

Florida keys aqueduct authority

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Subject:

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FLORIDA KEYS AQUEDUCT AUTHORITY--NOT REQUIRED TO OBTAIN BUILDING PERMIT FROM COUNTY

To: Robert T. Feldman, Attorney for Monroe County Zoning Board, Key West

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QUESTION:

May the Board of County Commissioners of Monroe County require an independent contractor who has contracted with the Florida Keys Aqueduct Authority to build a storage tank on land owned and occupied by said authority to obtain and pay for a building permit for said construction?

SUMMARY:

The Florida Keys Aqueduct Authority is not required to obtain a county building permit in order to construct one of its projects irrespective of whether the construction is performed by a private contractor or with the authority's own facilities.

Chapter 70-810, Laws of Florida, which creates the Florida Keys Aqueduct Authority, provides in s. 19, with other exceptions not here relevant, that:

"The board of directors shall have exclusive jurisdiction and control . . . over the projects of the Authority . . . except . . . to the extent that the board of directors may by agreement with any other public or private body authorize the same to exercise jurisdiction or control of any of the projects of the Authority. It shall not be necessary for the Authority to obtain any certificate of convenience or necessity, franchise, license, permit or authorization from any bureau, board, commission, or like instrumentality of the State or any political subdivision thereof in order to construct, reconstruct, acquire, extend, repair, improve, maintain or operate any project. . . ."
(Emphasis supplied.)

The foregoing appears to be a legislative declaration of the general rule that a public body acting in a governmental capacity is not subject to building and zoning regulations. See *A1A Mobile Home Parks, Inc. v. Brevard County*, 246 So.2d 126 (4 D.C.A. Fla., 1971); *Jefferson National Bank of Miami Beach v. City of Miami Beach*, 267 So.2d 100 (3 D.C.A. Fla., 1972). *But cf.* *City of Treasure Island v. Decker*, 174 So.2d 756(3 D.C.A. Fla., 1965), and AGO 073-369 respecting the applicability of building and zoning regulations when a public body is acting in a proprietary

capacity. In any event it is clear from the above-quoted language that, unless the Florida Keys Aqueduct Authority has by agreement authorized the Board of County Commissioners of Monroe County to exercise jurisdiction or control over one or more of its projects, the authority is not required to obtain a county building permit in order to construct a project. The fact that the construction is being performed by a private contractor instead of with the authority's own facilities does not compel a different conclusion.