

January 22, 2020

ADVISORY OPINION TO ADMINISTRATIVE STAFF REQUEST REGARDING REQUIREMENT OF ADDITIONAL DOCUMENTS FOR PERMIT APPLICATION AND BINDING AUTHORITY OF THE BOARD OF RULES AND APPEALS

Issue(s):

The Administrative Staff of the Broward County Board of Rules and Appeals has requested an Opinion with respect to two (2) separate but related issues.

The first issue pertains to a municipality's requirement for a "Permit Affidavit" to be submitted in addition to the requirement by the Broward County Uniform Permit Application. A copy of the Staff Request for Legal Opinion and the documents attendant thereto are attached to this Advisory Opinion as Exhibit "A."

The second issue pertains to the binding nature of interpretations of the Florida Building Code Chapter 1, Broward County Edition, on local municipalities where they were approved by a vote from the Broward County Board of Rules and Appeals.

1 Supplementing Permit Applications

Rule:

The authority of the Board of Rules and Appeals has been established and reviewed on numerous occasions in both the courts and the legislature. Local Building departments are the "local enforcing agencies" while the Board of Rules and Appeals is recognized as the "local *governing* body." See Special Act 71-575(3)(a) and 3(c); Section 9.02, Broward County Charter. In so saying, the express legislative intent is that the Broward County Board of Rules and Appeals as the local governing body has jurisdiction and ultimate authority in matters of interpretation and amendment where it may impact the Florida Building Code. See FS 633.208(2)(a), and F.S. Sec 553.71. ¹

We would further show the Administrative Staff the language contained in Section 9.02(A)(2) of the Broward County Charter wherein is stated:

The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code. The County Commission or a Municipality shall not enact any ordinance in conflict with Chapter 98-287 and Chapter 2000-141, Laws of Florida, as may be amended from time to time.

¹ See *especially* Attorney General of the State of Florida Opinion of August 21, 2018, page 2; and Frequently Asked Questions About Attorney General Opinions, at : <http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad> ("Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question."). [Emphasis added].

In so saying, the Broward County Board of Rules and Appeals is determined by Special Act of Legislature 71-575, and confirmed by the Attorney General of the State of Florida, as the governing body with ultimate authority on issues surrounding the Florida Building Code, and ordinances or amendments thereto.

Analysis:

- (1) As to a municipality's requirement that a "Permit Affidavit" be submitted with a Uniform Permit Application.

The short answer to this question is "No." A municipality may not place additional conditions on obtaining a Uniform Building Permit Application.

a) Uniformity in the application process means uniformity in the Code.

It is axiomatic that the purpose of a "Uniform" Building Permit Application is to provide uniformity in the permitting process. In 1996, the Florida Building Code Study Commission was appointed to review the system of over 400 local jurisdictions and state agencies with building code responsibilities. One of the most important issues was compliance. The Building Commission recommendations called for strengthened compliance through greater predictability and accountability in the building code system. The 1998 Legislature adopted the Study Commission's recommendations and amended Chapter 553, Florida Statutes, Building Construction Standards to create a single minimum standard building code that is enforced by local governments. In so saying, safety, uniformity and accountability are recognized as critical elements of the Florida Building Code.

In this specific case, if a local municipality were to unilaterally implement changes to the Permit Application process, it will have the effect of altering an administrative portion of the Building Code thus creating a "second" set of Building Code requirements" specific to that municipality. This is not permissible under Special Act 71-575 and further constitutes the creation of a conflicting amendment to law and forbidden under common law.

The courts have stated:

It is presumed that laws are passed with knowledge of all prior laws already on books, and that legislature neither intended to keep contradictory enactments in force nor to repeal prior law without express intention to do so; courts have duty to adopt scheme of statutory construction which harmonizes and reconciles statutes and to find reasonable field of operation that will preserve force and effect of each.

See Floyd v. Bentley, 496 So.2d 862, 865 (Fla 2d DCA 1986). *See also* Woodgate Development Corp. v. Hamilton Inv. Trust, 351 So.2d 14 (Fla 1977).

In the case of building permits, the law will not allow variations or modifications in a process which is statutorily controlled. A change in the application process by one municipality creates a new Florida Building Code. **As a matter of law, the municipality does not have the authority to create its own amendments to the Building Code and cannot do so indirectly through the use of supplemental application requirements where the end result is to impose a change in conditions and ultimately a change in the Building Code.**

b) Supplementing permit applications.

Local municipality amendments are restricted under Florida Statutes Sec 553.73 (4)a, which states *inter alia*:

(4)(a) ...

Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph. Local amendments shall be more stringent than the minimum standards described herein and shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

Florida Statutes Sec 553.73 (4)a

Thus, a local administrative amendment must strengthen the code in some fashion **but only as established county wide through the Broward County Board of Rules and Appeals. As previously noted, uniformity in the Code requires uniformity in its administration and application.**

CONCLUSION: As to supplemental conditions for permit applications

Put very simply, a municipality does not have the authority under Special Act 71-575, the Broward County Charter, the Florida Building Code, Broward County Edition, or Florida Statute to create supplemental conditions to Uniform Permit Application unless such supplemental conditions or amendment(s) are adopted by the Broward County Board of Rules and Appeals and instituted county-wide.

2) Binding Authority of the Board of Rules and Appeals

Rule

The duties of the Board of Rules and Appeals are set forth in section 9.02, sub section (1) which affirms that the authority of duties of BORA as established through its creation under Special Act of Legislature 71-575(f); and sub-section (3), specifically determine that BORA has the duty of monitoring and oversight of all governmental entities which are responsible for enforcing the Florida Building Code.

Analysis:

More specifically section 9.02, sub sections (1) and (3) of the Broward County Charter state *inter alia*:

9.02 Purpose.

(1) It shall be the function of the Broward County Board of Rules and Appeals, to exercise the powers, duties, responsibilities, and obligations as set forth and established in Chapter 71-575, Laws of Florida, Special Acts of 1971, as amended by Chapters 72-482 and 72-485, Laws of Florida, Special Acts of 1972; Chapter 73-427, Laws of Florida, Specials Acts of 1973; 74-435, 74-437, and 74-448, Laws of Florida, Special Acts of 1974; and Chapter 98-287, as amended by Chapter 2000-141, Laws of Florida, or any successor building code to the Florida Building Code applicable to the county, as amended.

Broward County Charter Section 9.02 Emphasis added.

As previously stated in the first part of this Advisory Opinion:

Local Building departments are the “local enforcing agencies” while the Board of Rules and Appeals is recognized as the “local governing body.” See Special Act 71-575(3)(a)

and 3(c); Section 9.02, Broward County Charter. In so saying, the express legislative intent is that the Broward County Board of Rules and Appeals as the local governing body has jurisdiction and ultimate authority in matters of interpretation and amendment where it may impact the Florida Building Code. See FS 633.208(2)(a), and F.S. Sec 553.71.

And:

The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code. The County Commission or a Municipality shall not enact any ordinance in conflict with Chapter 98-287 and Chapter 2000-141, Laws of Florida, as may be amended from time to time.

Broward County Charter, Section 9.02(A)(2)

The duties of monitoring and oversight include ensuring that municipalities and enforcement agencies comport with interpretations of the Code as mandated by statute and the Florida legislature.

If an enforcing agency determines that its interpretation of the Code supercedes the authority of the Board of Rules and Appeals it is the duty of the Board ensure compliance through monitoring and oversight to ensure compliance with the Broward County Charter, Special Act of Legislature 71-575 , and Florida Statutes Sec 553.73. See also F.S. Sec 775.083

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CONCLUSION - As to binding nature of interpretations of the Board or Rules and Appeals

The Broward County Charter, Florida Statutes, and Special Act of Legislature 71-575 are abundantly clear on this matter. Board interpretations of Code and Statute incorporated therein are binding on all municipalities and enforcement agencies in Broward County.

Broward County Board of Rules and Appeals

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