Certified contractors, discipline by local government

Number: INFORMAL

Date: October 09, 2009

The Honorable John Tobia
Representative, District 31
1901 South Harbor City Boulevard
Suite 508
Melbourne, Florida 32901

Dear Representative Tobia:

Thank you for contacting this office on behalf of the Florida East Coast Chapter of the Associated Builders and Contractors for assistance in determining whether local governments may discipline "certified" licensed contractors. You present an apparent conflict between sections 489.127(5)(n) and 489.127(5)(o), Florida Statutes.

Regrettably, the matter is one that may not be addressed directly at the request of someone other than the public official or entity whose powers are questioned. Moreover, this office lacks the statutory authority to render legal opinions to a private entity or individual, even though a public official has made the request on their behalf.[1]

In an effort to be of assistance, however, the following general comments are provided.

Part I of Chapter 489, Florida Statutes, requires that construction contractors practicing in Florida be registered or certified by the Department of Business and Professional Regulation. A "certified" contractor may practice anywhere within the state, with the presentation of his or her certificate to the local licensing entity and payment of the fee for the necessary occupational license and the building permit.[2]

A local construction regulation board, however, may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit the ability of a contractor to obtain a permit under specific conditions, if the board, through a public hearing process, has determined that the contractor is guilty of fraud or a willful building code violation.[3] Failure or refusal to provide proof of appropriate liability and workers compensation insurance may also result in the denial or suspension of a permit.[4]

Section 489.127(5), Florida Statutes, also provides:

"Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required."[5]

As reflected by Attorney General Opinion 90-73, the provisions in Part I, Chapter 489, Florida

Statutes, place primary responsibility for the discipline of certified contractors with the Construction Industry Licensing Board. Only the specified powers enumerated in sections 489.113 and 489.127, Florida Statutes, may be exercised by local governments. The opinion concluded that, with the exception of the specific provisions relating to local governments, the authority to discipline certified contractors is vested with the state licensing board.

You point out that section 489.127(n), Florida Statutes, states that "[n]othing contained in this subsection shall prohibit a county or municipality from enforcing its codes or ordinances by any other means," while section 489.127(o), Florida Statutes, provides that "[n]othing in this subsection shall be construed to authorize local jurisdictions to exercise disciplinary authority or procedures established in this subsection against an individual holding a proper valid certificate issued pursuant to this part." There is an apparent distinction between a local government's use of a different means of enforcing its codes, *e.g.*, through a code enforcement officer, in areas it is authorized to enforce and a local government's attempt to impose discipline for an infraction that is properly addressed only by the Construction Industry Licensing Board.

I trust that these informal comments will be helpful in clarifying this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* Frequently Asked Questions About Attorney General Opinions at www.myfloridalegal.com.

[2] *See* ss. 489.113 and 489.115, Fla. Stat.

[3] Section 489.113(4)(b), Fla. Stat.

[4] Section 489.113(4)(c), Fla. Stat.

[5] Section 489.127(1), Fla. Stat., sets forth the prohibitions of the act:

"(a) Falsely hold himself or herself or a business organization out as a licensee, certificateholder, or registrant;
(b) Falsely impersonate a certifcateholder or registrant;
(c) Present as his or her own the certificate, registration, or certificate of authority of another;
(d) Knowingly give false or forged evidence to the board or a member thereof;
(e) Use or attempt to use a certificate, registration, or certificate of authority which has been suspended or revoked;
(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a

contractor without being duly registered or certified or having a certificate of authority;
(g) Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent; except as provided in ss. 489.119 and 489.1195;
(h) Commence or perform work for which a building permit is required pursuant to part IV of chapter 553 without such building permit being in effect; or
(i) Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

For purposes of this subsection, a person or business organization operating on an inactive or suspended certificate, registration, or certificate of authority is not duly certified or registered and is considered unlicensed. A business tax receipt issued under the authority of chapter 205 is not a license for purposes of this part."