

June 17, 2020

James DiPietro, Administrative Director  
The Broward County Board of Rules & Appeals  
1 N. University Drive, Suite #3500-B  
Plantation, FL 33324

**ADVISORY OPINION AS TO REQUIREMENT FOR SUBMITTAL  
OF CONTRACT WITH BUILDING PERMIT APPLICATIONS**

Jim,

**Issue:**

You have asked the office of General Counsel to the Broward County Board of Rules and Appeals to review Florida Building Code Section 109.3 and 109.3.1 with respect to the legality of a Building Official requesting a copy of a contract between an owner and a contractor for the purpose of confirming building permit fees.

**Synopsis:**

A copy of a contract is not required as part of the building permit application process, however, a Building Official may request a copy of a contract to insure the assessment of the proper amount of permitting fees.

**Rule:**

We first note that the statute in question states as follows:

**Current Broward 109.3:**

**109.3** Building permit valuations. The applicant for a permit shall provide an estimated permit value at a time of application. Permit valuations, shall include

total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the Building Official. Final building permit valuation shall be set by the Building Official.

**109.3.1** The Building Official may require an estimate of the cost utilizing RSMeans, copies of signed contract and/or other descriptive data as a basis for determining the permit fee.

**Analysis (1):**

The issue with regards to legality primarily pertains to either 1) statutory pre-emption, or 2) the question of confidentiality of a contract between a Contractor and an Owner where the contract is requested by a Building Official and the state is not a party to the contract. State and local governments do not have an interest in contractual obligations between third parties where no valid state interest is implicated.<sup>1</sup>

With respect to statutory pre-emption, the Florida Statutes determine that the state and local governments have an interest in a contractor's obtaining a building permit only *after* entering into a contractual agreement. More specifically Florida Statutes §489.127 (4)(c) states:

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...

**(c) A certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not apply for or obtain a building permit for construction work unless the certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, or business organization duly qualified by said contractor, has entered into a contract to make improvements to, or perform the contracting at, the real property specified in the application or permit.** This paragraph does not prohibit a contractor from applying for or obtaining a building permit to allow the contractor to perform work for another person without compensation or to perform work on property that is owned by the contractor.

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<sup>1</sup> The issue of a local municipality requiring a signed acknowledgement by an Owner with respect to the potential for a Homeowners' Association required authorization of work prior to performance under a building permit has been previously addressed. See Advisory Opinion of March 31, 2020 in which is shown that a requirement by a municipality to confirm an Owner's awareness of potential contract issues with a third party, private enterprise, is beyond the reach of local government.

We further note that F.S. §489.126 determines penalties for obtaining a permit without a contract. *See DBPR and CILB vs. Lewis Jenkins*, Case No. 17-4510PL, September 14, 2017. (“*The evidence clearly showed that Respondent had not entered into a contract to renovate the Golfview Road property at the time he applied for and obtained the building permit.*”) *See also* F.S §489.129.

In so saying, the state’s interest is not merely incidental but rather based on the legislatively driven mandate of a requirement for a valid contract prior to the permit application.

Although there are no requirements under either statute or code which determine that a contractor or permit applicant must provide a copy of a contract in order to obtain a building permit, the state is authorized to request additional documentation to ensure compliance with the law. As noted in *Westland Skating Center, Inc. v. Gus Machado Buick, Inc.*, 542 So.2d 959, 964 (Fla.1989) “[W]hile ... compliance with a statute or ordinance may amount to evidence of reasonableness, such compliance is not tantamount to reasonableness as a matter of law” so as to exclude other relevant evidence.” *See Westland* at 964. In so saying, building departments may request a copy of the contract between a contractor and owner to ensure assessment of the proper amount of permit fees. *See also Lindsey v. Bill Arflin Bonding Agency Inc.*, 645 So.2d 565 (Fla. 1<sup>st</sup> DCA 1991).

**Analysis (2):**

A second question arises as to whether a contract between an owner and a contractor is protected as a trade secret or beyond the state’s purview where it is a private contractual matter. Given the state’s underlying statutory interest with respect to the necessity of having a contract before application for a permit we must answer in the negative. The state may assert an interest in a private contractual matter between two parties where the agreement substantially affects state interests. *See Chandris, S.A. v. Yanakakis*, 668 So.2d 180 (Fla. 1995).

The possibility exists that the state may have an interest in a contract which nevertheless contains terms which are privileged as to third parties however no opinion is offered to address a cure for this issue.

**Review of Proposed Revisions:**

You have provided us with a proposed Revision to FBC 109.3.1 as well as a formal interpretation which state:

**Revision to Section 109.3.1**

In the event that the Building Official determines that the valuation is underestimated on the permit application, then the Building Official may require an estimate of the cost utilizing RS Means, a copy of a signed contract, and/or other descriptive data as a basis for determining the permit fee. The

Building Official must have a reasonable basis for his or her determination that the valuation is underestimated.

**Formal Interpretation:**

The Broward County Board of Rules and Appeals interprets Sections 109.3 and 109.3.1 to state that the Building Official must first determine that a permit application is underestimated before the applicant can be required to provide a detailed validation of the valuation of the work to meet the approval of the Building Official. Therefore, the Building Official may not require permit applications to have an estimate or contract attached at the time of permit application submittal before the Building Official has determined that the valuation is underestimated. The Building Official must have a reasonable basis for his or her determination that the valuation is underestimated.

It is well established Florida law that courts accord great deference to a local administrative body's interpretation of law. See McGillis v. Department of Economic Opportunity, 210 So.3d 220 (Fla. 3d DCA 2017); (“*Courts shall defer to the administrative agency's interpretation of a statute because the interpretation may have been based on a history that is best known by the agency or special expertise the agency has in applying the statute.*”)

The authority of an administrative agency to seek additional information to ensure compliance with Florida law is similarly well established. See Doheny v. Grove Isle, Ltd., 442 So.2d 966 (Fla. 3d DCA 1983) (“*Within 30 days after receipt of an application for a permit under this chapter, the department shall review the application and shall request submittal of all additional information the department is permitted by law to require.*” Doheny citing *F.S. Sec 403.0876*). See also Chandris, S.A. v. Yanakakis, 668 So.2d 180 (Fla. 1995).

Although there is no requirement that a contract be submitted with every permit application, our analysis of the proposed revised Code provision (109.3.1) determines that the local governing authority may determine that submittal of a contract between Owner and Contractor is only required where there is a reasonable, good faith dispute as to the value of work set forth in a permit application.

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Page 5  
Advisory regarding FBC 109.3 et.al.  
June 17, 2020

## **CONCLUSION**

A state agency or its appointee(s) has/have the authority to seek additional information attendant with a building permit application for the purpose of insuring compliance with a regulatory scheme that does not encroach upon the rights of a party to enter into a contract or interject a state presence between parties to a lawful contract.

In this case, a copy of a contract is not required as part of the building permit application process however a Building Official may request a copy of a contract to insure the assessment of the proper amount of permitting fees, in accordance with the guidelines set forth herein.

The Broward County Board  
of Rules and Appeals

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