

other interpretation of this language would render meaningless the waiver of district residence requirements for the at-large member of the authority. It is a time-honored rule that statutes should be construed so as to give meaning, to the extent possible, to all of the language employed by the legislature. *Arvida Corp. v. City of Sarasota*, 213 So.2d 756 (2 D.C.A. Fla., 1968).

For the foregoing reasons it is my opinion that each member of the Charlotte County Development Authority, with the exception of the single at-large member, must reside in the district from which he was appointed or elected. When a member ceases to reside in the district from which he shall have been elected or appointed, his office becomes vacant pursuant to the provisions of §114.01(4), F. S. Vacancies which occur on the Charlotte County Development Authority should be filled in accordance with the provisions of §5, Ch. 65-1357, Laws of Florida.

073-53—March 12, 1973

STATE BUILDINGS

APPLICABILITY OF SOUTH FLORIDA BUILDING CODE; DETERMINATION OF COMPLIANCE WITH CODE

*To: Chester Blakemore, Executive Director, Department of General Services,
Tallahassee*

Prepared by: Henry George White, Assistant Attorney General

QUESTIONS:

1. Do the provisions of Ch. 71-575, Laws of Florida, as amended by Ch. 72-482, Laws of Florida, apply to state buildings constructed in Broward County under the auspices of the Division of Building Construction and Maintenance of the Department of General Services?
2. Do the provisions of the special acts require that compliance with the South Florida Building Code be determined by Broward County officials or engineers, as well as by state officials or engineers, for state buildings being constructed in Broward County?

SUMMARY:

The provisions of Ch. 71-575, Laws of Florida, as amended by Ch. 72-482, Laws of Florida, require that all construction, alterations, additions, or repairs which are undertaken with respect to state buildings located in Broward County be in compliance with the provisions of the South Florida Building Code. However, the authority to determine whether such state buildings are in compliance with the code rests with the state Division of Building Construction and Maintenance in the absence of a clear legislative delegation of that authority to local governmental officials.

In AGO 071-233 I ruled on a question substantially the same as the first question you pose. That opinion discussed the long-standing general rule that state property is exempt from regulation by municipal authorities unless the state has waived the right to regulate its own property. *See* 13 Am. Jur. 2d *Buildings* §7; and 47 Am. Jur. *State* §56. The same rule was applied in AGO's 062-41 and 071-75 with respect to county regulation of state property. The issue in AGO 071-233 was whether the language of Ch. 71-575, Laws of Florida, providing that "[t]he South Florida Building Code, Dade County 1970 edition, as amended . . . shall apply to all municipalities and unincorporated areas of Broward County" was a clear legislative declaration that state-owned buildings be subject to the requirements of

the code in question. It was held that the provisions of Ch. 71-575, *supra*, did not constitute an express legislative waiver of the state's control over its own buildings.

Subsequent to the ruling in AGO 071-233, the legislature enacted Ch. 72-482, Laws of Florida, which amended Ch. 71-575, *supra*, by adding the following provision:

Section 2(a). The South Florida Building Code as applicable to Broward County shall apply countywide in both incorporated and unincorporated areas to all new buildings and structures, both private and *public*, and to all alterations, additions and repairs in any new or existing building or structure, both private and *public*, including but not limited to public schools, county buildings or structures, municipal and *state buildings or structures*, hospitals, and any other building or structure of any governmental authority. (Emphasis supplied.)

The language used in Ch. 72-482, *supra*, to designate the areas and buildings covered by the South Florida Building Code is substantially the same as the language employed in §553.17, F. S., to define the coverage for the Florida Electrical Code. In AGO 071-75 it was held that the Florida Electrical Code was expressly made applicable to public buildings, including state buildings, by the provisions of §553.17. Similarly, I am of the view that the language of Ch. 72-482 expressly requires that all public buildings, including state buildings, conform with the standards of construction contained in the South Florida Building Code as adopted in Ch. 71-575, *supra*. Your first question is, therefore, answered in the affirmative.

The question of who shall determine whether state buildings in Broward County are in compliance with the South Florida Building Code is not so readily answered. Section 3 of Ch. 71-575, *supra*, reads as follows:

Inspection and enforcement of the South Florida building code shall be the responsibility of elected or appointed city commissioners, city councilmen, and mayor of each municipality; and the responsibility of elected or appointed members of the Board of County Commissioners in all unincorporated areas within Broward County.

Standing alone, the meaning of §3 seems clear. However, it will be noted that Ch. 72-482, *supra*, was superimposed on Ch. 71-575 and it was Ch. 72-482 which brought state buildings under the provisions of Ch. 71-575. Chapter 72-482 does not contain an express waiver by the state of its right to control its own buildings, nor a delegation to local authorities of the right to enforce the code as to state buildings. Of course, when the provisions of the two acts are read together, the language of §3 of Ch. 71-575 appears to grant to local governmental officials the power to enforce the South Florida Building Code against state buildings. But this construction of the statutes in question requires a full exploration of the consequences which the legislature is presumed to have known would flow therefrom.

Section 301 of the South Florida Building Code requires that an application for a permit be filed, and a permit be issued, prior to the construction, alteration, or repair of any building. An exception is made for repair or maintenance work, the cost of which does not exceed one hundred dollars for labor and material. Section 302 provides that applications for permits will be accepted only from applicants who are qualified under separate ordinance. Section 302.2 details the requirements of the plans and specifications which must accompany applications for permits. The plans must be approved by the local building official according to the terms of §302.4. Section 303 of the code requires that a permit fee be paid before a permit is issued. Section 305.2 requires mandatory inspections, by local building officials, at numerous critical stages of construction. Finally, §307.1 prohibits the occupation or use of a new structure or addition prior to the issuance of a Certificate of

Occupancy by the local building official. The amount of control which is vested in local officials under the provisions of the South Florida Building Code explains the necessity for a careful examination of the question of whether the legislature intended to grant local authority the power to enforce the code against state buildings. This question is also important because of the code's conflicts and duplications with the state's mechanism for supervising construction of its buildings.

The Division of Building Construction and Maintenance of the Department of General Services is charged, under §255.25, F. S., with the responsibility of approving the architectural design and preliminary construction plans for all buildings which any state agency proposes to construct. Chapter 288, F. S., deals with commercial development and capital improvements. In §288.18, the division is made responsible for promoting state building projects in communities where state buildings are needed. Section 288.15(5) authorizes the Division of Building Construction and Maintenance to cooperate fully with other state agencies in the acquisition, construction, extension, and maintenance of public buildings, facilities, and improvements when such buildings and facilities are intended for the ultimate use of the state or its instrumentalities. Section 288.15(9) provides that the provisions of §288.15(5), *supra*, should be liberally construed in order to effectuate the purposes and objectives thereof.

The Division of Building Construction and Maintenance has interpreted these statutory provisions as authorizing and requiring that it supervise all phases of the construction of state buildings throughout the state. Accordingly, the division approves all plans for the construction of state buildings and assures that such plans conform to local building code requirements where such requirements are not inconsistent with state law. In addition, the division makes regular inspections of construction projects to further assure that local and state building requirements are being met. The division also attempts to cooperate with local building officials to the fullest extent possible. These practices have been followed by the division since at least 1969 when the Reorganization Act became effective, and, as was observed in *Gay v. Canada Dry Bottling Co. of Florida*, 59 So.2d 788 (Fla. 1952):

Contemporaneous administrative construction of (a) statute by those charged with its enforcement and interpretation . . . is entitled to great weight and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.

It is apparent that the supervision and control over the construction of state buildings which is exercised by the Division of Building Construction and Maintenance is inconsistent with the authority which is vested in local Broward County building officials under the special acts in question. If Ch. 71-575, *supra*, as amended by Ch. 72-482, *supra*, is interpreted as a waiver of the state's right to enforce the standards of construction contained in the South Florida Building Code as to state buildings in Broward County, the state would be required to have its plans approved by building officials in Broward County and pay permit fees, which are used in part to offset the costs of making regular inspections during the course of each building project, even though the state has employed professional personnel in the Division of Building Construction and Maintenance to perform these services. An intention to create such an incongruous result should not be imputed to a legislature which is presumed to have had knowledge of the existing laws on the subject. *Compare City of St. Petersburg v. Siebold*, 48 So.2d 291 (Fla. 1959), *with Collins Investment Co. v. Metropolitan Dade County*, 164 So.2d 806 (Fla. 1964). On the contrary, an efficient purpose should be ascribed to legislative enactments. *City of Daytona Beach v. City of Port Orange*, 165 So.2d 678 (1 D.C.A. Fla., 1964).

The inefficiency which results from the statutory construction suggested above can be avoided by interpreting Ch. 72-482, *supra*, as an expression of the

legislature's desire that state buildings in Broward County be constructed in accordance with the provisions of the South Florida Building Code, but that enforcement of the code and supervision of construction be vested in the Division of Building Construction and Maintenance in accordance with their long-standing practice under existing law. This interpretation resolves the uncertainty as to the legislature's intent with respect to Ch. 72-482 in a manner which benefits the public and it allows a reasonable field of operation for both the general and special laws on the subject. *See* Sunshine State News Co. v. State, 121 So.2d 705 (3 D.C.A. Fla., 1960), and Markham v. Blount, 175 So.2d 526 (Fla. 1965).

For the foregoing reasons it is my view that until the matter is legislatively or judicially clarified, Ch. 72-482, *supra*, should not be deemed to vest in local building officials in Broward County the authority to enforce the provisions of the South Florida Building Code as to state buildings. The Division of Building Construction and Maintenance has the responsibility of assuring that all state buildings in Broward County are in compliance with the code. The division also continues to have general supervision and control over all state buildings which are constructed throughout Florida.

073-54—March 13, 1973

MUNICIPALITIES

REGULATION OF ESTABLISHMENTS LICENSED BY DIVISION OF BEVERAGE

To: Tom R. Sewell, City Manager, Winter Garden

Prepared by: Stephen F. Dean, Assistant Attorney General

QUESTION:

May a municipality, by ordinance, prohibit sale of alcoholic beverages for consumption on the premises regardless of alcoholic content within its city limits, even though a resident business has been issued a license for such purpose by the Division of Beverage?

SUMMARY:

Under the powers granted municipalities under the state Constitution and general laws of the state, including the general "home rule" provisions thereof, a Florida municipality by ordinance may not prohibit the sale of alcoholic beverages regardless of alcohol content for consumption on the premises within its city limits to a resident business establishment which has been issued a license for such purpose by the Florida Beverage Commission because the state, through a comprehensive system of regulatory laws, maintains preeminence in the regulation and control of alcoholic beverages.

Throughout this opinion, the specific ordinance enacted by the City of Winter Garden is as follows:

Section 5-15. Number of licenses allowed in city.

(a) No person, firm, or corporation engaged in or intending to be engaged in the selling or dealing in alcoholic beverages shall be issued a license or permit to sell such alcoholic beverages in the corporate limits of the city so that the number of such licenses within the limits of the city shall exceed one license to each two thousand five hundred (2,500) residents, or major fraction thereof.

(b) This section shall not apply to those licenses described in Section 561.20(2), Florida Statutes, 1959, nor shall it apply to