

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L

ATTORNEYS AT LAW

200 E. BROWARD BOULEVARD, SUITE 1900
FORT LAUDERDALE, FLORIDA 33301

WWW.WSH-LAW.COM

JAMIE A. COLE
MEMBER
MANAGING DIRECTOR
JCOLE@WSH-LAW.COM

July 13, 2015

Mayor Daniel J. Stermer
City Commissioner Toby Feuer
City Commissioner Angel Gomez
City Commissioner Thomas Kallman
City Commissioner Jim Norton
City of Weston
17200 Royal Palm Boulevard
Weston, FL 33326

**Re: The Authority of the City of Weston (the "City") to Regulate Transportation
Network Companies**

Dear Mayor and Commissioners:

At the July 6, 2015, City Commission Meeting, the Commission directed me to research and analyze (a) whether the City has the legal authority to adopt regulations governing Transportation Network Companies, such as Uber and Lyft, and their affiliated drivers (collectively, "TNCs") that operate within the City, and (b) whether, within the City, the City's regulations would prevail over conflicting regulations adopted by Broward County (the "County").

Summary

Neither Florida Statutes nor Federal laws regulate TNCs. Thus, pursuant to its home rule authority, the City would generally be permitted to enact reasonable regulations governing TNCs operating within the City. Pursuant to Section 11.01 of the County Charter, to the extent that there is a conflict between the City and County regulations, the City regulations would prevail within the City.

Nevertheless, the County Attorney's office has asserted that the County is authorized to "exclusively regulate" for-hire vehicles throughout the County based upon a 1974 Special Act of the Florida Legislature. However, it appears that the County Attorney's Opinion (1) fails to

recognize that Section 11.01 of the voter approved County Charter would govern over the 1974 Special Act (even if it had not been repealed) pursuant to Article VIII, Section 1(g) of the Florida Constitution, (2) relies upon a provision of the County Charter that was removed from the Charter in 2002, and (3) relies upon an obsolete and repealed definition of "taxicabs."

Accordingly, we believe that the City has a strong position that it is authorized to adopt an ordinance regulating TNCs operating within the City, and the ordinance would prevail in the event of a conflict with the County's TNC ordinance.

Background

At the April 28, 2015, Broward County Commission meeting, the Commission adopted an ordinance amending Chapter 22½ of the County Code to (i) regulate the operations of TNCs operating within the County, (ii) provide for enhanced background checks for chauffeurs (including TNC drivers), and (iii) require that all for-hire vehicles required to be permitted under the Motor Carriers Ordinance be inspected by a licensed mechanic approved by the County Environmental Licensing and Building Permitting Division (the "County Ordinance").

At the June 9, 2015, County Commission meeting, the Commission adopted an ordinance amending County Code Chapter 8½-12 to authorize the County to impose certain fines and penalties up to a maximum of \$1,000 per day per violation for an initial violation, up to \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if a hearing officer finds a code violation to be irreparable or irreversible in nature (the "Fine Ordinance"). The Fine Ordinance authorizes the County to allow these higher fines or penalties to be imposed in all code enforcement proceedings pertaining to those fines. The Fine Ordinance also amends Section 8½-16(t) to establish civil penalties for violations of the new provisions of the County Ordinance and to update penalties for violations of provisions that existed prior to the April 28, 2015, amendments.

After the County adopted the Fine Ordinance, Uber ceased providing services to the Fort Lauderdale-Hollywood International Airport and the Port Everglades seaport, which are controlled by the County. At the June 23, 2015, County Commission meeting, the Commission authorized the County Attorney to review the status of all resources necessary for TNCs to operate and to file suit, when appropriate, against TNCs that operate in Broward County other than in compliance with the County's regulations. On July 6, 2015, Uber announced that it would no longer provide service in Broward County, effective July 31, 2015.

At the July 6, 2015, City Commission Meeting, the City Commission directed me to research and analyze (a) whether the City has the legal authority to adopt regulations governing TNCs that operate within the City, and (b) whether, within the City, the City's regulations would prevail over conflicting regulations adopted by the County.

Municipal Ordinances Generally Prevail over Conflicting County Ordinances

Broward County is a Charter County. The powers of charter counties are framed in Article VIII, section 1(g) of the Florida Constitution:

CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. ***The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.*** (emphasis supplied)

Section 11.01 of the County Charter states:

Section 11.01

Sec. 11.01. - Conflict of County ordinances with Municipal ordinances.

Any County ordinance in conflict with a Municipal ordinance shall not be effective within the Municipality to the extent that a conflict exists regardless of whether such Municipal ordinance was adopted or enacted before or after the County ordinance. A County ordinance shall prevail over Municipal ordinances whenever the County acts with respect to the following:

- A. Sets minimum standards protecting the environment through the prohibition or regulation of air or water pollution, or the destruction of resources in the County belonging to the general public.
- B. Land use planning.
- C. Regulates the conduct of elected officials, appointed officials, and public employees through an enacted Code of Ethics.

In the event a County ordinance and a Municipal ordinance shall cover the same subject matter without conflict, both the Municipal ordinance and the County ordinance shall be effective. (emphasis supplied)

The very limited exceptions where a County ordinance would prevail over a conflicting municipal ordinance are not applicable to TNCs. The primary areas of TNC regulation in the County Ordinance (and most of the TNC laws being considered) are criminal background checks, vehicle inspections and insurance requirements. Municipal regulation of TNCs for such purposes would not affect minimum environmental standards, land use planning or the regulation of the ethical conduct of public officials. Therefore, pursuant to Article VIII, section 1(g) of the

Florida Constitution and Section 11.01 of the County Charter, a City ordinance regulating TNCs should prevail within the City over a conflicting County Ordinance to the extent of any conflict.

Home Rule Authority to Regulate TNCs

Under section 2(b) of Article VIII of the Florida Constitution, and Sections 166.021 and 166.041, Fla. Stat, municipalities are granted broad home rule powers that may be exercised for municipal purposes when not expressly prohibited by law. Article VIII, Section 2(b) of the Fla. Constitution states:

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, *and may exercise any power for municipal purposes except as otherwise provided by law.*

Section 166.021(1), states as follows:

1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, *and may exercise any power for municipal purposes, except when expressly prohibited by law.*

The adoption by the City Commission of TNC regulations, such as criminal background checks, vehicle inspections, driver training programs, and insurance requirements, for the purpose of safeguarding the life, health, safety and welfare of the public satisfies the municipal purpose requirements of the statute. Therefore, so long as the City's adoption of TNC regulations is not expressly prohibited by applicable Federal, State or County law, the City is authorized to enact TNC regulations governing TNCs operating in Weston through appropriate local legislation.

No Preemption by Federal or State Statutes

We are not aware of any existing Federal Law that would prohibit the City from enacting reasonable regulations governing TNCs operating within the City. Florida law does not currently recognize, address or preempt regulation of TNCs. There were multiple bills filed and considered by the Florida Legislature in the 2015 Florida Legislative Session seeking to regulate TNCs. Senate Bill 1298 and House Bill 757 would have required ride-sharing drivers to have insurance regulated by the state (See also Senate Bill 1326). House Bill 817 (CS/CS/1st Engrossed) would have expressly preempted the licensing and regulation of TNCs to the state and would have established a comprehensive state regulatory framework. However, none of the proposed bills were ultimately adopted by the Florida Legislature.

There is currently no Florida Statute regulating or addressing TNCS. This was clearly noted in the Florida House Staff Analysis for HB 817, which states: “**Currently, Florida law does not recognize TNCS**, but some local governments have addressed the issue of regulating TNCS.”¹ (emphasis supplied)

Florida Statutes currently provides insurance requirements for limousines and taxis, but not for TNCS. Aside from the insurance requirements, the majority of taxi and limousine regulation in Florida is controlled by local governments. For example, the County regulates taxis and chauffeurs in Broward County, including through the County’s Motor Carrier Ordinance. Florida law grants the County the power to “license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate *in the unincorporated areas of the county.*” Section 125.01, Fla. Stat., states:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(n) To the extent not inconsistent with general or special law, the legislative and governing body of a County must have the power to carry on county government, including, but not restricted to, *County must have the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county*; except that any constitutional charter county as defined in s. 125.011(1), F.S., must on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, must be issued by lottery among individuals with such experience as a taxi driver as the county may determine.

TNC vehicles do not meet the statutory definitions of a taxi, jitney, and limousine for hire or rental car, and, even if the definition were found to apply, the statutory provisions grant the County the power to license and regulate vehicles “that operate *in the unincorporated areas of the County.*” Therefore, a municipal regulation governing TNCS within the City’s jurisdictional boundaries would not conflict with Section 125.01(n), Fla. Stat.

The County Attorney’s Assertion of the County’s Authority to “Exclusively Regulate”

On July 10, 2015, the County Attorney issued an opinion (the “County Attorney Opinion”) that “Broward County is authorized to ‘exclusively regulate’ the operation of for-hire

¹See pg.3, Florida House of Representative Staff Analysis, Economic Affairs Committee, House Bill 817 (CS/CS/HB817), dated March 30, 2015.

passenger transportation vehicles in the County.”² A copy of the County Attorney Opinion is attached hereto. The County Attorney Opinion relies upon repealed Special Acts of the Florida Legislature, a repealed section of the County Charter and an obsolete and long since amended definition of “taxicabs.”

In 1971, the Broward County Transportation Authority, an independent agency of the State of Florida (the “Authority”), was established by a special act of the Legislature (Ch 71-561, Laws of Florida, the “1971 Special Act”) with the authority to improve, maintain and operate the Broward County transportation system and public mass transit system. In 1974, a special act was passed (Ch. 74-439, Laws of Florida, the “1974 Special Act”), effective October 1, 1974, which granted the Authority the power to “exclusively regulate, franchise and license the operation of all *taxicabs* that operate within Broward County.”³ (emphasis supplied)

On November 5, 1974, the voters of Broward County approved the Broward County Charter, which went into effect in Broward County on January 1, 1975. Section 7.04 of the Charter provided:

The functions, responsibilities, duties and obligations of the Broward County Transportation Authority as provided in Chapter 71-561, Laws of Florida, Special Acts of 1971, as amended, are hereby transferred and vested in the Charter Government; and said Authority shall cease to exist on the effective date of this Charter; and said Act is hereby repealed.

There was no reference in either Section 7.04 or any other provision of the County Charter to any exclusive regulatory authority of the County over taxicabs or for hire vehicles. To the contrary, Section 11.01 of the Charter provided that municipal ordinances shall prevail over conflicting County ordinances except in non-applicable specified areas (at that time, land use planning and minimum environmental standards). In 1977, the Legislature passed Ch. 77-515 (the “1977 Special Act”), which ratified County Charter Section 7.04 and expressly *repealed* the Broward County Transportation Authority Law, including the 1971 and 1974 Special Acts.

According to the County Attorney’s Opinion, Section 7.04 of the County Charter was removed from the Charter when it was revised on November 5, 2002. Thus, currently, neither the 1974 Special Act nor Section 7.04 of the County Charter is in force or effect, and any “exclusive” rights that the County had under those provisions are no longer in place.

² The County Attorney Opinion states: “Chapter 74-439, Laws of Florida, vested in the former Broward County Transportation Authority the power to ‘exclusively regulate, franchise and license the operation of all [*for-hire vehicles*] that operate within Broward County.’” The actual language of Chapter 74-439 applies to the operation of “all taxicabs” not “for-hire vehicles.” It is unclear why the County Attorney used the term “for-hire vehicles” rather than “taxicabs” as actually used Chapter 74-439. Although that law included a broad definition of “taxicab,” that definition, as noted below, is now obsolete and has been modified by the County.

³ The term “taxicab” is defined in the 1974 Special Act to “include every motor vehicle of nine passenger capacity or less, including the driver engaged in the general transportation of persons for hire, not on regular schedule or between fixed termini or over regular routes, but over the streets generally.”

Nevertheless, the County Attorney's Office claims the County retains exclusive authority to regulate for hire vehicles, and thus the County regulations trump those of any municipality. This argument is tenuous at best, because:

1. Article VIII, Section 1(g) of the Florida Constitution clearly states that the *County Charter*, not special or general law, provides which prevails in the event of a conflict between municipal and county ordinances. Thus, even if the 1974 Special Act were still in force (which it is not), it would be trumped by Section 11.01 of the County Charter.
2. Article VIII, Section 1(g) of the Florida Constitution was specifically included to avoid the intervention of the Legislature by special laws, when a charter county sought to preempt city ordinances in regulatory matters. This issue was specifically litigated between Broward County and Fort Lauderdale in the 1980s, and determined by the Florida Supreme Court.⁴
3. A vote of the Broward electorate as to when a County ordinance prevails over a municipal ordinance takes precedence over any such determination set forth in a special act of the Legislature (even if it were still in force). Article I, Section 1 of the Florida Constitution recognizes that: "All political power is inherent in the people." "When it comes to charter counties and municipalities within those counties, the Constitution expressly grants the electorate a right to determine by charter which government they desire to vest with preemptive regulatory power."⁵ The voters of Broward County have made that determination and have chosen to expressly grant preemptive regulatory power to the County regarding minimum environmental standards, land use planning and the ethical conduct of public officials or employees, but not regulation of TNCs. Thus, County Charter Section 11.01 is the definitive and final statement as to which takes precedence, and that would supersede any local or special act, even if it were still in place.

Notwithstanding the repeal of the 1971 and 1974 Special Acts and the removal of Section 7.04 from the County Charter on November 5, 2002, the County Attorney still claims that "the special act "remains effective pursuant to Section 11.02 of the Charter." The suggestion that

⁴ See *Broward County v. Fort Lauderdale*, 480 So.2d 631 (Fla. 1985) "Section 1(g), as we conclude both from the commentary and an understanding of the constitutional scheme vis-a-vis charter counties, was intended to specifically give charter counties two powers unavailable to non-charter counties: the power to preempt conflicting municipal ordinances, and the power to avoid intervention of the legislature by special laws. The power to preempt is the power to exercise county power to the exclusion of municipal power. It is clear from reading the transcripts of the Florida Constitution Revision Commission's discussion of preliminary versions of what would become section 1(g), that the preemption power was specifically included to eliminate the necessity of most if not all special laws when a charter county sought to preempt city ordinances in such areas as speed limits and other regulatory matters. Transcripts of Florida Constitution Revision Committee, Vol. 50 (1966) (available in Florida Supreme Court library)."

⁵ See *Seminole County v. City of Winter Springs* 935 So. 2d 521 (Fla. 5th DCA 2006), citing *Broward County v. Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).

Section 11.02 of the Charter somehow resurrected the repealed 1974 Special Act is contrary to the explicit language in Section 11.02 itself. Section 11.02, entitled "Effect on local laws," states that "[a]ll existing laws, ordinances, regulations and resolutions of all units of the *former government* shall remain operative except where inconsistent or in *direct conflict* with this Charter." (emphasis supplied) Section 11.02 does not apply because it (1) only addressed existing laws of the "former government" (namely, the non-Charter Broward County government) not special laws, and (2) would not be operative because the repealed 1974 Special Act would be "inconsistent or in direct conflict with" Section 11.01 of the Charter.

Finally, the County Attorney's Opinion is based upon an obsolete and long since replaced definition of "taxicabs." Although the County Attorney's Opinion references "for hire" vehicles, the 1974 Special Act actually addressed only "taxicabs." While the 1974 Special Act included a definition of "taxicabs" that could potentially be read broadly to include all "for hire" vehicles, that definition, over time, has become obsolete. Numerous local governments throughout the country, including Broward County, have struggled to determine the applicability of "taxicab" regulations to TNCs and have instead concluded that they are different. Thus, Broward County has revised its definition of "taxicab" in such a way as to clearly not include TNCs,⁶ which are defined separately.⁷ Accordingly, even if the County continued to have exclusive jurisdiction over the regulation of "taxicabs," that would not include TNCs, pursuant to the County's own new definition.

Jurisdiction Issue

If the City were to adopt an Ordinance regulating TNCs, TNCs could lawfully operate in the City in accordance with the City Ordinance. However, even if the City were to adopt conflicting regulations in the areas where TNCs have expressed the most concern, there are still practical limitations on a TNC's ability to effectively operate and service clients within the City that need to be addressed. Once the TNC driver leaves the jurisdictional boundaries of the City with a client, and enters another municipal jurisdiction in the County, the TNC driver may be subject to the County Ordinance provisions to the extent the other Broward municipality did not also adopt TNC regulations that conflict with the County Ordinance⁸. This issue could be addressed by Broward municipalities adopting similar TNC regulation ordinances that conflict with the County Ordinance. An interlocal agreement among such municipalities could serve as a means for coordinating such an effort.

⁶ Pursuant to Section 22 ½-1(k)(1), "taxicab means a motor vehicle that employs the use of a taximeter, as defined in Section 22½-1(r) of this Chapter, or a motor vehicle designed to accommodate not more than eight (8) passengers, exclusive of the driver, operated for compensation at rates, prescribed by Commission resolution, recorded and indicated by a taximeter in operation when the vehicle is in use for transportation of any passenger, and where the route or destination is controlled by the passengers."

⁷ "Transportation network company vehicle" to mean "a personal or other noncommercial vehicle that is used by a chauffeur or any other person to provide transportation services arranged through a transportation network company's digital platform." County Code Section 22 ½ -1(k)(7).

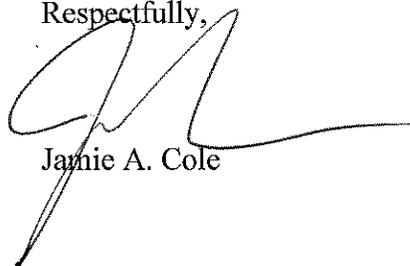
⁸ The TNC driver would also still remain subject to the County Ordinance provisions in the unincorporated areas of the County.

The Honorable Mayor and City Commission
July 13, 2015
Page 9

Conclusion

We believe that the City has a strong position that it is authorized to adopt an ordinance regulating TNCs operating within the City, and the ordinance would prevail in the event of a conflict with the County's TNC ordinance.

Respectfully,

A handwritten signature in black ink, appearing to read 'JA Cole', with a long horizontal flourish extending to the right.

Jamie A. Cole

cc: John R. Flint, City Manager
Enclosure

MEMORANDUM

TO: Mayor Tim Ryan

FROM: Joni Armstrong Coffey, County Attorney

DATE: July 10, 2015

RE: **Countywide Regulation of For-hire Vehicles**
CAO Files: 15-026 & 15.049.00

You have asked to what extent municipalities within Broward County may regulate for-hire vehicles.

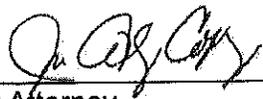
Broward County is authorized to "exclusively regulate" the operation of for-hire passenger transportation vehicles in the County. Chapter 74-439, Laws of Florida, vested in the former Broward County Transportation Authority the power to "exclusively regulate, franchise and license the operation of all [for-hire vehicles] that operate within Broward County." Chapter 77-515, Laws of Florida, transferred to Broward County all powers of the Broward County Transportation Authority, including the exclusive authority to regulate for-hire transportation.

The transfer of the Broward County Transportation Authority's powers to Broward County was included in the Broward County Charter in Article VII, Special Acts. When the Charter was revised on November 5, 2002, Article VII was removed; however, the special act remains effective pursuant to Section 11.02 of the Charter.

Based on this authority, Broward County has prescribed the regulation of for-hire transportation on a countywide basis since at least 1979. Pursuant to Section 22½-12 of the Broward County Code of Ordinances, only those municipalities within the County that regulated for-hire transportation as of July 1, 1976, may continue to regulate

Mayor Tim Ryan
July 10, 2015
Page 2

for-hire transportation within the municipality, and only if the regulations meet the minimum standards set forth in Chapter 22½.



County Attorney

JAC/AEA/lw

c: Board of County Commissioners
Bertha Henry, County Administrator
Evan A. Lukic, County Auditor