

Enforcement of municipal code provisions

Number: INFORMAL

Date: May 03, 2001

Mr. John C. Dellagloria
North Miami City Attorney
Post Office Box 61050
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RE: LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS ACT--MUNICIPALITIES--
BUSINESSES--enforcement of municipal code provisions. Pt. I, Ch. 162, Fla. Stat.

Dear Mr. Dellagloria:

You have contacted this office for assistance regarding application of Part I, Chapter 162, Florida Statutes, the "Local Government Code Enforcement Boards Act." [1] You have asked whether the City of North Miami may, under Part I, Chapter 162, Florida Statutes, prosecute a property owner for the actions of an occupant of that property for possible administrative code violations.

This office has no authority to construe local code provisions, such as section 11-18, City of North Miami Code of Ordinances. [2] However, the following informal advisory comments are provided in an effort to assist you in resolving this matter.

In an earlier opinion of this office, Attorney General's Opinion 81-62, considered whether a municipal code enforcement board's jurisdiction was limited to reviewing only a property owner's alleged violation of the city code to the exclusion of a nonproperty owner's alleged violation.

As that opinion notes, the answer to the question is dependent on a review of the wording of the particular municipal ordinance allegedly being violated to determine to whom the ordinance assigns responsibility for compliance. The act itself recognizes that both a property owner and someone other than the owner of the property may be responsible for a violation of a local government code provision. For example, the section providing enforcement procedures for the act, mentions both "the violator" [3] and "the owner of property which is subject to an enforcement proceeding[.]" [4]

Similarly, the notice procedures for the act reflect several options depending on who the violator may be. Section 162.12(1)(a), Florida Statutes, authorizes notice to be given by certified mail, return receipt requested "if such notice is sent . . . to the owner of the property in question[.]" Another section of this statute, section 162.12(1)(c), Florida Statutes, authorizes the delivery of notice of a violation by "[l]eaving the notice at the violator's usual place of residence[.]"

Attorney General's Opinion 81-62 notes that a review of the legislative history surrounding adoption of the act "discloses no intent on the part of the Legislature that the board's jurisdiction be limited to only property owners' alleged violations of the enumerated codes thus excluding from its jurisdiction nonproperty owners' violations of designated codes that apply or may apply

to nonproperty owners. The code was intended to provide "an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities[.]"[5] As the earlier opinion concludes "[t]o interpret the Act as providing for an 'equitable, expeditious, effective, and inexpensive method' of enforcement only for violations committed by property owners appears to me to be in contravention of the express intent of the Legislature especially when the terms of the underlying municipal ordinance apply or can be properly construed to apply to nonproperty owners within the incorporated area."

No statutory changes or case law of which I am aware would change this conclusion.

I trust that these informal comments will be helpful to you.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] Section 162.01, Fla. Stat., provides the short title of the act.

[2] See s. 16.01(3), Fla. Stat., authorizing the Attorney General to issue opinions provide opinions on questions of state law; and Department of Legal Affairs Statement Regarding Opinions.

[3] Section 162.06(2), Fla. Stat.

[4] Section 162.06(5), Fla. Stat.

[5] Section 162.02, Fla. Stat.