

November 25, 2020

**LEGAL ADVISORY OPINION AS TO REQUIREMENTS FOR  
PHYSICAL ATTENDANCE BY BOARD MEMBERS AT MEETINGS  
OF THE BROWARD COUNTY BOARD OF RULES AND APPEALS**

**Issue**

Broward County is currently experiencing the same pandemic related health concerns which are affecting the state, nation, and global population. On March 9, 2020, the Office of the Governor of the State of Florida, Ron DeSantis, issued Executive Order 20-52 which suspended the requirements for many offices of state and local government to conduct their affairs from their usual place of work and instituted remote workplace protocols.

On October 31, 2020, Executive Order 20-52 and all extensions of same were allowed to expire and the Office of the Governor ordered state and local government personnel, including advisory and administrative boards, back to conducting business in person as required by law. *See Press Release of Frederick Piccolo, Director of Communications, Governor Ron DeSantis, September 30, 2020.*

The threat of infection is a very real concern and with it, the threat of severe illness and/or death. You have asked your attorney to review applicable statutes, codes, guidelines, and Executive Orders which regulate the Broward County Board of Rules and Appeals (the “Board”) with respect to whether the Board must establish a physical presence to conduct its Board meetings or to carry out its duties.

**Synopsis**

Upon review of Section 113 of the Florida Building Code, Broward County; Section 9.02 of the Charter of Broward County; Special Act 71-575; Broward County Intergovernmental Affairs directives, recent Executive Orders, and Board of Rules and Appeals Policy 95-2 we find that there is no requirement that the Board must establish a physical presence to conduct business as mandated under any of the regulating protocols.

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**Rule**

The Broward County Board of Rules and Appeals was created by Special Act 71-575 with its purpose and procedural requirements further set forth in Section 9.02 of the Charter of Broward County. The general rule of law when determining authority on legal question follows a protocol of statute over code; code over ordinance; ordinance over policy. Generally, specific statutes on a subject take precedence over another statute covering the same subject in general terms. *See Littman v. Commercial Bank & Trust Co.*, 425 So.2d 636 (Fla. 3d DCA 1983). Where a statute is unclear, the courts will look to enabling legislation. In the absence of specifically controlling legislation, or clarity in enabling legislation, the courts will look to precedent in the stated descending order.

**Analysis:**

In the present case, Special Act 71-575 created the Board of Rules and Appeals. A careful review of Special Act 71-575 shows that nowhere was it contemplated that the Board is required to be physically present at any specific location to establish a quorum or conduct business.

Upon reviewing Section 9.02 of the Charter of Broward County, we determine while the Charter provides specific guidelines as to purpose, composition of Board members, hiring of clerical personnel and establishment of funding protocols through the County Commission, it is mute as to requirements as to physical presence.

Section 113 of the Florida Building Code provides no further requirements as to physical presence which is notable in light of the fact that it specifically establishes quorum requirements necessary to conduct business.

Where language is missing from a statute, neither the courts nor a party may create language to suit any particular purpose or impart meaning which was not legislatively intended. *In interpretation of statutes the courts cannot apply its own construction or rearrange the words nor even add punctuation marks that will result in a departure from the natural meaning of the language used. See Wagner v. Botts, 88 So.2d 611 (Fla. 1956).*

Having exhausted analysis of legislatively established meaning, we turn to precedent established through Board Policy 95-2 wherein is stated:

## **ARTICLE V** **MEETINGS**

Section 1. Regular meetings of the Board of Rules and Appeals shall be held on the second Thursday of each month at 7 o'clock p.m. in the Broward county commission chambers Room 422 in the Broward county government center.

Although the language does not specifically establish the requirement of a physical presence, based on precedent we would state that it has been established as a policy that meeting take place with the physical presence of both Board members and attendees on the second Thursday of every month at 7 o'clock p.m.

Conversely, Board Policy 95-2 contains what is commonly referred to as a "savings clause" whereby the Board reserves the right to amend policy as necessary. More specifically, Article XV states *inter alia*:

## **ARTICLE XV** **MISCELLANEOUS**

Section 2. These procedures may be changed from time to time by the Board if they deem it necessary for benefit of the public.

### **Contributing authority**

Your attorney has discussed the need to protect Board personnel and staff through use of video/ electronic media conferencing with the Office of General Counsel, Florida Building Commission. The Office of General Counsel for the Florida Building Commission advises that video conferencing is currently being practiced by the members of the Florida Building Commission with public notice of call in/ uplink information being published for the general public and interested parties so as to comply with all Government in the Sunshine requirements.

### **Conclusion**

The Executive Orders of the Governor of the State of Florida require a return to meeting in person where required by law, i.e. Florida statute. The Board of the Broward County Board of Rules and Appeals is not precluded by any statute or legislative guidelines from conducting its meetings by electronic media and may continue to conduct its meetings remotely so long as notice is provided to interested parties and the general public as required under the U.S. and Florida Constitutions; Florida Statutes Section 286 (Government in the Sunshine); and all other applicable meeting/ hearing protocols are met.

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