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The Great Transit Tax Grab of 2008

In a stunning stretch of logic and reason, the County Executive—the same County Executive who has gone to great lengths to convince the public that new taxes on drinks and car rentals were enacted to provide dedicated funding for mass transit—now wants to use any excess from the taxes to fund road and bridge projects in the County.

How can he get away with this? He is citing language from the section of Act 44 (Section 8601) that says "A County of the Second Class may obtain financial support for transit systems by imposing one or more of the taxes under subsection (B)" The important question here is "what is a transit system"? Presumably it means *the* transit system: the buses and light rail owned by the Port Authority that carry passengers every day and all the other facilities aiding in that operation.

But the Executive and some of his allies on Council have a different interpretation. This was revealed this past May when the County Council president said that "by definition, transit systems are both mass transit and transportation". That definition did not come from Act 44 as the phrase is not outlined in the statute. Instead, the phrase "transit systems" looks like fair game for interpretation until a court defines what it is.

But it really should not be that complicated. There is a lot of evidence that the drink and car rental taxes were enabled and approved by the Legislature as a means to act as a local match for mass transit.

First and foremost, the section of Act 44 creating the County's authority to levy the taxes is called "Taxation for Public Transportation". It does not say they are taxes for "transportation". There is a difference and it is a very crucial one. If we are to believe the argument of the Executive and the Council President, anything that the public uses to get from one place to another would be public transportation. If that were the case the state Constitution would not forbid using gas tax revenues for mass transit since mass transit would be indistinguishable from roads and bridges. A spokesman for the Senate Transportation Committee has twice said on record that the taxes were designed for public transit use and support, nothing more.

Even the County budget fund holding the money (until the Port Authority settles its contract satisfactorily) is called the "Transit Support Fund", not a "Transportation

Support Fund" or a "Transit Systems Fund"; and the County's capital budget separates out "roads", "bridges", and "Port Authority", into individual categories. It seems that the notion of a lumped together "transit system" that includes roads and bridges came about when officials had to try and justify their plan to spend more money.

According to a newspaper article, the County Executive has an opinion from the state's Legislative Reference Bureau which says his interpretation and that of his allies on Council is correct—that is to say, any excess proceeds from the drink and car rental taxes could be used for other transportation needs. But this opinion is not binding and does not carry the force of law. Besides, neither he nor the Bureau will release it to the public. Common sense and a straightforward reading of Act 44 clearly precludes using the taxes for roads and bridges.

It is not as if the County doesn't have money to fix roads—they have a capital budget and, thanks to gambling, they have an $80 million infrastructure fund.

If the Executive and Council succeed in using the excess funds for purposes beyond mass transit, it will be worse than the old "bait and switch": it will be outright, blatant deception. And it will continue the trend in county government by lawsuit that we have previously documented—a trend that displays a willingness to pass and circumvent existing laws when the Executive and Council find it expedient.

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