Farm building, exemption from Fla. Blg. Code

Number: INFORMAL

Date: July 27, 2007

Mr. Arnold M. Verwey
Code Compliance Director
499 Northwest 5th Avenue
Okeechobee, Florida 34972-2572

Dear Mr. Verwey:

You ask for a formal opinion of this office as to whether sections 553.73(8)(c) and 604.50, Florida Statutes, in exempting nonresidential farm buildings on farms from the Florida Building Code refers to a code regulating structural elements or to all of the Florida Building Code.

Requests for opinions should be submitted to this office by the head of the agency in question, accompanied by a memorandum of law. Thus, in the instant inquiry a request should be made by the board of county commissioners as the governing body of the county, or by the county attorney on the board's behalf, accompanied by a memorandum of law prepared by the county attorney.[1]

In an effort to be of assistance, however, I would note that in Attorney General Opinion 01-71, this office concluded that sections 553.73(7)(c) [now section 553.73(8)(c)] and 604.50, Florida Statutes, exempt nonresidential farm buildings located on a farm from the Florida Building Code and any county or municipal building code, making building permits unnecessary for such buildings. The opinion notes that while the Legislature in 1974 established statewide standards known as the State Minimum Building Codes, in 1998, as a result of a building codes study commission report suggesting the development of a single statewide building code, the Legislature created a statewide unified building code.[2]

Section 553.72(1), Florida Statutes, in setting forth the intent for the chapter, states:

"The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a *single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state* and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer. The Florida Building Code shall be organized to provide consistency and simplicity of use. The Florida Building Code shall be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. The Florida Building Code shall provide for flexibility to be exercised in a manner that meets minimum requirements, is affordable, does not inhibit competition, and promotes innovation and new technology. The Florida Building Code shall establish minimum standards primarily for public health and lifesafety, and secondarily for protection of property as appropriate."[3] (e.s.)

Section 553.73(1)(a), Florida Statutes, provides that the Florida Building Commission shall adopt, by rule, the Florida Building Code "which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section."[4]

Section 553.73(9)(c), Florida Statutes, provides that nonresidential farm buildings on farms are exempt from the Florida Building Code *as provided by law*.[5] The reference to the Florida Building Code would appear to be the same code as discussed elsewhere in that statute and as adopted by the Florida Building Commission. There is nothing in section 553.73(8) which limits the reference to a particular portion of the Florida Building Code. Similarly, the reference in section 604.50, Florida Statutes, is to the Florida Building Code, and not to a particular part of the code.

I hope that the above informal comments which should not be considered a formal opinion of this office may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

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[1] *Cf.* s. 125.56(1), Fla. Stat., authorizing the board of county commissioners of each of the several counties of the state to enforce the Florida Building Code.

[2] *See* Ch. 98-287, Laws of Fla.

[3] *And see* s. 553.72(3), Fla. Stat., providing that it is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with sections 120.536(1) and 120.54, Florida Statutes, and enforced by authorized state and local government enforcement agencies.

[4] *And see* Rule 9B-3.047(1), Fla. Admin. C., stating that the Florida Building Code as updated by the Florida Building Commission on July 1, 2005, and as amended by the Commission on December 11, 2005, December 8, 2006, and May 21, 2007, incorporated herein by reference is hereby adopted as the building code for the State of Florida. *See also* section 553.73(6)(a), Florida Statutes, requiring the commission to update the Florida Building Code every 3 years, selecting "the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are adopted by the International Code Council, and the National Electrical Code, which is adopted by the National Fire Protection Association, to form the foundation codes of the updated Florida Building Code, if the version has been adopted by the

applicable model code entity and made available to the public at least 6 months prior to its selection by the commission."

[5] *See* s. 604.50, Fla. Stat.