

Nonprofit corp. directors meeting; occupational license

Number: INFORMAL

Date: November 15, 2002

The Honorable Mitch Needelman
State Representative, District 31
Post Office Box 1656
Melbourne, Florida 32902

Dear Representative Needelman:

This is in response to your recent request for assistance in addressing two matters that have been raised by constituents.

The first inquiry is whether all meetings of the board of directors of a non-profit corporation, including an "executive session," are included under sections 617.0820 and 617.1601, Florida Statutes. Chapter 617, Florida Statutes, governs non-profit corporations in this state.

Section 617.0820, Florida Statutes, allows the board of directors of a non-profit corporation to hold meetings in or out of this state. Such meetings may be adjourned to another time and place by a majority of those directors present and, unless otherwise provided by the articles of incorporation or bylaws, notice of such adjournment must be given to the absent directors. Unless the articles of incorporation or bylaws provide otherwise, meetings may be called by the chair of the board or by the president, and the board may allow any or all of the directors to participate in a regular or special meeting by communication technology allowing simultaneous participation.

Section 617.1601, Florida Statutes, directs corporations to keep records of all meetings of its members and board of directors, a record of all actions taken by members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

Nothing in the cited sections limits their application to regular or special meetings. Rather, the use of the term "all" meetings would evidence an intent to cover any meeting at which the board of directors takes action. While there is no definition for the term "executive session" contained in the Florida Statutes, its use appears to be to provide a closed-door meeting at which actions may be taken that are not at that time open to public or shareholder scrutiny.[1]

The second inquiry involves an interpretation of Chapter 205, Florida Statutes, regarding a municipality requiring individual occupational licenses for engineers employed by a firm that has obtained an occupational license. Regrettably, this office may not comment upon the actions of a municipality absent a request from that entity.[2]

Generally, section 205.042, Florida Statutes, authorizes municipalities to levy occupational license taxes for the privilege of engaging in or managing businesses, professions, or

occupations within its jurisdiction. Several exemptions and partial exemptions are enumerated in Chapter 205, Florida Statutes. This office has consistently found that absent a specific statutory exemption from the occupational license tax, a municipality or county may not create new exemptions.[3]

In Attorney General Opinion 02-25, this office was asked whether a municipality could provide an exemption from the occupational license tax for licensed security guards who are employed by a licensed security agency. Recognizing that only the Legislature may provide exemptions from taxation, it was concluded that the municipality could not provide the exemption. In reviewing the historic progression of licensing security guards and agencies, however, it was recognized that over the years there has been an apparent shift to expose only security agencies to occupational license taxes. Given that an agency could include a sole proprietor, there remained some question as to whether individual licensed guards would be required to obtain occupational licenses.

Similarly, in Attorney General Opinion 83-17, this office considered whether a real estate agent operating under a real estate broker holding an occupational license in a municipality was a person subject to the occupational license tax under Chapter 205, Florida Statutes. Finding no exception or exemption from the occupational license tax for real estate salespersons, it was concluded that a real estate salesperson licensed and regulated by the state, who functions under the direction, control or management of a licensed real estate broker as required by Chapter 475, Florida Statutes, and performs or renders services for and to investors and the public, is a person subject to the occupational licensing tax.

A basic rule of construction is that exemptions from taxation are strictly construed against the taxpayer and, in the case of security guards, no clear exemption was found. It was advised, therefore, that legislative clarification of the issue might be appropriate.

A review of the laws applicable to professional engineers does not reveal a clear exemption from occupational license taxes for engineers employed by a firm. It may be advisable, therefore, to address this matter legislatively and to clarify whether an engineer must obtain an occupational license from a municipality in which the engineer's employing firm already holds an occupational license.

I trust that these informal comments may provide some assistance to you in addressing the concerns of your constituents.

Sincerely,

Richard E. Doran
Attorney General

RED/tls

[1] See, e.g., Senate Rule 12.2, stating that executive session is for the sole purpose of

considering appointment, removal, or suspension of public officers. *And see*, Senate Rule 12.4, making the work product of an executive session confidential except when such a ban is lifted by the Senate while it is in executive session.

[2] See Statement Concerning Attorney General Opinions, Part IV.

[3] See Ops. Att'y Gen. Fla. 00-01 (2000) (city may not exempt real estate agents operating under real estate brokers from its occupational license requirement, absent specific exemption in Ch. 205, Fla. Stat.); 83-17 (1983) (real estate salesperson licensed and regulated by the state and operating under the supervision of a broker is subject to occupational license tax); Inf. Op. to Ms. Julie B. Schutta, January 31, 2001 (real estate salespersons appropriately included within scope of occupational license tax ordinance).