

December 10, 2018

**ADVISORY AS TO CORPORATIONS PROVIDING BUILDING DEPARTMENT SERVICES
IN BROWARD COUNTY AND ALSO PROVIDING DESIGN AND CONSTRUCTION
SERVICES IN OTHER LOCATIONS, SPECIAL ACT 71-575**

You have asked your attorney to provide an Opinion as to whether a corporate entity which is providing Building Department Services in Broward County may also provide design and construction services in other locations without violating the specific provisions of Special Act 71-575.

Genesis of the issue.

The question appears to be predicated in part on the Opinion of the Florida Attorney General which was rendered on August 21, 2018 and addressed the preclusion of individual inspectors and building officials from using their Certificates of Competency to engage in outside work pursuant to Special Act 71-575.¹ The referenced Advisory Opinion from the Attorney General has been previously, and extensively, briefed.

Analysis and construction of the statute

Neither the courts, nor any administrative bodies have the authority to attempt to modify legislative intent through the addition or omission of wording which has been clearly set forth otherwise. See Harvard v. Palm Springs, 98 So. 3d 645, 2012 Fla. App. LEXIS 15330 (Fla. 4th DCA,2012).

If construction is necessary for interpretation, then rules of statutory construction apply in matters of legislation. ‘If the intent is not clear from the language of the statute, meaning is sought from a history of legislative intent. in construing statutes, manifest intent of Legislature will prevail over literal import of words used by it; no literal interpretation leading to unreasonable conclusion or purpose not intended by lawmakers should be given.’ See Florida Department of Environmental Protection vs. Contract Point Florida Parks, LLC, 986 So.2d 1260, (Fla. 2008)(“ We have long held that the Court should not interpret a statute in a manner resulting in unreasonable, harsh, or

¹ The Opinion from the Florida Attorney General was predicated on a question initially posed by the Broward County Building Certification Committee to General Counsel and subsequently articulated and posed to the Attorney General on June 14, 2018.

absurd consequences. State v. Atkinson, 831 So.2d 172, 174 (Fla.2002); see also State v. Burris, 875 So.2d 408, 414 (Fla.2004) (“A statute’s plain and ordinary meaning controls only if it does not lead to an unreasonable result.”).

In this case, the language of the Special Act must be scrutinized to determine if the legislation even applies to corporate entities. Special Act 71-575 states in pertinent part:

(b) Any Inspector (such as and including but not limited to structural, engineering, plumbing, mechanical, or electrical) or other building official charged with enforcing or otherwise supervising or inspecting any work covered under any section of the South Florida Building Code as applicable to Broward County pursuant to Chapter 71-575, Laws of Florida, and who is required to hold or who otherwise holds a Certificate of Competency in any area of construction shall not use that Certificate of Competency to engage in free enterprise thereby competing against persons or firms whose work he may also inspect, nor may he allow his Certificate of Competency to be used by another person or firm.

See Special Act, Chapter 71-575, Sec 4(b).

Nowhere does the Special Act of legislation reference a corporate entity. On the contrary, the legislation openly and directly addresses only those certificate (license) holders who wish to work as inspectors or building officials and specifically states that those persons “shall not use that Certificate of Competency to engage in free enterprise thereby competing against persons or firms whose work he may also inspect, nor may he allow his Certificate of Competency to be used by another person or firm.”

Distinguishing legal versus natural rights

Although an incorporated municipality and its affiliated sub-components, have some rights as a “legal person” - including the right to conduct business, to sue and be sued, and may employ persons either directly or indirectly (albeit enjoying a certain measure of sovereign immunity) - it is not a natural person and not an individual. In so saying, a corporation cannot be a building official or an inspector and with the prohibition directed against an inspector or official using their license to engage in free enterprise, the prohibition does not apply to corporations.

Distinguishing closely held corporations

The distinction between a corporation and an individual becomes somewhat blurred when discussing a “closely held corporation” as defined under Florida law and requires some interpretation where broad case precedent determines that closely held corporations cannot be used as vehicles to avoid the objective of an “arms-length-transaction.”

This matter was examined at length in an Advisory Opinion issued by your attorney on April 18, 2018 which stated in essence:

Where the actions of the owner are indistinguishable from the actions of the entity, there is a merger of interest and a merger of identities.

In Vantage View v. Bali E. Dev. Corp., 421 So. 2d 728, (Fla. 4th DCA 1982), a condominium association brought suit against a developer and a lender where the developer and the lender's identities were indistinguishable as the result of subsidiary status, similarity of persons and similarity of interests. The Vantage court stated:

“So it is that courts will look through the screen of corporate entity to the individuals who compose it in cases in which the corporation is a mere device or sham to accomplish some ulterior purpose, or is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or where the purpose is to evade some statute or to accomplish some fraud or illegal purpose.”
See Vantage View at 733.

As was noted in the referenced Opinion of the Florida Attorney General (*supra*):

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.”). *See Opinion of Attorney General*, August 21, 2018

Direction for interpreting intent of the specific portion of FS 71-575 as pertaining to Broward County is derived from extensive case law, and opinion from both the Attorney General's Office and the office of General Counsel for the Broward County Board of Rules and Appeals.

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Conclusion

Based on statutory interpretation constraints, the language of Special Act 71-575 determines that corporate entities may provide Building Department services including review, inspections and approvals for municipalities while at the same time providing design and or construction services in another location. This applies whether the inspections are performed on behalf of the Building Department or in conjunction with the corporate entities' retainer by another corporate entity(ies).

Such actions are not in violation of the prohibition of inspection services potentially being performed by an inspector or building official on their competitors where: 1) the inspector is at all times an employee of the corporate entity in question and; 2) the inspector receives no direct or indirect benefit from inspection of any other contractor/ engineer/ or inspector's work other than their wages as may be provided by the corporate entity.

This conclusion is set forth under the condition that those persons performing as inspectors, building officials or other certification and license holders may not engage in free enterprise as otherwise set forth in Special Act FS 71-575. Additionally, such building official, inspector, license or certificate holder may not permit any other person or firm to use his or her license for any purpose.

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