# Municipalities -- Code Enforcement -- Costs

**Number:** AGO 2014-04

**Date:** June 20, 2014

**Subject:**
Municipalities -- Code Enforcement -- Costs

Ms. Heather M. Ramos
GrayRobinson
Post Office Box 3068
Orlando, Florida 32802-3068

Dear Ms. Ramos:

On behalf of the Town of Windermere, you have asked for my opinion on substantially the following questions:

1. Do the provisions of section 162.07(2), Florida Statutes, permit the Town of Windermere to recover from the code violator the costs that the town pays to the special magistrate for his time for performing his services as a special magistrate?

2. Do the provisions of section 162.07(2), Florida Statutes, permit the Town of Windermere to recover from the code violator the costs that the town pays to the special magistrate's assistant for her time spent assisting the special magistrate with the performance of his services as a special magistrate?

In sum:

1. The provisions of section 162.07(2), Florida Statutes, which authorize the recovery of all costs incurred by a municipality in prosecuting a violator before a code enforcement board or special magistrate do not authorize the award of compensation or fees as "costs" to the special master for his or her services incurred in such a prosecution.

2. Section 162.07(1), Florida Statutes, requires a local governmental body utilizing the services of a special magistrate as a code enforcement board, to provide clerical and administrative personnel as are reasonably required to accomplish the duties of the board. Nothing in Chapter 162, Florida Statutes, would authorize the inclusion of these administrative personnel charges within the "costs" assessed against a code violator.

According to information you have provided to this office, the Town of Windermere has created an alternate code enforcement system pursuant to subsection 162.03(2), Florida Statutes. The system gives a special magistrate designated by the town council the authority to conduct code enforcement hearings and impose and authorize the collection of fines and costs against pending or repeat violators of town codes and ordinances. The town's special magistrate has the same status as an enforcement board under Chapter 162, Florida Statutes. The special

magistrate sits as an impartial hearing officer to determine, based on the evidence presented during the hearing, if a violation has occurred. The special magistrate does not initiate enforcement proceedings or inspect for code violations.

Question One

You ask whether section 162.07(2), Florida Statutes, permits the Town of Windermere to recover the funds the town pays to the special magistrate for performing the official services of a special magistrate from a code violator.

Chapter 162, Florida Statutes, establishes administrative enforcement procedures and a means of imposing administrative fines by local governmental bodies for violations of local codes and ordinances for which no criminal penalty has been specified. This mechanism is necessary in light of the provisions of Article V, section 1, and Article I, section 18, Florida Constitution, which provide that while commissions established by law or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices, no administrative agency shall impose a sentence of imprisonment, nor shall it impose any other penalty *except as provided by law*.[1] Thus, unless provided for in statute, no administrative penalty or fine may be imposed by an administrative agency such as a code enforcement board or a special master serving as the code enforcement board.[2]

Section 162.07(2), Florida Statutes, states:

"Each case before an enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body. *If the local governing body prevails in prosecuting a case before the enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the board and such costs may be included in the lien authorized under s. 162.09(3)*." (e.s.)

Thus, your question is whether the amounts paid to the special magistrate by the town for performing his services may be characterized as "costs" which are recoverable under the statute. It is my opinion that they may not as they constitute "fees" paid to a public officer for his services not "costs" incurred in prosecuting or defending an action.

Section 162.07(2), Florida Statutes, provides no definition for the term "costs" as used in that statute. However, "costs" are generally understood to be allowances to a party for the expenses incurred in prosecuting or defending a suit and are an incident to the judgment. The term "costs" is commonly understood in the legal sense to mean "[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees. – Also termed *court costs*."[3] (Emphasis in original) "Costs" are distinguishable from "fees" although the two terms are frequently used interchangeably.[4] "Fees" are understood to be compensation to public officers for services rendered in the course of the case.[5] "Fees" represent a charge for labor or services, especially professional services.[6]

Therefore, it is my opinion that the provisions of section 162.07(2), Florida Statutes, which authorize the recovery of all costs incurred by a municipality in prosecuting a violator before a code enforcement board or special magistrate do not authorize the award of compensation or

fees as "costs" to the special master for his or her services incurred in such a prosecution.

Question Two

Your letter also advises that the special magistrate employs an assistant or paralegal who assists in providing services related to the special magistrate position. You ask whether, pursuant to section 162.07(2), Florida Statutes, the town may recover from a code violator the costs incurred by the town for the services of the special magistrate's assistant.

Based on the discussion above relating to the fees paid special magistrates, I believe that your second question has been answered. The compensation paid to public officers for services rendered in the course of the case are not included within the term "costs" unless the Legislature has specifically included them. I am aware of no such legislative determination in section 162.07(2), Florida Statutes, and thus, must conclude that these fees may not be included within those "costs."

As support for this conclusion, I note that this office, in Attorney General Opinion 72-60, considered the assessment of court costs in criminal cases and stated:

"Costs properly chargeable against a defendant on conviction generally do not include the general expense of maintaining the system of courts and the administration of justice, all of which is an ordinary burden of government. Under this principle the costs of jurors or other expenses in connection with jurors are not chargeable. Likewise, expenses of the trial judge are considered part of government expense and not chargeable as costs. As a general rule, fees and mileage of government witnesses are held taxable costs of prosecution against convicted defendants."

While your questions deal with quasi-judicial code enforcement procedures and not with criminal proceedings, it would appear that the same considerations would apply in determining whether the expenses of the special magistrate and his or her assistant or paralegal are chargeable as costs.

In fact, section 162.07(1), Florida Statutes, includes the following directive:

"The local governing body shall provide clerical and administrative personnel as may be reasonably required by each enforcement board for the proper performance of its duties."

Thus, it appears that the local government is made responsible for providing the clerical and administrative personnel that may be required to accomplish the duties of the code enforcement board or a special magistrate serving as the code enforcement board.

In sum, it is my opinion that the provisions of section 162.07(2), Florida Statutes, which authorize the recovery of all costs incurred by a municipality in prosecuting a violator before a code enforcement board or special magistrate do not authorize the award of compensation of fees as "costs" to the paralegal or assistant to the special master for his or her services incurred in such a prosecution.

Sincerely,

Pam Bondi
Attorney General

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[1] *See generally* Op. Att'y Gen. Fla. 79-109 (1979) (governing body of charter county prohibited in absence of statutory authorization from providing by ordinance for imposition of civil penalties); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145, 1148 (Fla. 4th DCA 1982) (holding that provisions of county ordinance authorizing assessment of penalties by county agency was unconstitutional and agreeing with conclusion in Op. Att'y Gen. Fla. 79-109).

[2] *See* Op. Att'y Gen. Fla. 09-29 (2009) (a local government or its governing body derives no delegated authority from Ch. 162, Fla. Stat.; further, municipalities derive no home rule power from Art. VIII, s. 2(b), Fla. Const., or s. 166.021, Fla. Stat., to regulate code enforcement boards or otherwise regulate statutorily prescribed enforcement procedure); Ops. Att'y Gen. Fla. 85-84 (1985), 79-109 (1979); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982) (holding that the provisions of a county ordinance authorizing assessment of penalties by county agency was unconstitutional and agreeing with Op. Att'y Gen. Fla. 79-109).

[3] *See* Black's Law Dictionary *cost*, p. 372 (8th ed.).

[4] *See* 20 C.J.S. *Costs* s. 3, "Distinctions" (1990).

[5] *See Dade County v. Strauss*, 246 So. 2d 137 (Fla. 3d DCA 1971), *cert. denied*, 253 So. 2d 864 (Fla. 1971), *cert. denied*, 92 S.Ct. 1793, 406 U.S. 924, 32 L.Ed.2d 125 (1972) ("costs" and "fees" are different in their nature generally; "costs" are allowances to party of expenses incurred in successful transaction or defense of suit while "fees" are compensation to officer for services rendered in progress of cause). *And see Flood v. State*, 117 So. 385 (Fla. 1928) ("fee" is charge fixed by law for service or public officer of for use of privilege under government's control); *and see* 20 C.J.S. *Costs* s. 3, "Distinctions" (1990).

[6] *See* Black's Law Dictionary *fee*, p. 647 (8th ed.). *Cf.* Op. Att'y Gen. Fla. 09-07 (2009) (provisions of s. 162.07(2), Fla. Stat., which authorizes the recovery of all costs incurred by a municipality in prosecuting a violator before a code enforcement board would not authorize the board to award attorney's fees to the municipality for attorney's fees incurred in such a prosecution whether those fees are incurred directly or indirectly).