



## DEPARTMENT OF LEGAL AFFAIRS

## THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH  
Attorney General  
State of Florida

## MEMORANDUM

TO: The Honorable Ilene Lieberman  
Mayor, City of Lauderhill

FROM: Gerry Hammond *bx*  
Assistant Attorney General

RE: LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS--  
MUNICIPALITIES--authority of mayor of  
municipality to settle code enforcement  
board liens for lesser amount than imposed  
by board. Ch. 162, F.S.

DATE: June 2, 1988

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This is in response to your request for assistance in determining whether you, as the Mayor of the City of Lauderhill, are authorized by the provisions of Ch. 162, F.S., to compromise or settle municipal code enforcement board liens for less than the amount assessed by the board.

Chapter 162, F.S., known as the "Local Government Code Enforcement Boards Act," authorizes counties and municipalities, at their option, to create administrative boards for the purpose of providing "an equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances . . . in force in counties and municipalities . . ." <sup>1</sup> Technical codes which may be enforced in this manner include, but are not limited to, occupational license, fire, building, zoning, and sign codes. <sup>2</sup>

This office, in previous opinions, has concluded that the code enforcement board, as an administrative entity, created and operating pursuant to the authority set forth in Ch. 162, F.S., has only such authority as is set forth in the statutes pertaining to the board. <sup>3</sup> If a municipality utilizes the enforcement mechanism and procedures provided in Ch. 162, F.S., it must accept the prescribed enforcement boards and the enforcement procedures set forth in the act. A municipality derives no delegated authority from Ch. 162, F.S., to enforce its codes in

any manner other than as provided in that chapter. As stated in AGO 86-10, "municipalities derive no home rule power from s. 2(b), Art. VIII, State Const., or s. 166.021, F.S., to regulate the code enforcement boards or to impose any duties or requirements on such boards or to otherwise regulate the statutorily prescribed enforcement procedure."

With regard to the assessment of fines pursuant to Ch. 162, F.S., this office has stated that s. 162.09, F.S., provides the only authority for the imposition of any penalty by such a board.<sup>4</sup> That statutory section specifically states that a local government code enforcement board "may order the violator to pay a fine not to exceed \$250 for each day the violation continues past the date set for compliance or for each time the violation has been repeated . . . ." <sup>5</sup> In AGO 85-33 it was concluded that the term "a fine" as used in s. 162.09, F.S., "refers to a single fine and affords no flexibility" to a code enforcement board to adjust or automatically increase or decrease the amount of such fines dependent on any contingencies.<sup>6</sup>

The procedures set forth in Ch. 162, F.S., are the exclusive method for enforcing county and municipal codes and ordinances which have no criminal penalty. Local governmental entities derive no delegated authority from Ch. 162, F.S., to enforce codes and ordinances in any manner other than as described therein nor do such governmental entities possess home rule powers to regulate the code enforcement boards or the statutorily prescribed enforcement procedures described in this chapter.<sup>7</sup>

I am not aware of any provision of Ch. 162, F.S., which would authorize a municipal official to settle or compromise a lien imposed by a code enforcement board.

Based on the foregoing it is my opinion that the Mayor of the City of Lauderhill possesses no authority under Ch. 162, F.S., or Ch. 166, F.S., the Municipal Home Rule Powers Act, to compromise or settle or otherwise change or effect a lien imposed by the municipal code enforcement board pursuant to the Local Government Code Enforcement Boards Act, Ch. 162, F.S.

This informal advisory opinion was prepared by the Department of Legal Affairs in an effort to be of assistance to you. The opinion expressed herein is that of the writer and should not be considered a formal opinion of the Attorney General.

GH/gk

1 Sections 162.02-162.03, F.S.

2 Section 162.02, F.S.

3 See, AGO's 86-76, 86-10, 85-84, 85-27, 85-17, and 84-55.

4 See, AGO 85-33.

5 Section 162.09(1), F.S.

6 Cf., AGO 85-27 (A municipal code enforcement board does have the power to rehear or reconsider a matter which is the subject of one of its orders and take remedial action or modify its order if it is deemed necessary. Such a rehearing or reconsideration must be exercised before an appeal has been taken as provided in s. 162.11, F.S., or before expiration of the thirty day time period provided by that statute for taking an appeal to the circuit court. This conclusion is based in part on s. 162.08(1), F.S., which authorizes a code enforcement board to "[a]dopt rules for the conduct of its hearings.")

7 See, e.g., AGO 86-10, 85-17, and 84-55.