

January 2, 2021

James DiPietro, Administrative Director  
The Broward County Board of Rules and Appeals  
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Plantation Florida 33324

**ADVISORY OPINION REGARDING REQUIREMENTS FOR SIGNED AND SEALED DRAWINGS  
WHEN CONSTRUCTION COSTS EXCEED \$30,000.00**

Jim,

You have asked the Office of General Counsel if a signed and sealed drawing from an Architect or Engineer is required when construction costs exceed \$30,000.00 for one or two family residences where the local rule (BCAP 107.3.4.0.3) appears to be in conflict with the general rule (Florida Statute § 481.229).

**Synopsis:**

A signed and sealed drawing from an Architect or Engineer is required when construction costs exceed \$30,000.00 for one or two family residences in Broward County.

**Rule:**

The question arises due to the language set forth in Section 107.3.4.0.3 of the Broward County Administrative Provisions for the Florida Building Code which is in conflict with Fla.Stat 481.229. More specifically, the relevant rule and statute state *inter alia*:

**BCAP 107.3.4.0.3** – For alterations, repairs, improvements, replacements or additions to single-family residence, costing thirty thousand dollars (\$30,000.00) or more, as specified herein, the plans and/or specifications shall be prepared and approved by, and each sheet shall bear the impress seal of an Architect or Engineer. For any work involving structural design, the Building Official may require that plans and/or specifications be prepared by and bear the impress seal of an Engineer, regardless of the cost of such work.

**Fla.Stat. 481.229** Exceptions; exemptions from licensure. – (1) No person shall be required to qualify as an architect in order to make plans and specifications for, or supervise the erection, enlargement, or alteration of: (b) Any one-family or two-family residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost....

The inconsistent language of these provisions presents conflict of laws and preemption issues, which are governed by Florida constitutional law.

**Analysis:**

Pursuant to the Constitution of the State of Florida, the legislature may enact legislation by way of General Law or Special Law. *See* Art. III, § 10, Fla. Const. A general law operates uniformly upon all citizens across the state. *See State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering v. Gulfstream Park Racing Ass'n, Inc.*, 912 So. 2d 616 (Fla. 1st DCA 2005), *decision aff'd*, 967 So. 2d 802 (Fla. 2007). A special law is one relating to, or designed to operate upon, particular persons or things, or in a specifically indicated part of the state. *See Id.* *See also Schrader v. Florida Keys Aqueduct Authority*, 840 So. 2d 1050 (Fla. 2003).

The question of whether more stringent local government action conflicts with the less burdensome state statute is best answered through the use of the underlying statute's language. If no portion of the statute **expressly forbids** more stringent regulation, the local government may enact and enforce the regulation.<sup>1</sup> On the other hand, some Florida courts have held that the preemption need not be explicit, so long as it is clear that the Legislature has clearly preempted local regulation of the subject. *Santa Rosa County v. Gulf Power Co.*, 635 So. 2d 96, 100, 151 Pub. Util. Rep. 4th (PUR) 552 (Fla. 1st DCA 1994), cause dismissed, 641 So. 2d 1345 (Fla. 1994).

The Broward County Board of Rules and Appeals was granted its authority by Special Act Ch. 71-575 and incorporated in the Broward County Charter. Additionally, BORA was granted the authority to make special amendments to the Florida Building Code by under the Charter of Broward County. As such, all provisions of the BCAP are authorized by special act of the Florida legislature. Therefore, under the general rule, this provision prevails over general law 481.229.

In order for any exception to apply, 481.229 must, by its terms, explicitly supersede BCAP 107.3.4.0.3. In this case, there is no express language which manifests an intent to create a new and exclusive rule on the subject matter. The fact that the state law is inconsistent with BCAP 107.3.4.0.3, which is protected by the special charter of Broward County, does not necessitate preemption. Quite the opposite is true, as it gives the municipality the choice to act under whichever of the two laws it chooses.

The Florida legislature has long recognized that the building regulations of Broward County require great local deference. This is illustrated Broward County's designation as a High Velocity Hurricane Zone in the Florida Building Code. For this reason, the state has granted Broward County and BORA great independence in amending and enforcing its building regulations. With this legislative history in mind, it is not logical to conclude that the legislature has, with the enactment of 481.229, intended to supersede or preempt the provisions of the of the BCAP.

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<sup>1</sup> Commentator's view on test for whether local and state laws conflict. Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness Of Home Rule: A Preemption And Conflict Analysis*, Florida Bar Journal 83-JUN FLBJ 92 (June 2009) (citing *Shetler v. State*, 681 So. 2d 730 (Fla. 2d DCA 1996 {00329778.DOCX; 1 }

**Conclusion:**

BCAP 107.3.4.0.3 was enacted pursuant to special act of the Florida legislature and adopted into the special Charter of Broward County. Fla.Stat. 481.229 is a general law which is intended only to apply to those counties not under specific direction and authority of a special act or Charter. Because the two provisions cannot be harmonized and there is no express language manifesting intent to preempt, BCAP 107.3.4.0.3 takes precedence over Fla. Stat. 481.229.

A signed and sealed drawing from an Architect or Engineer is required when construction costs exceed \$30,000.00 for one or two family residences

Highest regards,

Charles M. Kramer, Esq.  
Board Certified by the Florida Bar