

School construction in airport flight patterns

Number: INFORMAL

Date: January 14, 2004

The Honorable Rafael Arza
Representative, District 102
14645 Northwest 77th Avenue, Suite 104
Hialeah, Florida 33014

Dear Representative Arza:

You have contacted this office to request assistance in determining the relationship of various statutes on the subject of airport zoning and school facility siting and construction. You have also asked about the jurisdiction of both the Miami-Dade County Board of County Commissioners and the School Board of Miami-Dade County to take certain actions regarding the construction of educational facilities within the flight patterns of an airport.

While this office may not comment formally on the jurisdiction of any governmental entity except at the request of that body or its attorney,[1] the following general comments may be helpful to you in advising your constituents.

As indicated in our earlier correspondence, section 1013.36(3), Florida Statutes, states that "[a]s provided in s. 333.03, the site (for construction of educational facilities) must not be located within any path of flight approach of any airport." Section 333.03(3), Florida Statutes, provides:

". . . [A]irport zoning regulations shall be adopted which restrict new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway or a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. *Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.*" (e.s.)

The statute authorizes local governments with airport zoning authority to make specific findings detailing the reasons for allowing the construction of an educational facility or other incompatible uses within these areas. The granting of any such exceptions must be preceded by findings made by the governmental entity administering the airport zoning regulations.

Section 333.03, Florida Statutes, authorizes local governments to adopt airport zoning regulations. This statute provides that "every political subdivision having an airport hazard area

within its territorial limits shall . . . adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area." [2] The statute requires that airports owned or controlled by political subdivisions in which any airport hazard area is located wholly or partly outside the territorial limits or the political subdivision must cooperate with other affected local governmental entities by entering into interlocal agreements for the enforcement of airport zoning regulations or creating a joint airport zoning board by ordinance or resolution to enforce airport zoning regulations. [3]

Chapter 333, Florida Statutes, the "Airport Zoning Law of 1945," [4] contains detailed requirements for adopting airport zoning regulations, resolving conflicts among local governmental regulations and other provisions. Section 333.08, Florida Statutes, sets forth an appeals procedure for any person aggrieved by airport zoning regulations and section 333.11, Florida Statutes, also makes provision for judicial review of these matters. Enforcement of the provisions of Chapter 333, Florida Statutes, is prescribed in section 333.13, Florida Statutes, and authorizes any political subdivision or agency adopting airport zoning regulations to "prevent, restrain, correct, or abate any violation of this chapter[.]" [5] This section also criminalizes certain violations of the act.

Finally, pursuant to sections 333.025 and 333.03(1)(d), Florida Statutes, the Florida Department of Transportation may also be involved in the process of permitting the construction of structures within an airport hazard area. You may wish to contact the department to discuss this matter with them.

I trust that these informal comments will assist you in advising your constituents. Thank you for contacting the Attorney General's Office to express your concerns.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See s. 16.01(3), Fla. Stat.

[2] Section 333.03(1)(a), Fla. Stat.

[3] Section 333.03(1)(b), Fla. Stat.

[4] See s. 333.14, Fla. Stat., providing the short title for the act.

[5] Section 333.13(2), Fla. Stat.