

Florida History Museum

Number: INFORMAL

Date: March 12, 1998

Mr. Donald L. Bell
General Counsel
Department of State
The Capitol
Tallahassee, Florida 32399-0250

Dear Mr. Bell:

The Auditor General in his February 20, 1998, review of the operations of the Florida History Associates, Inc. (FHA), and its relationship with the Florida Department of State, raised several issues regarding FHA's authority. The Auditor General suggested that the Department of State seek the Attorney General's guidance on these issues. In following the Auditor General's suggestions, you have asked this office's assistance regarding the duties and responsibilities of FHA.

Chapter 267, Florida Statutes, generally provides for the duties of the Division of Historical Resources of the Department of State (division). The division is responsible for promoting and encouraging knowledge and appreciation of Florida history throughout the state.[1] The division is authorized to engage in the collection, research, exhibition, preservation, and interpretation of historical materials; the encouragement of others to do the same; the publication of the state's history; the development of programs to encourage the teaching of Florida history; and the operation of museums, including the Museum of Florida History.[2]

Section 267.072(1)(b), Florida Statutes, provides that the division shall:

"Support the establishment and operation of a nonprofit organization or association to promote and encourage knowledge and appreciation of Florida history and the programs of the Museum of Florida History and to cooperate with historical societies and other organizations to provide funding and promotional support for the programs of the museum. Such organization or association may, with the consent of the division, operate the museum store or conduct special events and programs in the museum. All proceeds must be used to support the programs of the Museum of Florida History."

The Florida History Associates, Inc., a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, was created in 1983 to accomplish this purpose.[3] In reviewing this statute, the Auditor General read the provisions restrictively to conclude that the FHA's powers were limited in their scope and direction. The Auditor General, however, recognized that "a broader interpretation may be made of the purpose for which moneys of the FHA may be spent." [4]

The language of section 267.072(1)(b), Florida Statutes, does not lend itself to a single interpretation. While a narrow reading of the statute would restrict FHA's activities to those

related to museum programs that also promote and encourage a knowledge and appreciation of Florida history, such an interpretation would, in my opinion, unduly restrict FHA's ability to accomplish its function to promote Florida history throughout this state. The public purpose underlying the creation of this nonprofit corporation leads me to conclude that rather than reading the statute narrowly, section 267.072(1)(b), Florida Statutes, should be interpreted broadly.[5]

While this office cannot comment upon the appropriateness of individual items of expenditure by FHA, I am of the view that the role of FHA under section 267.072, Florida Statutes, should be construed in such a manner as to allow the corporation greater flexibility to promote a knowledge and appreciation of Florida history and to support the programs of the Museum of Florida History. Obviously this assumes that the division and FHA would take steps to ensure that the purposes for which expenditures are made would be fulfilled.

Section 267.17(2), Florida Statutes, authorizes a citizen support organization, such as FHA, to use the property and facilities of the division without charge. It is my understanding that certain state-owned property under the control of the department was leased to private parties when the property was not otherwise needed or in use by government, and that the proceeds from such rentals were used to carry out the responsibilities of FHA. The Auditor General has questioned whether there is a public purpose to the renting of such state-owned facilities and whether there is sufficient statutory and regulatory authority to support the rental program.

While the rules provide for limited use of facilities for governmental purposes, they do not provide specific authority for the rental of facilities by FHA to private parties.[6] Nor do the statutes provide clear authorization for such use. However, government should never lose sight of the fact that it and its infrastructure are owned by the citizens it serves and there may be many types of uses that are both sensible and appropriate. In these instances the funds generated by such use could support museum programs and bring people into historical venues, exposing them to Florida history and culture. In light of the lack of clarity, this office recommends that the department seek clear legislative guidance.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] See s. 267.071, Fla. Stat.

[2] See Rule 1A-41.001, Fla. Admin. Code.

[3] See Articles of Incorporation, FHA, March 30, 1983.

[4] Auditor General's Review of FHA, February 20, 1998.

[5] See *Department of Environmental Regulation v. Goldring*, 477 So. 2d 532 (Fla. 1985) (provisions of statutes enacted in the public interest should be given a liberal construction in favor of the public).

[6] See Rule 1A-33.005 and Rule 60H-6.007, Fla. Admin. Code.