

August 23, 2018

ADVISORY AS TO OPINION BY THE OFFICE OF ATTORNEY GENERAL, PAM BONDI, ESQ. AND LEGAL INTERPRETATION OF PROVISIONS PERTAINING TO THE LOCAL GOVERNING AUTHORITY

We are in receipt of the Opinion from Attorney General Pam Bondi, Esq. dated August 21, 2018.

The Opinion determines that inspectors or building officials may not use their Certificates of Competency to engage in outside work.

A copy of the entire Opinion is attached hereto. The portion of text addressing the prohibition of outside employment specifically states:

Given the straightforward requirements of section 4(b), this office is unable to render a formal opinion that would further clarify such provision. Under the plain language quoted above, an inspector or building official who is engaged in enforcement, supervision, or inspection of work in Broward County that is encompassed by the South Florida Building Code as applicable to Broward County, and who holds a Certificate of Competency, may not use such Certificate to engage in outside work either within or beyond Broward County. Additionally, such building official may not permit any other person or firm to use his or her Certificate of Competency for any purpose.

The second portion of the Opinion pertains to the distinction between a Certificate of Competency and a Professional License. More specifically, your attorney asked the Attorney General:

- 5.(a) Does the term "certificate of competency" apply to licensed architects and engineers where architects and engineers are technically not issued certificates of competency but rather are "licensed"?

The Office of the Attorney General has stated that it is unable to comment as to the issue of "Certificates of Competency" but at the same time, has provided clear direction with respect to avoiding the impracticality of favoring form over content. More specifically the footnotes contained on page two (2) specifically state:

1 Although ch. 71-575(4)(b) refers generally to a "**Certificate of Competency**" that certain inspectors may be required to hold, the provisions within the Code are what actually establish the need within each specialty for **certain certificates of competency from any of multiple examining boards and entities.**

2 *See Frequently Asked Questions About Attorney General Opinions, at <http://myfloridalegal.com/pages.nsf/Main/dd177569f5fbOf1a55256cc6007b70ad>;* ("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.**").

In so saying, guidance from the Office of Attorney General determines that the interpretation and application/ implementation of local codes and ordinances as set forth in Special Act 71-575 are to be determined by the attorney for the governing entity. In this case the governing entity is the Broward County Board of Rules and Appeals as established under Special Act 71-575 and the Broward County Charter, Section 9.02.

Review of direction from the Office of the Attorney General as to architects and engineers.

In matters of statutory or legislative interpretation the "plain language" rule prevails. More specifically, legislation is to be interpreted according to the plain language and meaning of words with no added words or presumptive meaning. If interpretation cannot be accomplished through review of the plain language, the courts and administrative bodies may look to legislative intent. See Madison at Soho II Condominium Ass'n, Inc. v. Devo Acquisition Enterprises, LLC., 198 So. 3d 1111 (Fla. 2d DCA 2016); Quarantello v. Leroy, 977 So.2d 648 (Fla. 5th DCA 2008).

Additionally, the interpretation of legislation by an administrative agency or body charged with its enforcement is entitled to great deference and should not be overturned unless clearly erroneous or in conflict with the legislative intent of the statute. See Donato v. American Tel. & Tel. Co., 767 So.2d 1146 (Fla. 2000); South Florida Racing Ass'n v. State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering, 201 So.3d 57 (3rd DCA 2005); Palm Beach Polo, Inc. v. Village of Wellington 918 So.2d 988 (Fla. 4th DCA 2006).

In this case, the direction from the Office of the Attorney General is clear. What is not expressly set forth in Special Act 71-575 as to architects and engineers, is determinable from a common sense and plain reading analysis of the legislation language. Simply stated, professional licenses are also properly called certificates of competency insofar as the application of Special Act 71-575. **This is clear from the provisions within the Florida Building Code and the Opinion of the Attorney General which determines that it is not the name, "Certificate of Competency"¹ which is of overriding consideration but rather that the certificates of competency² can be called a "license" or any other name without affecting the fact that it is nonetheless a certificate of competency, obtained from "any of multiple examining boards and entities" as determined by the Florida Building Code.**

CONCLUSION

The Office of the Attorney General states quite clearly that an inspector or building official who is engaged in enforcement, supervision, or inspection of work in Broward County that is encompassed by the South Florida Building Code as applicable to Broward County, and who holds a Certificate of Competency, **may not use such Certificate to engage in outside work either within or beyond Broward County.** Additionally, such building official may not permit any other person or firm to use his or her Certificate of Competency for any purpose.

The Office of the Attorney General states quite clearly that it is the prerogative of the attorney for the local government in question to provide a determination of the interchangeability of the terms, "Certificate of Competency" and a "certificate of competency" where the footnotes of the Opinion lead to the same inescapable conclusion. Pursuant to the Charter of Broward County, section 9.02, the purpose of the Board of Rules and Appeals is:

Sec. 9.02. - Building code and Board of Rules and Appeals.

A. 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 Chapter 72-482 and 72-485, Laws of Florida, Special Acts of 1972; Chapter 73-427, Laws of Florida, Special Acts of 1973; Chapters 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.

...

¹ Note that the text in "quotes" is an uppercase style of designation e.g. "Certificates of Competency."

² Note that the text not in quotes uses the same words a footnote #1, but it is not in upper case style. The distinction is clear.
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(2) 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.

(3) The Board of Rules and Appeals shall conduct a program to monitor and oversee the inspection practices and procedures employed by the various governmental authorities charged with the responsibility of enforcing the Building Code.

(4) The Board of Rules and Appeals shall organize, promote and conduct training and educational programs designed to increase and improve the knowledge and performance of those persons certified by the Board of Rules and Appeals pursuant to the Building Code and may require the completion of certain minimum courses, seminars or other study programs as a condition precedent to the issuance of certificates by the Board of Rules and Appeals pursuant to the Building Code.

In so saying, the attorney for the Broward County Board of Rules and Appeals states that the term "certificate of competency" as set forth in Special Act 71-575 4(b), is a generic term which includes licenses, or professional licenses held by Florida licensed architects and engineers. As such, an inspector or building official who is engaged in enforcement, supervision, or inspection of work in Broward County that is encompassed by the South Florida Building Code as applicable to Broward County, and who holds a professional license, may not use such license to engage in outside work either within or beyond Broward County. Additionally, such building official may not permit any other person or firm to use his or her license for any purpose.

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