

Municipality, code enforcement

Number: INFORMAL

Date: September 17, 2007

Mr. Michael A. Meadows
Vernis & Bowling of The Florida Keys, P.A.
Islamorada Professional Center
81990 Overseas Highway, 3rd Floor
Islamorada, Florida 33036

Dear Mr. Meadows:

Thank you for contacting the Florida Attorney General's Office regarding a proposed ordinance of the City of Layton. Attorney General McCollum has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may comment at this time. The Florida Attorney General is statutorily limited to providing legal advice and opinions on questions of state law. See section 16.01(3), Florida Statutes. Your letter asks that we comment on a proposed ordinance of the City of Layton. Hypothetical questions, that is, questions premised on proposed legislation or contemplated legislation, are outside the scope of our authority. However, in an effort to be of assistance to you, I offer the following informal comments.

Chapter 162, Florida Statutes, establishes administrative enforcement procedures and a means of imposing administrative fines by local governing bodies for violations of local codes and ordinances for which no criminal penalty has been specified. Such a mechanism is necessitated by the provisions of Article V, section 1, and Article I, section 18, Florida Constitution, which state that commissions established by law or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices, and that no administrative agency shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.[1]

This office, in a number of previous opinions, has stated that a local government or its governing body derives no delegated authority from Chapter 162, Florida Statutes.[2] Further, municipalities derive no home rule power from Article VIII, section 2(b), Florida Constitution, or section 166.021, Florida Statutes, to regulate the code enforcement boards or to impose any duties or requirements on such boards or to otherwise regulate the statutorily prescribed enforcement procedure.[3] Thus, once a municipality has adopted the procedures of Chapter 162 to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures, but must utilize them as they are set forth in the statutes.[4]

However, as this office and the courts have recognized, a municipality retains the authority, utilizing its home rule powers, to adopt ordinances and enforce its codes by means other than Parts I and II of Chapter 162, Florida Statutes. In Attorney General's Opinion 2000-34, this office concluded that a municipality was authorized to enter into an interlocal agreement with the

county to have municipal code infractions handled by the county's code enforcement board. The Fourth District Court of Appeal, in *Goodman v. County Court in Broward County, Florida*,^[5] concluded that a city could utilize the code enforcement board scheme of Chapter 162, Florida Statutes, and prosecute municipal code violations in county court. As the court recognized, "[t]he Legislature has provided that the code enforcement board procedure is supplemental to other means of securing code compliance."^[6]

Thus, the City of Layton has a number of options for adopting a scheme for code enforcement. If it utilizes the provisions of Chapter 162, Florida Statutes, to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures by relying on the statutory scheme as set forth in the statutes. However, the code enforcement procedures contained in Chapter 162 do not preempt or otherwise operate to prevent a city from enforcing its codes by other means.

I am enclosing copies of several Attorney General Opinions discussing these issues and trust that you will find them helpful in advising your client. The topic of code enforcement is one upon which this office has issued numerous opinions. Should you wish to do additional research on this issue, you may wish to review these opinions at www.myfloridalegal.com.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/t

[1] See Ops. Att'y Gen. Fla. 85-84 (1985) (municipal code enforcement board must find that same violation has been repeated by same violator before a fine for each day the repeated violation occurred past the date set for compliance may be imposed by the board) and 79-109 (1979) (governing body of charter county prohibited in absence of statutory authorization from providing by ordinance for imposition of civil penalties by agencies); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982) (holding that the provision of a county ordinance authorizing assessment of penalties by county agency was unconstitutional, and agreeing with conclusion in Op. Att'y Gen. Fla. 79-109). See also Ops. Att'y Gen. Fla. 84-51 (1984) (ordinance of noncharter county not a "law" within the purview of s. 5(c), Art. II, State Const.) and 84-39 (1984) (municipal ordinance not a "law" within the meaning of s. 8, Art. I, State Const.).

[2] See, e.g., Ops. Att'y Gen. Fla. 04-50 (2004), 01-77 (2001), and 00-53 (2000).

[3] See Ops. Att'y Gen. Fla. 00-53 (2000), 97-26 (1997), 86-10 (1986), 85-84 (1985), 85-27 (1985), 85-17 (1985), and 84-55 (1984).

[4] See Op. Att'y Gen. Fla. 01-77 (2001) (Legislature's code enforcement procedures are

additional or supplemental means of securing compliance with local codes and do not preempt or otherwise operate to prevent city from enforcing its codes by other means; however, if city seeks to utilize provisions of Chapter 162, Florida Statutes, to authorize an administrative agency such as code enforcement board or special master to impose fines, it may not change the procedures prescribed therein).

[5] 711 So. 2d 587 (Fla. 4th DCA 1998), *rev. denied*, 727 So. 2d 905 (Fla. 1998).

[6] *Id.* at 589. *And see, Deehl v. Weiss*, 505 So. 2d 529 (Fla. 3rd DCA 1987) (municipality could determine which code violations would be heard by code enforcement board and mere establishment of board did not require municipality to make it the enforcement arm of all of its codes). *Cf., Metropolitan Dade County v. Hernandez*, 708 So. 2d 1008 (Fla. 3rd DCA 1998) (county enforcement scheme utilizing both Parts I and II of Chapter 162, Florida Statutes, approved); *Verdi v. Metropolitan Dade County*, 684 So. 2d 870 (Fla. 3rd DCA 1996) (county may use any combination of Chapter 162 methods for code enforcement procedures).