

Contractors, county building code regulations

Number: INFORMAL

Date: December 18, 1995

The Honorable Jack N. Tobin
Chairman, House Committee on Business
and Professional Regulation
310 House Office Building
Tallahassee, Florida 32399-1300

Dear Representative Tobin:

You have asked this office to comment upon the impact of Dade County's incorporation of certain licensing and training requirements from Chapter 10 of the Code of Metropolitan Dade County into the South Florida Building Code. Specifically, you ask whether Dade County may penalize state certified contractors for failing to maintain the stipulated number of journeymen on the job site. Further, you ask whether Dade County may require a state certified contractor to comply with continuing education requirements, testing requirements, insurance requirements, or any other provision, which is in addition to or exceeding those expressly provided in Chapter 489, Florida Statutes.

Consistent with the views expressed in Attorney General Opinion 91-2, a local authority may require a state certified contractor to maintain the required number of locally licensed journeyman on a construction site to supervise unlicensed individuals when the requirement is incorporated into the local building code as Dade County has done. Nevertheless, the action which may be taken by Dade County to penalize the state certified contractor for violating such requirements is limited to the contractor's ability to obtain permits. Dade County may deny the issuance of a building permit to a state certified contractor or issue a permit with specific conditions, if the local construction regulation board has found through the public hearing process, that such contractor has been guilty of fraud or willful building code violations within Dade County, as set forth in section 489.113(4), Florida Statutes. A willful failure to comply with the journeyman requirement that has been incorporated in the South Florida Building Code would lead to Dade County's refusal to issue new building permits, or to revoke or suspend those permits that it has previously issued to the contractor.[1] Nevertheless, Dade County may not take any of the disciplinary actions described in section 489.129, Florida Statutes.[2]

You have also inquired as to whether Dade County may require a state certified contractor to comply with continuing education, testing, and insurance requirements in addition to those requirements set forth in Part I, Chapter 489, Florida Statutes, in order to be allowed to work in Dade County. As indicated in Attorney General Opinion 91-2, the Florida Statutes set forth the requirements that a state certified contractor must meet in order to engage in contracting in any area of the state. Section 489.113(4), Florida Statutes, provides that a state certified contractor is only required to exhibit to the appropriate local official evidence of holding a current state certified license and to pay the occupational license fee and building permit fee required of other persons in similar situations.[3]

As noted above, this office has previously recognized the authority of a local government to impose more stringent requirements in its building code.[4] However, unlike the situations addressed in those previous opinions where the requirements imposed in the building code were not also prescribed in chapter 489, Florida Statutes, the requirements relating to continuing education, testing and insurance are specifically addressed in Chapter 489.

Accordingly, the statutory requirements for state certified contractors set forth in Chapter 489 would appear to preclude local regulation in these areas. Should the Legislature consider the current regulatory scheme in Chapter 489 inadequate to protect the public, it may wish to address those concerns through amendatory legislation.

I trust that the above informal comments may be of assistance to you in resolving this matter. If this office may be of further assistance, please let me know.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/eb

[1] Section 553.79(1), Fla. Stat. (1994 Supp.).

[2] See Op. Att'y Gen. Fla. 90-73 (1990).

[3] Section 205.065, Fla. Stat.(1994 Supp.), clarifies that a state certified contractor is only required to pay the occupational license fee in the local jurisdiction in which the contractor maintains a permanent business location or branch office.

[4] See Ops. Att'y Gen. Fla. 91-2 (1991) and 79-21 (1971).