

Agency Clerk  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, Florida

*DCA 10-DEC-107*  
**FILING AND ACKNOWLEDGEMENT**  
FILED, on this date, with the designated  
Clerk, receipt of which is hereby  
acknowledged.  
*Paula P. Ford* *5/7/10*  
Paula P. Ford Date  
Commission Clerk

IN THE MATTER OF:  
  
BUILDINGS OFFICIAL'S OFFICE  
  
PUTNAM COUNTY, FLORIDA

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**PETITION FOR DECLARATORY STATEMENT**

**BEFORE THE FLORIDA BUILDING COMMISSION**

Petitioner, Building Official's Office, Putnam County, Florida, pursuant to Section 553.775, Florida Statutes, and Section 120.565 Florida Statute, hereby requests a declaratory statement from the Florida Building Commission and as grounds therefore states the following:

**Petitioner's Name and Address**

Name: Paul T. Myers, Building Official

Address: 2509 Crill Ave. Suite 300  
PO Box 1486  
Palatka, Florida 32178-1486

Telephone: (386) 329-0312

Facsimile: (386) 329-1213

**Name and Address of Petitioner's Attorney  
Or Qualified Representative, if any**

Not Applicable

**Statutory Provision(s), Agency Rule(s) or Agency Order(s) on Which the Declaratory Statement is Sought**

**WHEREAS**, the Attorney General's office has issued passed opinions stating it is a fundamental principle of statutory construction that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way. (AGO 96-46).

**WHEREAS**, 553.72 FS states it is the intent of the Legislature that local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public health, safety, and welfare pursuant to chapters 125 and 166.

**WHEREAS**, 553.72 FS states it is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with ss. 120.536(1) and 120.54 and enforced by authorized state and local government enforcement agencies.

**WHEREAS**, 553.71 FS defines "Local enforcement agency" to mean an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

**WHEREAS**, 112.312 FS defines "Agency" to mean any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university and for purposes of the provisions of s. 8, Art. II of the State Constitution.

**WHEREAS**, 553.80 FS states when an enforcement district has been formed as provided herein, upon its registration with the department, it shall have the same authority and responsibility with respect to building codes as provided by this part for local governing bodies.

**WHEREAS**, 553.73 FS states responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words "local government" and "local governing body" as used in this part shall be construed to refer exclusively to such local board or agency.

**WHEREAS**, the Laws of Florida Ch. 1998-419 – established Section 468.604, Florida Statutes, Responsibilities of Building Code Administrators or Building Official.

**WHEREAS**, Laws of Florida Ch. 1998-419 – amended 468.617 so that a county or municipal government may enter into contracts with an individual or entity to perform inspections or plans review.

**WHEREAS**, 468.603, FS defines as "Building code administrator" or "building official" as any of those employees of municipal or county governments with building construction regulation responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction...

**WHEREAS**, 553.791 FS defines "Local building official" as the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

**WHEREAS**, Section 8, Article II of the Florida Constitution, states a public office is a public trust the people shall have the right to secure and sustain that trust against abuse. To assure this right, and as may be determined by law, other public officers and employees shall file full and public disclosure of their financial interests.

**WHEREAS**, 112.3145 FS defines any person holding the position of chief county or municipal building code inspector to be a "Local officer".

**WHEREAS**, 468.603. FS states one person employed by each municipal or county government as a building code administrator or building official and who is so certified under this part may be authorized to perform any plan review or inspection for which certification is required by this part.

**WHEREAS**, FAC 61G19-1.009 defines "Employee" as a person who receives compensation from, and is under supervision and control of, an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law.

**WHEREAS**, 876.05 FS requires all public employee to take an oath to support the Constitution of the State of Florida.

**WHEREAS**, 553.791 FS, defines "Building code inspection services" as those services described in s. 468.603(6) and (7) involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

**WHEREAS**, 468.603(6) and (7) provides definition for "Categories of building code inspectors" and "Plans examiner".

**WHEREAS**, 112.313 FS states no public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

**WHEREAS**, 468.621 FS states the following acts constitute grounds for which the disciplinary actions in failing to lawfully execute the duties and responsibilities specified in this part and ss. 553.73, 553.781, 553.79, and 553.791.

**WHEREAS**, the following historical timeline related to contracted inspections, plans reviews, and private providers fails to support the practice of a county or municipality contracting for the services of "Building code administrator" or "building official" as defined by 468.603, FS.

## **1998**

- ✓ 1998 Legislature passed legislation marking the first major reform of Florida's Building Code system since 1974.
- ✓ Laws of Florida Ch. 98-287 – Established the Florida Building Commission and directed it to develop the Florida Building Code for authorization by the legislature.
- ✓ Laws of Florida Ch. 1998-419 – Added Section 468.604, Florida Statutes, Responsibilities of building code administrators, plans examiners and inspectors. With the exception of referencing the Florida Building Code and changing "Inspector" to "Building Code Inspector", FS 468.604 is the same today.
- ✓ Laws of Florida Ch. 1998-419 – Amended 468.617 and so county or municipal government may enter into contracts with an individual or entity to perform inspections or plans review. Contracting for a building official is not included.

## **2000**

- ✓ Laws of Florida Ch. 2000-141 – Amended 468.617 by adding school board, community college board, state university, or state agency to this section.
- ✓ Laws of Florida Ch. 2000-372 – Amended 468.617 by changing "Inspector" to "Building Code Inspector".

## **2001**

- ✓ The 2001 Legislature created a special task force to study and make recommendations for privatization of certain components of building code enforcement. The Commission participates on the task force and defers action or further study on this task.

## **March 1, 2002**

- ✓ Effective date of the Florida Building Code.

## **October 1, 2002**

- ✓ Laws of Florida Ch. 2002-295 – Establishes FS 553.791 Alternate Plans Review and Inspections.

## **2003**

- ✓ Private Provider View Point (presented to the FBC on October, 13, 2003) from Universal Engineering Science, Inc. with concern regarding Building Officials participation in the FS 553.791. Their conclusion was the heavy-handed opposition by the Building Officials should be redirected in a legal, positive way.

## 2004

- ✓ Commission Report – Issues that would require changes to current law will be addressed through development of consensus recommendations for presentation to the 2005 Legislature.

## 2005

- ✓ Commission Report – Many recommendations offered by Jeff A. Blair, Florida Conflict Resolution Consortium – One significant recommendation was to change the definition of “Private Provider” to allow any person licensed under Chapter 468, as a Building Code Administrator, to perform services as a private provider. This recommendation does not appear to have been acted on by the Legislature.
- ✓ Laws of Florida Ch. 2005-02 - Subsection (19) of section 553.791, Florida Statutes, is repealed to delete obsolete language requiring a report to Legislature on or before January 1, 2004.
- ✓ Laws of Florida Ch. 2005-147 – Amends FS 553.791 but the basic concept for alternate plans review and inspections established in 2002 remains intact.
- ✓ Laws of Florida Ch. 2005-216 - Amends FS 553.791 but the basic concept for alternate plans review and inspections established in 2002 remains intact.

## 2006

- ✓ Commission Report – In 2005 the Florida Legislature adopted a package of refinement to the system, which were signed into law in the summer of 2005. As indicated above, it does not appear the definition of “Private Provider” was changed to include Building Official duties.
- ✓ Laws of Florida Ch. 2006-65 - Amends FS 553.791 but the basic concept for alternate plans review and inspections established in 2002 remains intact.

## 2007

- ✓ Commission Report – The FBC does not appear to address private providers or FS 553.791 in this report.
- ✓ Laws of Florida Ch. 2007-187 - Amends FS 553.791 but the basic concept for alternate plans review and inspections established in 2002 remains intact.

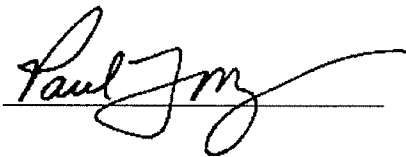
## 2008

- ✓ Commission Report – The FBC does not appear to address private providers or FS 553.791 in this report.
- ✓ Laws of Florida Ch. 2008-4 - Amends FS 553.791 for consistency with Ch. 2007-187, Laws of Florida, but the basic concept for alternate plans review and inspections established in 2002 remains intact.

**Questions:**

- 1. Is it ethical for a county or a municipality to contract for the services of a building code administrator or building official, for the purposes of enforcing the Florida Building Code, with a person, firm, or corporation, in lieu direct employment as a county or municipal employee?**
- 2. Is it ethical for a county or a municipality to accept building code administration from a private provider, for the purposes of enforcing the Florida Building Code, in lieu direct employment as a county or municipal employee?**
- 3. Is it lawful for a county or a municipality to contract for the services of a building code administrator or building official, for the purposes of enforcing the Florida Building Code, with a person, firm, or corporation, in lieu direct employment as a county or municipal employee?**
- 4. Is it ethical for a county or a municipality to accept building code administration from a private provider, for the purposes of enforcing the Florida Building Code, in lieu direct employment as a county or municipal employee?**

**Respectfully submitted this 7th day of May, 2010**

A handwritten signature in black ink, appearing to read "Paul T. Myers", written over a horizontal line.

**Paul T. Myers, CBO  
Putnam County Building Official  
Petitioner**