CARLTON FIELDS

Florida Qui Tam Statute Applies to False Claims Made to State, not Local, Governments

March 25, 2016

What is the state? Before the summer of 2015, there were two schools of thought on the answer to this question in the context of the Florida False Claims Act (FFCA). The first was advanced in a February 2014 *Florida Bar Journal* article, "Florida Updates Qui Tam Whistleblower Statute." The article's authors article posited that 2013 amendments to the FFCA broadened the definition of the "state" to include claims made to local municipal and county governments. The second, more narrow view is that the statutory definition of the "state" still means the "state" and does not include local municipal and county governments despite the 2013 amendments. The tension between these two positions came to a head last year when two plaintiffs, citing the 2014 *Florida Bar Journal* article as legal authority, brought a lawsuit that was contingent upon defining "state" under the FFCA to include municipalities and counties. *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.*, No. 2014-CA-1669 (Fla. 2d. Jud. Cir. 2014). Leon County Circuit Judge James C. Hankinson was then called upon to answer the question, "What is the state under the FFCA?" Applying both a plain reading of the statute and rules of statutory construction, he concluded that under any view the "state" is the state of Florida, not local governments such as counties and municipalities.[1] As such, Judge Hankinson dismissed the claims with prejudice.[2] Judge Hankinson's decision is believed to be the first and only decision in Florida expressly finding that the FFCA does not apply to false claims made to municipalities and counties because they are not the "state." This article provides a brief background on the pertinent FFCA definitions that control the answer to the question posed to Judge Hankinson. It then addresses the arguments and factors that support the result he reached. **The FFCA and the 2013 Amendments** The FFCA prohibits the making of false "claims," which are defined as "any request or demand, whether under a contract or otherwise, for money or property." Fla. Stat. § 68.082(1)(a). When the Legislature adopted the FFCA in 1994, the statute only governed false claims made to an "agency." "Agency" was defined as "any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government."[3] "State government," in turn, was defined as "the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other

instrumentality of the state."[4] Because the definition of "agency" referred to entities housed under the executive branch, the plain language of the statute was not construed to apply to the legislative and judicial branches or to other state-level districts, divisions and instrumentalities.[5] In the same vein, the FFCA clearly did not apply to local governments, since local governments are not entities housed in the executive branch of state government. In 2013, however, the Legislature amended the FFCA through a comprehensive rewrite that was a legislative priority for the Attorney General.[6] While the statute previously provided that only false claims made to an "agency" or "state government" were actionable, it now covers false claims made to the "state."[7] Notwithstanding this change, the Legislature retained the definition of "state government" from the pre-amendment FFCA as the definition of "state" in the amended statute. Thus, under the amended statute, only false claims made to "the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the state" are actionable.[8] In the action before Judge Hankinson, the relators advanced arguments that the new definition of "state" expanded the FFCA so as to include false claims made to municipalities and counties.[9] On the other hand, the defendants in the lawsuit and the Attorney General argued that the plain meaning of the statute and the customary tools of statutory interpretation compelled the conclusion that the FFCA only applied to false claims made to a state entity.[10] Judge Hankinson considered both positions and agreed with the defendants and the Attorney General. Some of the reasons supporting this decision are outlined below. **The Plain Language of the Statute Does Not Extend to Local Governments** The FFCA limits viable claims to those made to an "employee, officer, or agent *of the state,*" and the Legislature limited the definition of "state" to mean "the government of the *state* or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality *of the state*."[11] The plaintiffs in the case before Judge Hankinson suggested that local governments qualify as "divisions" or "instrumentalities of the state" and therefore come within the auspices of this definition.[12] "Divisions . . . of the state" has a well-understood meaning as an organizational unit of state government. In fact, Florida law provides that the executive branch of the state government shall be divided into "departments" and that "[t]he principal unit of the department is the 'division.'" Fla. Stat. § 20.04(1), (3)(a). Additionally, Florida law specifically provides that the term "political *subdivisions*" "include[s] counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state." Fla. Stat. § 1.01(8). This structure, and the distinction between divisions and political subdivisions is reflected in the current organizational chart maintained by the Florida Office of Program Policy Analysis and Government Accountability, which illustrates that counties and municipal governments are not "divisions" of the state of Florida.[13] **Under Ordinary Rule of Statutory Construction, the State is the State** If you are still struggling with your answer to the question posed at the outset of this article, there are more reasons why local governments aren't the state. Namely, such an interpretation is not supported by two rules of statutory construction. First, when the Legislature uses different words in different parts of the same statute, it is presumed to have intended different meanings and to have understood what it was doing in writing the law. *State v. Bodden*, 877 So. 2d 680 (Fla. 2004); *State v. Mark Marks, P.A.*, 698 So. 2d 533, 541 (Fla. 1997). The

FFCA is a perfect example of this rule. That is because the FFCA specifically references counties and municipalities by name another subsection of the statute, 68.087(6), Fla. Stat. This language illustrates that the Legislature knew how to reference municipalities and counties by name, and had it wanted to include them in the definition of "state" in the same statute, it would have done so by name. Second, courts must strive to harmonize related statutory provisions through a reasoned and cohesive interpretation that avoids absurd results. *Knowles v. Beverly Enterprises-Florida, Inc.*, 898 So. 2d 1, 6 (Fla. 2004); *Palm Beach Cnty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000). It would be offensive to that rule for the "state" to include local governments because it would enable the state, as the real party in interest and beneficiary of the financial recovery for claims against the "state," to enjoy a massive financial recovery when the state was not damaged by the fraud at all. As Judge Hankinson pointed out in reaching his conclusion, there are several provisions in the statute that simply wouldn't make sense if local governments were considered part of the "state."[14] **The Attorney General Says the "State" Is the State** The Attorney General wields substantial power in the administration of the FFCA. That power, including the power to unilaterally kill a whistleblower claim, was recently confirmed by the First District in *Barati v. State*, 1D15-213, 2016 WL 699129 (Fla. 1st DCA 2016). In the case before Judge Hankinson last summer, that power was also on display. There, the Attorney General undertook an initial investigation of the claims before Judge Hankinson. She concluded that there were no false claims made to the state and said exactly that in court filings. Accordingly, the Attorney General declined to intervene. Relators elected to press on despite the Attorney General's warnings that her office considered the action without merit. While not exercising her power to unilaterally dismiss the case, the Attorney General made written submissions to Judge Hankinson confirming her view that the state means the state and FFCA claims do not extend to conduct directed to local governments. Specifically, she said "the Attorney General has consistently interpreted the Florida False Claims Act to cover only claims involving state funds or property."[15] At the hearing, the Attorney General argued for dismissal of the claims with prejudice. Having the Attorney General, who is statutorily charged with the administration of the FFCA, argue against the relators' position was undoubtedly a heavy influence on the court's ultimate answer that the "state" means the state. **Conclusion** The case before Judge Hankinson presented a unique statutory question under the current definitions contained in the FFCA. Despite the opinions set forth in the prior Bar Journal article suggesting that the "state" now extends FFCA jurisdiction to local governments, the Attorney General and Judge Hankinson rejected that broad view. Those defending Florida whistleblower claims based on alleged false claims to local governments should keep the principles set forth above in mind so they are prepared to answer the question "What is the state of Florida?" when it comes time to defend such claims.

---

[1] Tr. Hrg. on Mtn. to Dismiss, *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.*, No. 2014-CA-1669) (Fla. Leon Cnty. Ct. 2014). The filings in this lawsuit referenced are available upon request from the authors or through the Leon County Clerk of Courts' website. The authors of this article were counsel to defendants in this case. [2] Judge Hankinson also found the FFCA's public

disclosure bar was an independent basis for dismissal. Generally, the public disclosure bar precludes relators from using information that is already in the public domain as the basis for their fraud claims under the FFCA. Fla. Stat. § 68.087(3). The realtors initially appealed Judge Hankinson's decision to the First District Court of Appeal, but ultimately dismissed that appeal. *Gold & Hollander v. Am. Traffic Sols. et al.*, No. 1D15-4093 (Fla. 1st DCA 2015). [3] Fla. Stat. § 68.082(1)(a), (b) (1994). [4] *Id.* at (1)(d). [5] Fla. B.J., February 2014, at 38 ("This definition proved to be extremely narrow, as it excluded two branches of state government and a host of other subdivisions and instrumentalities of the state."). [6] Att'y Gen. Fla., *Attorney General Bondi Announces Legislative Priority to Protect Taxpayers' Money from False Claims Against the Government*, *available at* http://myfloridalegal.com/__852562220065EE67.nsf/0/017907684A98B17785257B2600573C2E ("While "qui tam" complaints are routinely brought in Medicaid cases, reports of non-Medicaid fraud against the state are increasing. These cases can include any individual or company that engages in business with the State of Florida and knowingly scams the state by inflating prices or otherwise obtaining unwarranted payments. The legislation would be the first significant enhancement to the Act since its passage nearly two decades ago and would provide the office with the necessary tools to independently verify the fraud allegations and make an informed decision on pursuing a 'qui tam' case. The Attorney General's Office is dedicated to protecting Florida's taxpayers from fraud, waste or abuse involving public funds."); ACTIONS AND PROCEEDINGS—FALSE CLAIMS, 2013 Fla. Sess. Law Serv. Ch. 2013-104 (C.S.C.S.H.B. 935). [7] Fla. Stat. § 68.082(1)(a)(1) (2013). [8] Fla. Stat. § 68.082(1)(f) (2013). [9] Am. Complaint *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.*, No. 2014-CA-1669 (Fla. Leon Cnty. Ct. May 19, 2015) (alleging that "local governments are the 'state' for purposes of the False Claims Act"). [10] Att. Gen.'s Notice of Filing Regarding Joint Mtn. Dismiss, *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.*, No. 2014-CA-1669 (Fla. 2d Jud. Cir. Aug. 26, 2015) (explaining that "the Attorney General has consistently interpreted the Florida False Claims Act to cover only claims involving state funds or property"). [11] Fla Stat. § 68.082(1)(a)(1)(f) (emphases added). [12] Plaintiffs' Response to Joint Motion to Dismiss, *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.,* No. 2014-CA-1669 (Fla. 2d Jud. Cir. July 27, 2015). [13] Fla. O.P.P.A.G.A., *State of Florida Organizational Chart (Sept. 2015), available at* http://www.oppaga.state.fl.us/government/storgchart.aspx. [14] Tr. of Aug. 27, 2015 Hrg. on Mtn. to Dismiss at 59:1–7, *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.,* No. 2014-CA-1669 (Fla. 2d Jud. Cir. 2014). [15] Att. Gen.'s Notice of Filing Regarding Joint Mtn. Dismiss, *State of Florida ex rel. Gold & Hollander v. Am. Traffic Sols. et al.,* No. 2014-CA-1669 (Fla. 2d Jud. Cir. 2014) Op. Att'y Gen. Fla. 2011-10, 2011 WL 2429107 (2011).

Authored By

Kevin P. McCoy

Adam P. Schwartz

Related Practices

White Collar Crime & Government Investigations
False Claims Act, Qui Tam, and Whistleblower Defense

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.