

Code Enforcement Board, reduction of fine

Number: AGO 98-50

Date: August 12, 1998

Subject:
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Ms. Laura Ann McCall
Okeechobee County Attorney
Post Office Box 968
Okeechobee, Florida 34972

RE: COUNTIES--CODE ENFORCEMENT BOARD--reduction of fine imposed. s. 162.09, Fla. Stat.

Dear Ms. McCall:

On behalf of the Okeechobee Board of County Commissioners and the Okeechobee County Code Enforcement Board, you ask substantially the following question:

In light of the amendments to section 162.09, Florida Statutes, authorizing the local governing body of a county or municipality to execute a satisfaction or release of the lien imposed by the code enforcement board, does the code enforcement board still have the authority to reduce a fine imposed pursuant to section 162.09, Florida Statutes?

In sum:

A local code enforcement board retains the authority to reduce a fine imposed by the board pursuant to section 162.09, Florida Statutes, and this authority is unaffected by recent amendments to the law.

Part I of Chapter 162, Florida Statutes, the Local Government Code Enforcement Boards Act (act), seeks to provide an effective and expeditious method of enforcing local codes and ordinances by authorizing a county or municipality to create local code enforcement boards.[1] These code enforcement boards possess the authority to impose administrative fines and other noncriminal penalties.[2]

Section 162.09, Florida Statutes, authorizes the imposition of an administrative fine by a code enforcement board, upon notification by the code inspector that an order of the board has not been complied with by the set time or upon finding that a repeat violation has been committed.[3] The fine may not exceed \$250 per day for a first violation or \$500 per day for a repeat violation.[4] In determining the amount of the fine, section 162.09(2)(b), Florida Statutes, provides that the code enforcement board shall consider the following factors:

"1. The gravity of the violation;

2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator."

Section 162.09(2)(c), Florida Statutes, expressly grants the code enforcement board the authority to reduce a fine.

You note that in Attorney General Opinion 93-91, this office concluded that a city council had no authority to reduce a fine imposed by a municipal code enforcement board. Rather, it was the code enforcement board that possessed authority to reduce such fine and execute a satisfaction or release of lien. This conclusion was based on the language of section 162.09, Florida Statutes (1993), relating to administrative fines and liens, which at that time provided in subsection (2)(c) that "[a]n enforcement board may reduce a fine imposed pursuant to this section."

During the 1994 legislative session, however, section 162.09, Florida Statutes, was amended.[5] Section 162.09(2), Florida Statutes, still provides that a code enforcement board may reduce a fine imposed pursuant to the section. Subsection (3) of the statute, however, now provides that a lien arising from a fine imposed pursuant to this section "runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien."

In light of the statutory changes, this office recently stated that a board of county commissioners, as the governing body of the county, has the authority to reduce or satisfy a fine imposed by a code enforcement board.[6] In light of the county commission's authority, you ask whether the code enforcement board may still reduce the fine it imposed.

As noted above, section 162.09(2)(c), Florida Statutes, expressly authorizes the code enforcement board to reduce the fine. While the statute now provides that the lien arising from the fine runs in favor of the local governing body, which may execute a satisfaction or release of the lien, the code enforcement board still is statutorily authorized to reduce the fine. This office has no authority to ignore or alter the plain language of the statute.

Accordingly, I am of the opinion that the code enforcement board retains the authority to reduce a fine imposed by the board pursuant to section 162.09, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] See ss. 162.03 and 162.05, Fla. Stat. *And see* s. 162.02, Fla. Stat., setting forth the legislative intent.

[2] See *generally* Art. V, s. 1, Fla. Const. (administrative bodies established by law may be granted quasi-judicial powers in matters connected with the functions of their office), and Art. I, s. 18, Fla. Const. (no administrative agency shall impose a sentence of imprisonment or any other penalty except as provided by law).

[3] Section 162.09(1), Fla. Stat.

[4] Section 162.09(2)(a), Fla. Stat.

[5] Section 4, Ch. 94-291, Laws of Florida.

[6] Attorney General Opinion 98-40 (1998).