Human trafficking signage - tattoo establishments

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Subject:
Human trafficking signage - tattoo establishments

June 5, 2020

Jennifer C. Rey
For the firm as Sumter County Attorney
20 South Broad Street
Brooksville, Florida 34601

Dear Ms. Rey:

This office has received your letter on behalf of the Sumter County Board of County Commissioners requesting an Attorney General opinion addressing whether a tattoo establishment is a business or establishment that offers “bodywork services for compensation" for purposes of enforcing the signage requirements contained in section 787.29(3)(b), Florida Statutes. That statute provides, in pertinent part:

> 787.29. Human trafficking public awareness signs
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> (3) The employer at each of the following establishments shall display a public awareness sign developed under subsection (4) in a conspicuous location that is clearly visible to the public and employees of the establishment:
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> (b) A business or establishment that offers massage or bodywork services for compensation that is not owned by a health care practitioner regulated pursuant to chapter 456 and defined in s. 456.001.
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> (5) The county commission may adopt an ordinance to enforce subsection (3). A violation of subsection (3) is a noncriminal violation and punishable by a fine only as provided in s. 775.083.

In turn, section 456.001(4), Florida Statutes, defines “health care practitioner” as “any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part II or part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.”1 Based on the plain and ordinary meaning of “bodywork,” which is compatible with concepts reflected in certain licensing statutes referenced in section 787.29, the answer to your question is “No.”

Background Facts

You state that, on August 10, 2019, as authorized by section 787.29(5), Florida Statutes, Sumter County adopted Ordinance No. 2019-20, implementing the human trafficking public awareness signage requirements specified in the statute. In the ordinance, the phrase “bodywork services” is defined to mean “services involving therapeutic touching or manipulation of the body using specialized techniques consistent with F.S. § 787.29, as may be amended.”2 “Massage services” is defined to mean “the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation as provided for and consistent with the terms as defined in F.S. ch. 787.29, as may be amended.” 3 And “business or establishment” is defined to mean “any place of business or any club, organization, person, firm, corporation or partnership, wherein massage or bodywork services are provided” that “is not owned by a health care profession regulated pursuant [to] F.S. Ch. 456, and defined in F.S. § 456.001, as may be amended.”4

You further indicate that a question has arisen regarding whether a tattoo establishment constitutes a business or establishment offering “bodywork services” for compensation within the meaning of section 787.29 (and the County’s ordinance implementing that provision).5 As you observed in your letter, “bodywork” is not a specifically defined term in the statute.

Analysis

Where a word is not statutorily defined, it must be given its “plain and ordinary meaning,”6 which “may be derived from dictionaries.”7 The Merriam-Webster Dictionary defines “bodywork,” in pertinent part, to mean “therapeutic touching or manipulation of the body by using specialized techniques.” This dictionary definition is consistent with concepts found elsewhere in Florida administrative regulations relating to the licensure of certain therapeutic massage practitioners, such as acupuncturists and massage therapists.8

The dictionary meaning of “bodywork” also comports with the definition of massage contained in section 480.033(3), Florida Statutes. There, “massage” is defined as “the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.”9

To the extent that the word “bodywork” might potentially be construed to comprise a broader range of services, applicable rules of statutory construction instruct otherwise. The operative statutory language requires the employer of a “business or establishment that offers *massage or bodywork* services for compensation that is not owned by a health care practitioner” to display a human trafficking public awareness sign in a conspicuous location.10 Thus, this statutory provision conjoins an arguably more narrow concept, “massage,” with the potentially broader concept, “bodywork,” by use of the disjunctive “or.” “[I]n its elementary sense the word ‘or’ is a disjunctive participle that marks an alternative generally corresponding to ‘either’ as ‘either this or that’; a connective that marks an alternative.” *Rudd v. State ex rel. Christian*, 310 So. 2d 295,

298 (Fla.1975) (citations omitted). Here, construing “bodywork services” to be an alternative analogous to “massage services” is consistent with the plain meaning of bodywork reflected in the dictionary: the “therapeutic touching or manipulation of the body.”

Tattooing, in contrast, is not accomplished solely by touching or manipulating soft tissues. Instead, it involves creating “a mark or design…on or under the skin of a human being by a process of piercing and ingraining a pigment, dye, or ink in the skin.”11 Whereas, the licensing statutes regulating massage therapists and acupuncturists (chapters 480 and 457, respectively) are specifically referenced in section 456.001—which, in turn, is incorporated in the exception provisions of section 787.29—the licensing statute regulating tattoo artists (chapter 381) is not. All these considerations lead to a conclusion that tattooing is not a part of “bodywork services,” as that term is used in section 787.29, Florida Statutes.

Based on the foregoing, it would appear that a tattoo establishment is not a business or establishment that offers “bodywork services for compensation" for purposes of enforcing the signage requirements contained in section 787.29(3)(b), Florida Statutes.

Sincerely,

Ashley Moody
Attorney General

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1 Of particular note here, Massage Practice is regulated under chapter 480, and Acupuncture is regulated under chapter 457.

2 Sumter County Code of Ordinances, art. II, § 14-16.

3 This description is consistent with the definition of “massage” found in section 480.033(3), Florida Statutes.

4 *Id.*

5 Questions requiring an interpretation of local codes or ordinances are left for resolution by the attorney for the local government. *See* Requesting an Attorney General Opinion, IV. When Opinions Will Not Be Issued (available at http://myfloridalegal.com/pages.nsf/Main/DD177569F8FB0F1A85256CC6007B70AD).

6 *Metro. Cas. Ins. Co. v. Tepper*, 2 So. 3d 209, 214 (Fla. 2009).

7 *State v. Peraza*, 259 So. 3d 728, 731 (Fla. 2018).

8 *See* Fla.Admin.Code Rule 64B1-4.005 (defining “oriental massage” as including “all forms of oriental bodywork including acupressure, amma, anmo, guasha, hara, niusha, reiki, reflexology, shiatsu, tuina, traction and counter traction, vibration, and other neuro-muscular, physical and physio-therapeutic techniques used in acupuncture and oriental medicine for the promotion, maintenance, and restoration of health and the prevention of disease”).

9 *See* Fla. Admin. Code R. 64B7-25.001 (establishing licensure examination requirements for Massage Therapists, and reinforcing the interrelatedness of therapeutic “massage” and “bodywork” by approving, in pertinent part, the “National Certification Board for Therapeutic Massage and Bodywork Examination” and the “National Exam for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork”).

10 § 787.29 (3)(b), Fla. Stat. (emphasis added).

11 Fla. Stat. § 381.00771(6), Fla. Stat.