Records, economic development agency

Number: INFORMAL

Date: June 16, 2011

Subject:
Records, economic development agency

Mr. Derek P. Rooney
Assistant County Attorney
Charlotte County
18500 Murdock Circle, Suite 573
Port Charlotte, Florida 33948-1068

Dear Mr. Rooney:

On behalf of the Charlotte County Board of County Commissioners, you have asked whether an amendment to the county's charter placing the executive director of the county's economic development agency under direct supervision of the commission makes the commission part of the economic development agency for purposes of section 288.075, Florida Statutes.

In sum, this office does not interpret local codes or charters and is, therefore, unable to make a determination of whether such amendment makes the county commission a part of the economic development agency for purpose of maintaining the confidentiality of materials under section 288.075, Florida Statutes. If by amendment of the county charter, the voters made the county commission a part of the economic development agency, then the provisions in section 288.075, Florida Statutes, would apply to the county commission.

The materials you have provided indicate that in November, 2010, the voters of Charlotte County approved amendments to the county's home rule charter to have the executive director of the county's economic development agency (EDA) report directly to the county commission.[1] Previously, the executive director reported to the county manager. You ask whether the fact that the executive director is now hired by and reports to the county commission makes the county commission an economic development agency under section 288.075, Florida Statutes. If the county commission is an EDA, it is required to keep certain records confidential under that statute.

Section 288.075, Florida Statutes, makes certain records of a private corporation, partnership, or person held by an EDA confidential and exempt from section 119.07(1), Florida Statutes, and Article I, section 24(a), Florida Constitution.[2] Pursuant to section 288.075(2)(a), Florida Statutes,

"Upon written request from a private corporation, partnership, or person, information held by an economic development agency concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first."[3]

A public officer or employee may not enter into a binding agreement with a corporation, partnership, or person requesting confidentiality under this subsection until 90 days after the information is made public unless the public officer or employee is acting in an official capacity, the agreement does not accrue to his or her personal benefit and, in his or her professional judgment, the agreement is necessary to effectuate an economic development project.[4] Any person who is an employee of an EDA who releases the confidential records violates the provisions of the section and commits a misdemeanor of the second degree.[5]

Section 288.075(1)(a), Florida Statutes, defines "[e]conomic development agency" for purposes of the section as:

"1. The Office of Tourism, Trade, and Economic Development;[6]
2. Any industrial development authority created in accordance with part III of chapter 159 or by special law;
3. Space Florida created in part II of chapter 331;
4. *The public economic development agency of a county or municipality* or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
5. Any research and development authority created in accordance with part V of chapter 159; or
6. Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county."[7] (e.s.)

The Legislature's designation of those entities which are economic development agencies for purposes of section 288.075, Florida Statutes, precludes any other entities from being considered an EDA.[8]

As discussed in this office’s statement regarding Attorney General Opinions, opinions of this office generally are not issued on questions requiring an interpretation only of local codes, ordinances, or charters rather than the provisions of state law. Thus, it is not within the province of this office to interpret the intent of the amendment to place the executive director of the EDA under the supervision of the county commission. To the extent it was the intent of the voters to make the county commission an EDA by the amendment of the county charter, this office may not determine otherwise.

Section 288.075(1)(a)4., Florida Statutes, recognizes that when a county does not have a public economic development agency, other county officers or employees who are assigned the duty of promoting the general business interests or industrial interests of the county may be considered an economic development agency for purposes of the statute.[9] While there is no evidence in the legislative history of section 288.075, Florida Statutes, indicating whether the Legislature contemplated that a county commission would assign itself such functions, the statute does not on its face prohibit such a designation and this office cannot read such a limitation into the statute.[10]

It should be noted, however, that section 288.075 affords an exemption from the provisions of Chapter 119, Florida Statutes, not from the provisions of section 286.011, Florida Statutes. Section 119.07(7), Florida Statutes, provides that an exemption from section 119.07, Florida Statutes, "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act do not by implication allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law.[11]

I trust that these informal comments will be of assistance to you. Due to the importance of ensuring the integrity of the process whereby economic development agencies retain confidential records and the apparent confusion as to how broadly the definition of such an agency may be construed, it may be advisable to seek legislative clarification on this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* s. 2.3.F., Art. II, Charlotte County Home Rule Charter, providing:

"Director of Economic Development. There shall be a director of the economic development office selected by the board of county commissioners who shall serve at the pleasure of the board. The director of the economic development office shall not be under the direction and control of the county administrator but shall, instead, be responsible directly to the board of county commissioners."

[2] *See* s. 288.075(2), (3), (4), (5), and (6), Fla. Stat., making confidential and exempt the following: plans, intentions, and interests; trade secrets; proprietary confidential business information; identification, account, and registration numbers; and information regarding the administration of an economic incentive program.

[3] *And see* s. 288.075(2)(b), Fla. Stat., providing that an economic development agency may extend the period of confidentiality for up to an additional 12 months upon written request and upon a finding by the economic development agency that the private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. The request for an extension, however, must be received prior to the expiration of any confidentiality originally provided under this section.

[4] Section 288.075(2)(c), Fla. Stat.

[5] *See* s. 288.075(7), Fla. Stat.

[6] *See* s. 148, SB 2156, 2011 Legislative Session, amending s. 288.075(1)(a)1., Fla. Stat., to

change "The Office of Tourism, Trade, and Economic Development" to "The Department of Economic Opportunity." If not vetoed by the Governor, the bill will become effective July 1, 2011.

[7] The 2001 Florida Legislature amended the definition to broaden the scope of the exemption to include records of a county or a municipal economic development agency. *See* Ch. 2001-161, Laws of Fla. *And see* Analysis of the House of Representatives, as revised by the Council for Competitive Commerce, on CS/HB 1541 (enacted as Ch. 2001-161, Laws of Fla.), dated April 11, 2001; storage name: h1541s1.ccc.doc, stating that the bill "broadens the definition of 'economic development agency' to include the Florida Commercial Space Finance Corporation (FCSFC), and any county or municipal economic development office, rather than being limited to a public economic development agency that advises the county commission on the issuance of industrial revenue bonds. With the broader definition, confidentiality would apply not only to the FCSFC, but also to the records of a local government economic development office that works with businesses as they evaluate site selection options in the community." *See also* s. 288.106(2)(b), Fla. Stat, providing that an "[a]uthorized local economic development agency" means "a public or private entity, including an entity defined in s. 288.075, authorized by a county or municipality to promote the general business or industrial interests of that county or municipality."

[8] *See* Op. Att'y Gen. Fla. 95-52 (1995) (community redevelopment district not within the entities enumerated in s. 288.075, Fla. Stat., as an economic development agency).

[9] *See also* House of Representatives Staff Analysis, HB 7201 (2007 Legislative Session), amending s. 288.075(1)(d), Fla. Stat. (now [1][a]4.) to allow county or municipal officers assigned the duty to promote the general business or industrial interests of the county or municipality to be considered the economic development agency, when the county or municipality does not have a public EDA. The analysis states that the amendments "[e]xpand the definition of economic development agency, contained in the bill, to include county or municipal officers or employees who have economic development responsibilities, when these local governments do not have a specific agency responsible for those tasks."

[10] *See, e.g., Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974) (Attorney General's Office has no authority to supply additional words to or modify the meaning of a duly enacted statute); and Ops. Att'y Gen. Fla. 82-80 (1982) (Attorney General is not free to add words to a statute to support a conclusion that the plain wording of the statute does not supply); 94-09 (1994); 87-43 (1987); 86-32 (1986); and 82-20 (1982).

[11] *See* Ops. Att'y Gen. Fla. 10-04 (2010), 04-44 (2004), 95-65 (1995), 93-41 (1993), and 91-88 (1991).