Special Magistrate Code Enforcement Hearings

Number: AGO 2017-01

Date: March 23, 2017

Subject:
Special Magistrate Code Enforcement Hearings

March 9, 2017

Mr. Lonnie N. Groot
1001 Heathrow Park Lane
Suite 4001
Lake Mary, Florida 32746

RE: GOVERNMENT IN THE SUNSHINE LAW–SPECIAL MAGISTRATE CODE ENFORCEMENT HEARINGS–inapplicability of Sunshine Law requirement that public be given reasonable opportunity to be heard at quasi-judicial Code Enforcement hearings conducted by Special Magistrate; requirement that outcomes of such hearings be presented at public hearing conducted by Special Magistrate. s. 286.0114, Fla. Stat. (2016), and s. 162.07(4), Fla. Stat. (2016).

Dear Mr. Groot:

You have requested an opinion addressing these matters:

1. You ask whether section 286.0114, Florida Statutes, requires that members of the public be given a reasonable opportunity to be heard at hearings you hold as a special magistrate pursuant to authority delegated from the Seminole County code enforcement board;

2. As a follow-up to a prior informal opinion from this office,[1] you ask whether section 162.07(4), Florida Statutes (providing that the [special magistrate] “shall issue an order affording the proper relief consistent with powers granted herein”) requires that you “announce the order in public at a subsequent public hearing” instead of “merely issu[ing] a written order[.]”

In sum:

1. Section 286.0114, Florida Statutes, does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board.

2. Section 162.07(4), Florida Statutes, contemplates that the outcomes of such code enforcement hearings will be presented at a public hearing conducted by the special magistrate.

Question One

Pursuant to section 286.0114, Florida Statutes, members of the public "shall be given a reasonable opportunity to be heard on a proposition before a [county board.]"[2] But this requirement does not apply to "[a] meeting during which the board…is acting in a quasi-judicial capacity."[3]

A special magistrate who has been given "the authority to hold hearings and assess fines" resulting from local code violations has "the same status as an enforcement board under [Chapter 162, Florida Statutes]."[4] As the Fifth District Court of Appeal has recognized, the powers given to code enforcement boards by Chapter 162, Florida Statutes, are quasi-judicial.[5] Therefore, pursuant to the express exception provided in section 286.0114 (3)(d), Florida Statutes, the requirement that *members of the public* be "given a reasonable opportunity to be heard" does not apply to code enforcement hearings conducted by a special magistrate acting "in a quasi-judicial capacity" pursuant to delegated board authority. This exception "does not affect the right of a person to be heard as otherwise provided by law."[6]

Question Two

As previously recognized, a special magistrate who has been delegated code enforcement board authority as allowed by Chapter 162, Florida Statutes, has "the same status as an enforcement board" under that chapter.[7] In prescribing code enforcement board hearing requirements, section 162.07(4), Florida Statutes ("Conduct of hearing"), provides, in pertinent part:

"(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. *The finding shall be by motion approved by a majority of those members present and voting*, except that at least four members of a seven-member enforcement board, or three members of a five-member enforcement board, must vote in order for the action to be official."

§ 162.07(4), Fla. Stat. (2016) (italicized emphasis added). Pursuant to this procedure, as a result of the board's public vote on its "finding," each outcome of the public hearing on alleged code violations is, necessarily, presented at a public hearing of the board.

The logistics involved when a special magistrate makes findings of fact (including the ultimate finding of whether proven conduct constitutes a code violation) and arrives at conclusions of law are, pragmatically, not the same as those required for a collegial body. The collegial body must both deliberate, and vote to adopt the course of action it will follow,[8] in public. A special magistrate engages in no such public "vote."

On the one hand, as this office has previously stated, a "county choosing to create a code enforcement board under Chapter 162, Florida Statutes, is bound by the requirements or restrictions contained therein and may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes."[9] On the other, as the Second District Court of Appeal observed in *City of Tampa v. Brown*, "[i]t is necessary to fill the procedural gaps in [chapter 162] by the common-sense application of basic principles of due process."[10]

The question of whether a special magistrate is required to present each outcome of the code enforcement hearings at a public hearing appears to fall between these two guideposts. However, because the statutory provisions contemplate that the board will present the outcomes of code enforcement hearings at a public hearing of the board, it would be most consistent to implement a process whereby the *special magistrate* similarly presents the outcomes of code enforcement hearings at a public hearing of the special magistrate.

Therefore, I am of the opinion that section 286.0114 (3)(d), Florida Statutes, does not require that members of the public be given a "reasonable opportunity to be heard" at quasi-judicial code enforcement hearings conducted by a special magistrate pursuant to authority delegated by the county code enforcement board, and that section 162.07(4), Florida Statutes, contemplates that the outcomes of code enforcement hearings will be presented at public hearings conducted by the special magistrate.

Sincerely,

Pam Bondi
Attorney General

PB/ttlm

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[1] *See* Informal Attorney General's Opinion dated November 15, 2016, to Mr. Lonnie N. Groot, Esquire (reflecting that § 162.074(4), Fla. Stat., neither specifically requires "that an oral pronouncement" be made regarding the special magistrate's "findings of fact…and conclusions of law," nor provides "a specified timeframe within which the order must be rendered").

[2] § 286.0114(1), Fla. Stat. (2016).

[3] § 286.0114(3)(d), Fla. Stat. (2016).

[4] § 162.03(2), Fla. Stat. (2016).

[5] *See Michael D. Jones, P.A. v. Seminole Cty.*, 670 So. 2d 95, 96 (Fla. 5th DCA 1996) ("The powers given by the Legislature to code enforcement boards by Chapter 162 do not appear to us as having crossed the line between 'quasi-judicial' and 'judicial.'"); *accord, Verdi v. Metropolitan Dade County*, 684 So. 2d 870, 873-74 (Fla. 3d DCA 1996) ("[C]ode enforcement proceedings are quasi-judicial rather than judicial in nature and…the County's use of hearing officers in these proceedings is constitutionally authorized.").

[6] § 286.0114(3)(d), Fla. Stat. (2016) (italicized emphasis added).

[7] § 162.03(2), Fla. Stat. (2016).

[8] § 162.07(4), Fla. Stat. (2016).

[9] Op. Att'y Gen. Fla. 01-77 (2001).

[10] *City of Tampa v. Brown*, 711 So. 2d 1188, 1189 (Fla. 2d DCA 1998). In that case, the Court concluded that, because the violator had "received notice, had the opportunity to be heard, and was provided a copy of the final order from which an appeal could be taken[,]" the city was not required to serve the order on the violator by certified mail. *Id.*