



OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

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Attorney General
State of Florida

70174 - 93 0815
Code Enforcement
Board

Permits

August 25, 1993

Mr. Scott E. Simpson
Attorney at Law
Post Office Box 305
Ormond Beach, Florida 32175

Dear Mr. Simpson:

On behalf of the City of South Daytona you have asked for an opinion relating to the city's authority to change the criteria on which certain permits are issued. You also have some concern about the effect this change would have on actions taken by the municipal code enforcement board.

According to your letter, the City of South Daytona has adopted an ordinance which prevents a property owner from parking boats in his or her residential front yard unless the property owner has a permit from the city. In order to qualify for such a permit, the property owner must have owned and parked the boat prior to February, 1991. It appears that the city initially accepted a notarized bill of sale indicating proof of the date of purchase as evidence of ownership and issued permits on this basis.

Subsequently, however, the city determined that it would not accept a bill of sale for purposes of issuing such a permit but would require proof of registration with the state. While your letter does not indicate whether these criteria are established as part of the ordinance or as an administrative rule promulgated pursuant to the ordinance, I must assume that they are formally expressed in one of these forms.

A property owner, who was issued a permit based on his bill of sale, subsequently had his permit revoked when the city changed its criteria for issuing permits. A citation was issued against this property owner when the code enforcement board determined that he was continuing to park his boat in his front yard although his permit had been revoked.

I understand from your letter that the city is now considering amending the criteria for a permit again to allow a bill of sale

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to constitute proof of ownership for purposes of securing a permit. You have asked whether the city is authorized to amend its determination of what constitutes adequate criteria for purposes of issuing a permit.

Section 166.041, F.S., sets forth certain requirements for the adoption of ordinances and includes procedures to be followed in amending such ordinances.¹ Clearly then, the statutes reflect a recognition of municipal authority to change ordinances.²

Likewise, an administrative body does not usually exhaust its power to make rules and regulations by having adopted a particular regulation.³ It may modify or repeal its administrative rules or regulations.

Thus, through either an ordinance or an administrative rule, whichever is appropriate in this situation, the City of South Daytona may amend the criteria which it accepts as proof of ownership for purposes of issuing certain permits. The issue of whether a change in criteria is reasonable or is applied evenhandedly, is a mixed question of law and fact which this office cannot resolve.⁴

You have also asked about the effect of a code enforcement board decision which is outside the scope of authority of the board. It is the general rule that an administrative agency or officer possesses no inherent power and may exercise only such authority as is expressly or by necessary implication conferred by law.⁵ However, if administrative agencies proceed without authority, their acts are invalid, and will not be enforced.⁶

A municipality has the power to compromise or settle litigation of any kind to which it is a party,⁷ as an incident to and implied from the power to sue and be sued.⁷ I cannot however, advise you that the city has the authority to interject itself into the appeals process for code enforcement board decisions.

As this office has consistently advised, a local government or its governing body derives no delegated authority from Ch. 162, F.S., to enforce its codes in any manner other than as provided in that chapter. Further, municipalities derive no home rule power from either constitutional⁸ or statutory⁹ sources to regulate the code enforcement boards or the statutorily prescribed enforcement procedure.¹⁰

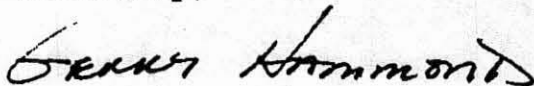
Thus, if a municipality is a party to a final administrative order of an enforcement board, it may appeal, as any other aggrieved party, under s. 162.11, F.S. Further, a municipality

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is generally authorized to settle or compromise legal actions brought against the city. However, a municipality has no authority to interject itself into the appeals process under Ch. 162, F.S., to overrule or foreclose actions of the code enforcement board.

I trust that these informal comments will assist you in advising your client, the City of South Daytona. The advisory comments herein represent the opinion of the writer and should not be considered a formal opinion of the Attorney General.

Sincerely,



Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosure

¹ See, s. 166.041(2), F.S., (No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection).

² See generally, 12 Fla.Jur.2d Counties and Municipal Corporations s. 167 (The right to pass an ordinance includes the power to repeal or modify it).

³ See generally, 1 Fla.Jur.2d Administrative Law s. 59. Cf., s. 120.54, F.S. (1992 Supp.), relating to rulemaking by state agencies and setting forth the procedure for adoption, amendment, or repeal of administrative rules.

⁴ See, Department of Legal Affairs Statement of Policy Concerning Attorney General Opinions (copy enclosed).

⁵ See, e.g., 67 C.J.S. Officers ss. 190, 192; Lang v. Walker, 35 So. 78, 80 (Fla. 1903); Gessner v. Del-Air Corporation, 17 So.2d 522 (Fla. 1944).

⁶ See generally, id. s. 38.

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⁷ See generally, 13 Fla.Jur.2d Counties and Municipal Corporations s. 285.

⁸ The constitutional provision implicated in municipal home rule is s. 2(b), Art. VIII, State Const.

⁹ See, s. 166.021, F.S., relating to municipal home rule.

¹⁰ See, AGO's 92-73, 85-84, 85-27, and 84-55.