Mobile Homes, suitable facilities for relocation

Number: INFORMAL

Date: December 13, 2005

The Honorable Susan Bucher
Representative, District 88
2240 Palm Beach Lake Boulevard, Suite 102
West Palm Beach, Florida 33409-3403

Dear Representative Bucher:

You request this office's opinion regarding the interpretation of section 723.083, Florida Statutes.

Section 723.083, Florida Statutes, states:

"No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners."

As this office recently noted, the plain language of section 723.083, Florida Statutes, requires an agency with zoning authority to make a determination that adequate facilities exist for the relocation of mobile home owners before approving any application for rezoning or taking any official action resulting in the removal or relocation of mobile home owners.[1] For example, in *Williams v. City of Sarasota*,[2] a municipal ordinance aimed at closing a municipally-owned mobile home park and evicting residents was held to be invalid because the municipality did not comply with the provisions of section 723.083.

Thus, the statute imposes an affirmative duty on agencies with zoning authority to make a determination that suitable facilities exist for the relocation of mobile home owners. The statute, however, does not define "suitable" facilities or prescribe a method by which such agencies are to make such a determination.[3]

I would, however, note that in 1986, then Attorney General Jim Smith issued an informal opinion regarding the interpretation of section 723.083, Florida Statutes.[4] Noting that the statute provides that a zoning authority must determine the existence of adequate mobile home parks or other suitable facilities for the relocation of mobile home *owners* (as opposed to the relocation of mobile homes), the opinion concluded that nothing in the statute expressly precludes a zoning authority from considering facilities other than mobile home parks such as apartments and trailer parks.

The use of the term "or other suitable facilities" following "mobile home parks" supports such an interpretation. Had the Legislature sought to restrict the statute's relocation provisions to only mobile home parks, the use of the term "other suitable facilities" would have been mere surplusage. Statutory language is not to be assumed to be surplusage; rather, a statute is to be

construed to give meaning to all words and phrases contained within the statute.[5] Thus, it appears that the statute contemplates that facilities other than mobile home parks may be considered in determining whether "other suitable facilities" exist.

The 1986 informal opinion to Cook also addressed the factors that should be considered in determining the suitability of the relocation facilities. A review of the legislative history surrounding the enactment of the statute indicated a concern by the Legislature that many who could not afford conventional housing were being forced out of mobile home parks as parks were being sold when the land became more valuable for commercial and residential use and local zoning authorities were reluctant to approve new zoning for such parks.[6]

Based upon such a review of the legislative intent, the informal opinion concluded that the phrase "adequate mobile home parks or other suitable facilities" referred to relocation facilities that are appropriate to the financial and other needs of the specific population of mobile home owners who were being displaced by the rezoning.[7] Thus, in making a determination as to whether such facilities were available, the zoning authority would have to consider the financial abilities of the mobile home owners to relocate to other facilities. The informal opinion also concluded that the zoning agency should only consider facilities within its territorial jurisdiction, recognizing that the extraterritorial powers of a county must be expressly authorized by statute.[8]

The statute has not been amended since the informal opinion was issued, nor do there appear to be any appellate judicial decisions contrary to the conclusions reached in that opinion. Accordingly, until and unless the Legislature seeks to amend the statute, it appears that the conclusions reached in the 1986 opinion are still valid. In light of the inquiries recently received by this office regarding this statute, however, the Legislature may wish to clarify its intent.[9]

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] *See* Inf. Op. to Representative Leslie Waters, dated November 14, 2005. As noted in that opinion, there are several provisions in Chapter 723, Florida Statutes, which provide notice and safeguards to mobile home owners who may be subject to removal and relocation due to a change of use of the mobile home park land. *See* s. 723.061(1)(d), Fla. Stat., requiring 6 months notice of a projected change in use and need to find other accommodations. *And see* s. 723.061(2), Fla. Stat., stating that homeowners may object to a change of use by petitioning for administrative or judicial remedies within 90 days of receiving notice or they will be barred from taking any subsequent action to contest the change in use; however, this does not prevent a homeowner from objecting to a zoning change at any time. *See also* s. 723.0612, Fla. Stat., providing for relocation expenses to a mobile home owner required to move due to a change in use of the land under s. 723.061(1)(d).

[2] 780 So. 2d 182 (Fla. 2nd DCA 2001).

[3] When a general power has been granted to a public officer unaccompanied by definite directions as to how the power is to be exercised, such a grant implies the right to employ the means and method necessary to comply with the statute. *See In re Advisory Opinion to the Governor*, 60 So. 2d 285 (Fla. 1952); *see also* Ops. Att'y Gen. Fla. 81-100 (1981) and 85-38 (1985).

[4] Inf. Op. to Van Cook, Pinellas County Attorney, dated January 3, 1986.

[5] *See, e.g., Terrinoni v. Westward Ho!*, 418 So. 2d 1143 (Fla. 1st DCA 1982); *Unruh v. State,* 669 So. 2d 242 (Fla. 1996) (as a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless); Ops. Att'y Gen. Fla. 95-27 (1995); 91-16 (1991) (operative language in a statute may not be regarded as surplusage); 91-11 (1991) (statute must be construed so as to give meaning to all words and phrases contained within that statute).

[6] As the opinion notes, s. 83.760(4), Fla. Stat. (1983), was the predecessor statute to s. 723.083, Fla. Stat., and except for amendments which do not materially affect the issue under consideration, the provisions of s. 723.083 are substantially the same as those contained in s. 83.760(4). Section 83.760(4), Fla. Stat. (1983), was enacted by s. 4, Ch. 74-160, Laws of Florida.

[7] *See Ervin v. Peninsular Telephone Company*, 53 So. 2d 647 (Fla. 1951) (duty in construction of statutes is to ascertain Legislature's intention and effectuate it); Op. Att'y Gen. Fla. 85-74 (1985) (legislative intent is the polestar by which a court must be guided in interpreting statutory provisions). *And see Smith v. Ryan*, 39 So. 2d 281 (Fla. 1949); *State Board of Accountancy v. Webb*, 51 So. 2d 296 (Fla. 1951) (in construing a statute, courts look at the purpose of the legislation, examining such things as the history of the act, evil to be corrected, intention of the law-making body, the subject regulated, and the object to be obtained); Op. Att'y Gen. Fla. 99-61 (1999). *See also Alexdex Corporation v. Nachon Enterprises, Inc.,* 641 So. 2d 858 (Fla. 1994) (legislative history of a statute may be used to clarify ambiguity and illuminate legislative intent).

[8] *See* Ops. Att'y Gen. Fla. 91-25 (1991) (counties, municipalities, and special districts may not act beyond their respective boundaries in the absence of an express statutory grant) and 85-103 (1985) (state officer is officer whose duties and powers are coextensive with territorial limits of state; county officers are those whose exercise of power is confined to limits of the county); *cf.* Art. VIII, s. 2(c), Florida Constitution, provides that the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

[9] Senate Bill 934 has been filed for consideration during the 2006 legislative session. The bill would amend s. 723.083 to require that the existence of adequate mobile home parks or other suitable facilities shall be substantiated in a written document, and that the agency make a written good faith estimate of the fiscal benefits, include annual increases in property taxes or other revenue sources and any nonrecurring revenues or fees, including, but not limited to, impact fees, permit fees, connection fees, utility charges, or other revenues.