Building Inspector/Code Administrator, interference

Number: INFORMAL

Date: November 04, 2008

Mr. Patrick J. Sura
Code Compliance Director/Building Official
Suwannee County Building Department
224 Pine Avenue
Live Oak, Florida 32064

Dear Mr. Sura:

You ask for clarification of the sentence in section 468.604(1), Florida Statutes, which provides that the building code administrator or building official shall faithfully perform the responsibilities prescribed therein without interference from any person.

The statute refers to "any person" and would not appear to be limited to unlicensed persons. In *Henry Company Homes, Inc. v. Curb*, 548 F. Supp.2d 1281 (N.D. Fla. 2008), the court stated that the statute requiring building officials to perform their responsibilities "without interference from any person" was designed to prevent building officials from engaging in corrupt practices, not to prevent the deliberative process involving other local government officials. Thus, the statute did not render a county engineering employee's making of recommendations regarding issuance of building permits beyond scope of his discretionary authority, so as to preclude assertion of qualified immunity in defense to civil rights claims of developer.

You also refer to the language of section 468.604(2), Florida Statutes, which provides the building code inspector's responsibilities must be performed under the direction of the building code administrator or building official without interference from any unlicensed person. The statute does not define "unlicensed person." I would note, however, that the legislation which added this language originally referred to "uncertified person." *See* House Bill 4439, 1998 legislative session. The staff analysis for the bill notes that "Building code administrators and inspectors are licensed pursuant to part XII of chapter 468, Florida Statutes " and notes:

"The bill makes a variety of changes to the regulation, including: (1) Adding categories of *licensure*; (2) Setting forth the actual duties of building code administrators, plans examiners and inspectors . . . ." (e.s.)

See House of Representatives as further revised by the Committee on General Government Appropriations Bill Research & Economic Impact Statement on House Bill # 4439, dated April 21, 1998; storage name: h4439a.gg. While I am not aware of any appellate court decision addressing this issue, in light of the above, it would appear to be reasonable to read the term "licensed" or "unlicensed" in light of the licensure provisions of Part XII of Chapter 468, Florida Statutes. In addition, I would note that while the decision in *Henry Company Homes, Inc. v. Curb* , *supra*, considered the language of section 468.604(1), Florida Statutes, the comments of the court may well be relevant to the provisions of section 468.604(2), Florida Statutes, which

contains similar, although not identical, language.

You may wish to contact the Florida Building Code Administrators and Inspectors Board. The board possesses the statutory authority to adopt rules implementing the provisions of Part XII, Chapter 468, Florida Statutes, and administers these statutory provisions. *See* sections 468.606 and 468.607, Florida Statutes.

I hope that the above informal comments may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t