Professional documents - authenticity - notaries

Number: INFORMAL

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Mr. Herbert W.A. Thiele
County Attorney
301 South Monroe Street, Suite 202
Leon County Courthouse
Tallahassee, Florida 3230l

Dear Mr. Thiele:

On behalf of Leon County ("County"), you have requested an opinion regarding the question set forth below. It concerns the status of copies of original professional documents submitted to a governmental permitting authority—here, the County—in connection with a permit application (*e.g.*, for proposed construction of buildings, bridges, or roadways), where the applicant (1) represents that the documents from which such copies were made are original signed and sealed engineering or architectural documents and (2) purports to rely on the documents in submitting its application for the County's permitting determination. Specifically, your (rephrased) question is:

"Can such copies be treated as the legal and functional equivalent of original signed and sealed engineering documents for purposes of review of the permit applications which depend upon them where the copies are accompanied by the 'attestation' of a third-party notary to the effect that:
(1) the copies are 'true and correct' copies of the originals, or
(2) the signature and seal on the originals 'comply with State law'?"[1]

Attorney General Pam Bondi has asked that I respond to your letter.

As a preliminary matter, under section 117.05, Florida Statutes (2018), a notary public "may supervise the making of a photocopy of an original document and attest to the trueness of the copy, provided the document is…[not] a public record, if a copy can be made by the custodian of the public record." Because, under the scenario described, neither the original document nor a duly authorized electronically signed and sealed copy[2] is submitted to the permitting authority, attesting to the trueness of such copy would appear to be a notarial act which is authorized by the statute.[3] *See generally* § 119.011(12), Fla. Stat. (2018) ("'Public records' means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or *in connection with the transaction of official business by any agency.*") (Emphasis added).

However, it does not appear that chapter 117, Florida Statutes, authorizes a notary to opine on the legal sufficiency of the signature and seal on an original document (from which a copy has been made for submittal to the permitting entity) by attesting that the signature and seal on the original "comply with state law." *Cf. The Fla. Bar v. Fuentes*, 190 So. 2d 748, 749–51 (Fla. 1966)

(enjoining a notary public from performing legal activities which could be rendered only by lawyers who have the training and knowledge to perform them). Therefore, submittal of a document in which a notary purports to attest to the legal sufficiency of the signature and seal on the original adds nothing of legal significance in connection with the permitting authority's consideration of the copy in support of the application.

The only question left, then, is whether a true and correct copy of a signed and sealed engineering or architectural document[4] submitted to a permitting entity in lieu of the original provides a legal and practical equivalent for purposes of evaluating a permit application which relies on the original document. As discussed below, applying the criteria specified in governing statutes and implementing rules, it does not.

While (as set forth in the memorandum of law accompanying your opinion request) the operative statutes[5] and implementing rules[6] variously contemplate the use of electronic or digital signatures or seals in connection with the creation of signed and sealed professional documents, there are no provisions authorizing printed copies of complying original documents to be deemed signed and sealed documents. To the contrary, rules applicable to such professional documents reflect that "[p]rinted copies of this document are not considered signed and sealed[,]"[7] and that "[a] scanned image of an original signature shall not be used in lieu of a digital or electronic signature."[8]

"When the Legislature has prescribed the mode, that mode must be observed. When the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way."[9] Consistent with these principles, a professional document provided to the County may only be relied upon as an authentic signed and sealed document if, based upon the County's review, the actual document submitted complies with applicable statutory and rule requirements.

Thus, where a "true and correct copy" (lacking the statutorily prescribed evidence of authenticity) is submitted to the County, there is no way to ascertain from the copy that the *original* is an authentic signed, sealed, and dated professional document on which the County may rely in its permit application evaluation; nor has a signed, sealed, and dated final professional document complying with statutory requirements been received by the County for its consideration and retention as a public record.[10] I trust that these informal observations will assist you in advising the County on this matter.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

TLM/tsh

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[1] The County also asked a second question: "If yes, are the original signed and sealed engineer/architect plans kept by the third party considered public records that must be retained and made available in accordance with the Public Records Law?" Because this office has concluded that the answer to the first question is "No," the second question is not addressed.

[2] *See* Fla. Admin. Code R. 61G15-23.005(e) (“Procedures for Electronically Signing and Sealing Electronically Transmitted Plans, Specifications, Reports or Other Documents.”); Fla. Admin. Code R. 61G15-30.009 (“Retention of Engineering Documents.”).

[3] *See* § 117.05 (12)(a), Fla. Stat. (2018) (“A notary public may supervise the making of a photocopy of an original document and attest to the trueness of the copy, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.”).

[4] For purposes of these informal comments, we assume that the original documents are properly signed and sealed engineering or architectural documents. Under the scenario described, however, the County could not confirm the authenticity of originals by reviewing copies lacking the statutorily-prescribed indicia of authenticity. See §§ 471.025(1), 481.221(2), Fla. Stat. (2018).

[5] *See* chaps. 471 (“Engineering), 481 (“Architecture, Interior Design, and Landscape Architecture”), Fla. Stat. (2018).

[6] *See* subtitles 61G1 (“Division of Professions Board of Architecture and Interior Design”), 61G15 (“Board of Professional Engineers”), Fla. Admin. Code.

[7] Fla. Admin. Code R. 61G15-23.004(3)(c)3.; Fla. Admin. Code R. 61G15-23.005(4)(c)3.

[8] Fla. Admin. Code R. 61G1-16.005(1)(a).

[9] *Alsop v. Pierce*, 19 So. 2d 799, 805–06 (Fla. 1944).

[10] *See* §§ 471.025(1), 481.221(2), Fla. Stat. (2018) (requiring all final professional documents filed for public record—including drawings, plans, specifications, or reports prepared or issued by a registered architect or engineer—to be signed by the licensee, dated, and sealed).