

Application of 553 F.S. relating to inspection fees

Number: AGO 85-100

Date: December 23, 1997

Subject:

Application of 553 F.S. relating to inspection fees

Ms. Toby A. Turbyfill
City Attorney
City of Lauderdale Lakes
420 Southeast 12th Street
(Davie Boulevard)
Fort Lauderdale, Florida 33316

RE: MUNICIPALITIES--Plumbing Code

Dear Ms. Turbyfill:

This is in response to your request for an opinion on substantially the following question:

Do the provisions of Part I of Ch. 553, F.S., relating to inspection fees, apply within the City of Lauderdale Lakes, located in Broward County?

Your inquiry notes that the City of Lauderdale Lakes is considering waiving an inspection fee for inspection of reinstallation of hot water heaters in residential units. However, you also note that s. 553.08, F.S., provides that municipal plumbing inspectors "*shall* charge and collect a reasonable fee for the cost of such inspections" (e.s.) Thus, you need to know if the provisions of Part I of Chapter 553, "Plumbing," relating to inspection fees apply to plumbing inspections conducted by the City of Lauderdale Lakes, such that the city must charge an inspection fee for the above described reinstallations.[1]

Part I of Ch. 553, F.S., was enacted to protect the public health and safety in this state by the regulation of plumbing contractors and plumbing. However, s. 553.11(1), provides:

"Nothing herein contained shall limit or repeal the authority of the Department of Health and Rehabilitative Services as granted by law; however, this part shall not affect laws or parts of laws establishing plumbing codes *nor shall it be applicable in counties where plumbing codes have been established by local or special laws or general bills of local application at the option of county commissioners of said counties.*" (e.s.)

The Legislature has enacted such special legislation: Section 2, Ch. 71-575, Laws of Florida, provides that the South Florida Building Code "shall apply to all municipalities and unincorporated areas of Broward County, Florida." Section 1 of Ch. 72-482, Laws of Florida, amended Ch. 71-575, to clarify that the building code applied to all "alterations, additions and *repairs . . .*" The courts have also recognized that the building code in effect for Broward County

is the South Florida Building Code, and that the code requires periodic inspections after issuance of a permit. *Manors of Inverrary XII Condominium Association, Inc. v. Atreco-Florida, Inc.*, 438 So.2d 490 (4 D.C.A. Fla., 1983); *Brown v. South Broward Hospital Dist.*, 402 So.2d 58 (4 D.C.A. Fla., 1981); *City of Sunrise v. Plastics Pipe Institute*, 299 So.2d 112 (4 D.C.A. Fla., 1974).

For the following reasons, it is my opinion that the provisions of Part I of Ch. 553 relating to plumbing inspection fees do apply within the City of Lauderdale Lakes, notwithstanding the enactment of Ch. 71-575, Laws of Florida, as amended, and the provisions of s. 553.11, F.S.

Section 553.73(1)(a), F.S. (1984 Supp.), expressly provides in pertinent part:

"By October 1, 1984, *local governments* and state agencies with building construction regulation responsibilities *shall adopt a building code* which shall cover all types of construction. *Such code shall include the provisions of parts I through VII, relating to plumbing . . .*" (e.s.)

Section 553.73 was amended in 1984 by Ch. 84-273, Laws of Florida, to specifically provide, *inter alia*, that Part I of Ch. 553 relating to plumbing was included in the building code adopted by local governments. See s. 2, Ch. 84-273. Subsection (2) of s. 553.73, as amended by Ch. 85-97, Laws of Florida, requires local governments to adopt one of the State Minimum Building Codes (S.M.B.C.) as its building code, "which shall govern the construction, erection, alteration, repair, or demolition of any building for which the local government . . . has building construction regulation responsibility"; paragraph (e) providing that the South Florida Building Code, 1983 Edition, with 1984 accumulated amendments is one of the model code choices available under that subsection. Subsection (5) of s. 553.73, as amended, requires each municipality to enforce the specific model code of the S.M.B.C. adopted by it, in accordance with the provisions of s. 553.80.

Thus, current s. 553.73(1)(a) *expressly* incorporates by reference the provisions of Part I of Ch. 553 into the building code in force in your municipality. It is my view that s. 553.73(1)(a)'s statement of mandatory incorporation of Part I should control as a later expression of legislative intent notwithstanding the provisions of s. 553.11 and Ch. 71-575, Laws of Florida. See *Albury v. City of Jacksonville Beach*, 295 So.2d 297 (Fla. 1974) (last expression of Legislature will prevail in cases of conflicting statutes); *Laramore v. State*, 342 So.2d 90 (1 D.C.A. Fla., 1977); AGO 73-331. *And see* AGO's 78-86, 84-102; s. 553.79(3), F.S.; *Broward County Board of Rules and Appeals v. Rush Hampton Industries*, 332 So.2d 666 (4 D.C.A. Fla., 1976) (holding that general law provisions on state minimum building codes [Ch. 74-167] had effect of impliedly repealing provisions of special act [Ch. 71-575] relating to method or procedure of appellate review of county order, and that Legislature intended a general revision of the subject matter of area building codes such that statewide minimum standards and uniformity are required). *Contrast* AGO 79-21 (under *earlier* version of Ch. 553, city could exercise home rule powers on matter relating to building official's tenure and removal, since construction standards, regulations and *enforcement requirements* of Ch. 553, Part VI, were *not* violated or *lessened*).

Since it is apparent that Part I and Part VI of Ch. 553 are by operation of law, made a supplementary part of and incorporated by reference into, your building code, I am of the opinion that s. 553.08 applies within your municipality, to the effect that the City of Lauderdale Lakes "

shall charge and collect a reasonable fee for the cost of such [plumbing] inspections" (e.s.)
See *also* s. 553.80(1), as amended by Ch. 85-97, Laws of Florida (placing enforcement responsibilities on local enforcement agencies such as municipalities and authorizing their governing bodies to adopt a schedule of *fees* for enforcement).

In summary, until legislatively or judicially determined otherwise, it is my opinion that the provisions of Part I, Ch. 553, specifically s. 553.08, relating to plumbing inspection fees, apply within the City of Lauderdale Lakes, notwithstanding the enactment of Ch. 71-575, Laws of Florida, and the provisions of s. 553.11, F.S.

Sincerely,

Jim Smith
Attorney General

Prepared by:

Anne Curtis Terry
Assistant Attorney General

[1] See ss. 103.2, 301, South Florida Building Code (providing that as a general rule, additions, alterations, and repairs shall comply with that code); s. 553.73(2)(e), F.S., as amended by Ch. 85-97, Laws of Florida (building code to govern "alteration, repair").