## Code Enforcement Boards -- Costs

**Number:** INFORMAL

**Date:** April 14, 2014

Mr. Michael S. Craig
Office of the County Attorney
Polk County
Post Office Box 9005
Bartow, Florida 33831-9005

Attn: Mr. Randy M. Mink
Assistant County Attorney

Dear Mr. Mink:

You have asked for this office's assistance in addressing several questions relating to section 604.50, Florida Statutes. More specifically, you have asked whether a "nonresidential farm building" under section 604.50, Florida Statutes, would include buildings used for various purposes. You also ask what would constitute a "nonresidential farm building[s] on [a] farm[s]" as that term is used in section 553.73(10)(c), Florida Statutes, for purposes of the Florida Building Code and whether a building used for a particular purpose may fall within the scope of that phrase. Finally, you have asked for clarification of what may constitute a "farm sign" under section 604.50, Florida Statutes. Attorney General Bondi has asked me to respond to your letter.

After reviewing your letter and the material submitted with the request, I must advise you that the Attorney General is statutorily limited to providing legal opinions on questions of state law.[1] Resolution of mixed questions of law and fact, which are the province of the judiciary, are not within the statutory authority of this office. However, in an effort to be of some assistance to you, I provide the following informal comments.

Chapter 604, Florida Statutes, sets forth this state's general agricultural laws. Section 604.50, Florida Statutes, the statute about which you have inquired, relates to nonresidential farm buildings, farm fences, and farm signs and their treatment under the Florida Building Code and local code provisions. The statute provides that:

"Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes[2] is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6) - (8)."[3]

The statute contains a definition of "nonresidential farm building" in subsection (2)(d):

"'Nonresidential farm building' means any temporary or permanent building or support structure

that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c)[4] or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house."

Pursuant to the statute, a "nonresidential farm building" may be a temporary or permanent building or a support structure. It must be classified as a nonresidential farm building on a farm under the Florida Building Code or used primarily for agricultural purposes.[5] It must be located on land integral to a farm operation or classified as agricultural land for purposes of tax classification and assessment. Buildings intended to be used as residential dwellings do not qualify for the exemption under section 604.50, Florida Statutes. While the Legislature has provided a non-exclusive list of what it considers representative of "nonresidential farm buildings," *i.e.*, barns, greenhouses, shade houses, farm offices, storage buildings, or poultry houses, it would appear that a building categorized as a "nonresidential farm building" must be farm related.[6]

You have asked whether the term "nonresidential farm building" may be applied to a building on a farm or land classified as agricultural under section 193.461, Florida Statutes, if the building is being used as a feed store under various scenarios.[7] As indicated in my initial comments, this office has no authority to resolve mixed questions of law and fact. It appears that a resolution of your questions involves a determination of what may qualify as a "nonresidential farm building" or a "nonresidential farm building on a farm." Any such determination involves application of section 553.73(10)(c), Florida Statutes. This provision of the Florida Building Code, which exempts these structures from regulation under the Building Code, contains no definition of the term "nonresidential farm buildings on farms." In the absence of a more definite legislative expression of what may constitute a "nonresidential farm building" or a "nonresidential farm building on a farm" this office cannot make such a determination.

Section 553.73(10), Florida Statutes, provides that

"The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare."

This office is aware of no administrative rule adopted by the Department of Agriculture and Consumer Services pursuant to this statutory section.[8]

In light of the Department of Agriculture's authority in this area, you may wish to contact the department to request their assistance in addressing your questions. It may also be advisable for the Legislature to more clearly express their intent with regard to the commercial use of what may be classified as "nonresidential farm buildings" and whether that use may remove any such building from the scope of the exemption.

You have also asked whether a "farm sign" exempted under section 604.50, Florida Statutes, would include signs that advertise products for sale, but not produced on the property upon which the building is located or nationally manufactured agricultural equipment or nationally

produced feed that is sold on the land.

Section 604.50(2)(c), Florida Statutes, provides the Legislature's definition of a "farm sign" for purposes of the statute:

"'Farm sign' means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm."

Thus, the Legislature has determined that a farm sign must relate *solely* to farm produce, merchandise, or services which are sold, produced, manufactured, or furnished on the farm. Signs advertising merchandise, produce or services which are not sold, produced, manufactured, or furnished on the farm are outside the scope of the statute and may not take advantage of the exemption from the Florida Building Code and other county or municipal regulation.

I trust that these informal comments will be helpful to you in advising your client, the Board of County Commissioners of Polk County. We appreciate the opportunity to be of assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Opinions available at www.myfloridalegal.com.

[2] A "bona fide agricultural purpose[s]" is defined in section 193.461(3)(b), Fla. Stat. (this statute deals with the classification and assessment of agricultural lands), to mean:

"(b). . . . The term 'bona fide agricultural purposes' means good faith commercial agricultural use of the land.
1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:
a. The length of time the land has been so used.
b. Whether the use has been continuous.
c. The purchase price paid.
d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.
e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices.
f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.

g. Such other factors as may become applicable.
2. Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale.

[3] Section 604.50(1), Fla. Stat.

[4] Section 553.73(10)(c), Fla. Stat., states that "[n]onresidential farm buildings on farms" are exempt from the Florida Building Code as provided by law.

[5] *See* s. 604.50(2)(a), Fla. Stat., for a definition of "bona fide agricultural purposes" for use in s. 604.50, Fla. Stat., and n.1 for the text of s. 193.461(3)(b), Fla. Stat.

[6] See *Turnberry Isle Resort and Club v. Fernandez*, 666 So. 2d 254 (Fla. 3d DCA 1996) (under the doctrine of *noscitur a sociis*, the meaning of statutory terms, and the legislative intent behind them, may be discovered by referring to words associated with them in the statute); *Cepcot Corporation v. Department of Business and Professional Regulation, Construction Industry Licensing Board*, 658 So. 2d 1092 (Fla. 2d DCA 1995) (court looked to the terms "construct," "repair," "remodel," and "demolish," in the statute to determine what types of duties were encompassed by the use of the terms "alter" and "improve"); Ops. Att'y Gen. Fla. 00-07 (2000) (while staff analysis refers to "invoices," that term should be construed in light of the other types of information referenced), 94-12 (1994), and 90-55(1990).

[7] *Compare* Rule 40D-400.550, F.A.C., promulgated by the Southwest Florida Water Management District which qualifies "nonresidential farm buildings" as being used "*solely for agricultural purposes*[;]" and Rule 62-330.550, F.A.C., which includes similar limiting language relating to construction permits issued by the Department of Environmental Protection. (e.s.)

[8] This office has communicated with the Department of Agriculture and Consumer Services and been advised that no such rules have been promulgated.