Santa Rosa Island Auth., hotel v. residential rooms

Number: INFORMAL

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Mr. Matt E. Dannheisser
Danheisser & Stebbins
501 North Baylen Street
Pensacola, Florida 32501

Dear Mr. Dannheisser:

On behalf of the Santa Rosa Island Authority you have asked whether the authority may adopt regulations distinguishing commercial hotel rooms from residential dwelling units and the effect of any such regulations. Attorney General McCollum has asked me to respond to your letter.

The Santa Rosa Island Authority was created by Chapter 24500, 1947 Laws of Florida, as a dependent special district of the county.[1] The authority is a board created and appointed by the county commissioners of Escambia County to "use the Island for such purposes as it shall deem to be in the public interests"[2] and has various governmental powers[3] including the authority to prepare and develop a comprehensive land use plan.[4]

Section 3(a) of the 1947 act provides:

"The County Commissioners are authorized and required to delegate to and vest power and authority in a board hereinafter provided for, to be known as Santa Rosa Island Authority, to exercise, do and perform all of the authority, powers, duties, acts and things herein granted to, vested in, or authorized to be exercised by the County or County Commissioners, which shall include the power and authority herein granted to or vested in said County Commissioners to lease the Island from time to time, in whole or in part or parts; to purchase, construct, extend, improve, own, maintain, insure and operate, either itself or by contract or lease with individuals, firms or corporations, all of the bridges, buildings, structures, facilities, projects, developments, streets, playgrounds, installations, utilities, properties, establishments and things mentioned in this Act; to acquire, sell and dispose of property; to fix and collect tolls, rents, revenues and profits; to advertise the Island; t*o adopt and enforce building codes and health, sanitation and safety rules and regulations, and regulations generally*; and to enter into leases and contracts. The foregoing enumeration of specific powers and authority shall not be held to limit or restrict in any manner the delegation to and vesting in said Authority of all of the authority, powers and duties granted to or vested in said County or County Commissioners by this Act. *Provided, however*, that any power or authority that cannot be lawfully delegated to and vested in said Authority by the County Commissioners, and the power and authority to issue revenue bonds or certificates and to acquire property by condemnation shall remain exclusively in the County Commissioners and the County Commissioners are authorized and empowered to exercise all such powers and authority." (e.s.)

Thus, the special act authorizes the Santa Rosa Island Authority to exercise the authority of the

county with regard to the powers granted by the special act. The act does not, however, vest all the powers and authority of the County Commissioners in the Santa Rosa Island Authority.[5] The authority was created for specific, limited purposes and does not possess the broader home rule powers of the county.[6]

It is a well established rule that special districts have only such powers as are expressly granted to them by law or those necessarily implied because they are essential to carry into effect those powers expressly granted.[7] While it is clear from a reading of the enabling legislation for the authority that the powers granted to it are broad, those powers are limited. However, the act clearly recognizes that the authority can "adopt and enforce building codes and health, sanitation and safety rules and regulations, and regulations generally[.]"[8] The act provides that the authority has the power "[t]o adopt and enforce building codes regulating and restricting the height, size, type of construction, location and use of buildings and other structures."[9] The act also provides that the authority is authorized "[t]o adopt and enforce rules for the regulation of the use of the Island and all improvements, projects and things thereon" and "[t]o enforce all reasonable rules, regulations, building codes and the like by injunction or any other appropriate legal or equitable remedy."[10] Thus, the Santa Rosa Island Authority has the power to adopt rules and regulations and the use, improvements and projects relating to construction in the district appear to be appropriate subjects for those rules and regulations.

You have also asked about the effect of any administrative rules and regulations adopted by the Santa Rosa Island Authority. The rule-making powers of administrative agencies are necessarily limited to the parameters of the statute which confers on the agency its rule-making authority.[11] An administrative rule cannot enlarge, modify, or contravene the provisions of a statute.[12] However, an agency is given broad discretion in the exercise of its lawful authority and the burden is on the person challenging a rule to demonstrate that the rule is arbitrary and capricious.[13] Florida courts have determined that if an enabling statute simply states that an agency may make such rules and regulations as may be necessary to carry out provisions of an act, regulations promulgated thereunder will be sustained as long as they are reasonably related to purposes of enabling legislation and are not arbitrary or capricious.[14]

I trust that these informal comments will be helpful to you in advising your clients. This informal advisory opinion was prepared by the Department of Legal Affairs in an effort to be of assistance to you. The conclusions herein are those of the writer and do not constitute a formal Attorney General's Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* Ch. 24500, 1947 Laws of Florida, as amended by Ch. 26422, 1949 Laws of Florida; Chs. 63-1322, 79-457, 83-407, and 84-426, Laws of Florida. *And see* s. 189.403(2), Fla. Stat.,

defining the term "[d]ependent special district."

[2] Sections 2(1) and 3, Ch. 24500, 1947 Laws of Florida.

[3] *See* s. 2(3), id.

[4] *See* s. 1, Ch. 70-680, Laws of Florida, which amended s. 3(a) of Ch. 24500, 1947 Laws of Florida, and required the authority to prepare and develop a comprehensive land use plan.

[5] *See Furnams v. Santa Rosa Island Authority*, 377 So. 2d 983 (Fla. 1st DCA 1979), *affirmed*, 399 So. 2d 1142 (Fla. 1981).

[6] *See* Art. VIII, s. 1(f), Fla. Const., providing non-charter counties with "such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special
law[;]" and s. 125.01(1), Fla. Stat.

[7] *See, e.g., Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919); Op. Att'y Gen. Fla. 89-34 (1989).

[8] *See* s. 3(a), Ch. 24500, 1947 Laws of Florida.

[9] Section 2(6), *id*.

[10] Sections 2(8) and (9), *id*.

[11] *See Booker Creek Preservation, Inc. v. Southwest Florida Water Management District*, 534 So. 2d 419 (Fla. 5th DCA 1988), *rev. den.*, 542 So. 2d 1334 (Fla. 1989).

[12] *Greenberg v. Cardiology Surgical Association*, 855 So. 2d 234 (Fla. 1st DCA 2003).

[13] *See Dept. of Corrections v. Hargrove*, 615 So. 2d 199 (Fla. 1st DCA 1993); *Charity v. Florida State University*, 680 So. 2d 463 (Fla. 1st DCA 1996).

[14] *Florida League of Cities, Inc. v. Dept. of Environmental Regulation*, 603 So. 2d 1363 (Fla. 1st 1992).