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Attorney General
Department of Legal Affairs
The Capitol PL 101
Tallahassee, Florida 32399-1050

Re: Wakulla County, Florida
Request for Informal Opinion

Dear Mr. McCollum:

Question

Pursuant to Section 553.80, Florida Statutes, may Wakulla County, a Florida charter county, use fees collected in accordance with Section 125.56, Florida Statutes, to pay for services -- such as partial salaries and costs for administration, fire, legal, OMB, facilities, and other government services and facilities -- provided to the Building Department in furtherance of its responsibility to enforce the Florida Building Code and in accordance with a cost allocation plan?

Analysis

Wakulla County requests an informal opinion in response to the above question. Section 553.80, Florida Statutes, requires Florida's local governments, including counties, to "regulate building construction" by way of enforcing Florida's Building Code, included within Part IV, Chapter 553, Florida Statutes. Subsection (7) of section 553.80, Florida Statutes, authorizes local governments to adopt a fee schedule in accordance with sections 125.56(2) (counties) or 166.222 (municipalities), Florida Statutes, to fund the costs associated with the local government's responsibilities in "enforcing the Florida Building Code."

Subsection (7) of section 553.80, Florida Statutes, further provides that the phrase "enforcing the Florida Building Code" is intended to include, the following:

the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to

unlicensed contractor activity to the extent not funded by other fees.

§ 553.80, Florida Statutes (2009).

Section 125.56, Florida Statutes, which authorizes Florida counties to enforce the Florida Building Code and the Florida Fire Prevention Code, further authorizes such boards to “provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement” of the Florida Building Code and the Florida Fire Prevention Code. See § 125.56(1) and (2), Fla. Stat.¹

The Attorney General’s office has interpreted section 125.56, Florida Statutes, in Attorney General Opinion No. 2005-19, relating to use of building permit fees. In that opinion, the Attorney General’s office was asked whether a county may use building permit and inspection fees to either rent or construct a building used to house only the county’s building department. The Attorney General concluded that “provision of space to house such activities would appear to be a reasonable cost of providing enforcement of [the Florida Building Code and the Florida Fire Prevention Code].” The Attorney General further opined that the fees could not be used for functions unrelated to enforcement of building and fire prevention codes, and costs should be prorated such that building permit and inspection fees were used only for the rent or construction costs directly relating to the enforcement of the building and fire prevention codes. Atty Gen. Op. 2005-19 (April 1, 2005).

Prior to Attorney General Opinion No. 2005-19, the Attorney General’s office published Opinion No. 2001-63, in which it considered the municipal expenditure of building inspection funds. In that opinion, the Attorney General’s office was asked to consider whether a municipality would be permitted pursuant to section 166.222, Florida Statutes, authorizing municipal building code inspection fees, to construct a building with building permit and inspection fees that would only be used in part to house the city’s building and zoning department. The Attorney General concluded that building permit fees could not be used to fund the entire cost of a building which would be used for purposes other than inspecting and enforcing the building code. Atty Gen. Op. 2001-63 (August 31, 2001).

The distinction made by the Attorney General between these two opinions was that in the 2005 opinion the county intended to use the building inspection fees to fund only the rental or construction costs attributable to enforcing the building and fire prevention codes, whereas in the 2001 opinion, it was not clear whether building inspection fees would be used to pay for the total construction cost of a building that would have been used for purposes other than enforcement of the building code. Both opinions confirm, however, that local governments may use building permit and inspection fees to fund the costs, including indirect overhead costs, that are attributed to the enforcement of building codes.

¹ Section 166.222, Florida Statutes, similarly allows Florida’s municipalities to provide a reasonable fee schedule to defer the costs of inspection and enforcement of municipal building codes.

In neither of the two opinions discussed above did the Attorney General's office consider or interpret subsection 553.80(7), providing that both direct and reasonable indirect costs of enforcement could be recouped through building inspection fees.² Also, though there have been no court decisions specifically interpreting this subsection, the Fourth District Court of Appeal has offered some instruction on some uses of building permit fees. In City of Hollywood v. Hollywood Beach Hotel Co., 283 So. 2d 867 (Fla. 4th DCA 1973) (quashed on other grounds in Hollywood Beach Hotel Co. v. City of Hollywood, 329 So. 2d 10 (Fla. 1976)), the Fourth District refused to refund lawfully imposed building permit fees when the local government imposing such fees has performed all required regulatory tasks. The Fourth District stated that the city was authorized to impose such charges as consideration for:

several services rendered by the municipality in processing the permit for the landowner. The application for the building permit as well as plans, surveys, topographical data, and other specifications must be examined by municipal employees. The municipality also incurs expenses in connection with printing forms, mailing notices, boards of appeal, and many other items. Inspection of the work done pursuant to an issued permit, both before and after completion, also represents municipal expense.

Id. at 871.³

Section 553.80(7), Florida Statutes, clearly anticipates that fee revenues may be used for both the direct and reasonable indirect costs of reviewing building plans, performing building inspections and reinspections, processing of building permit applications, enforcing the building code, and conducting fire inspections related to new construction.⁴

Based upon the plain language of the statute and consistent with the Attorney General's past opinions, necessary supplies, equipment, and facilities used to enforce the Florida Building Code would clearly be authorized as direct or reasonable indirect costs that could be funded with building permit and inspection fee revenues. Similarly, the expenditure of building permit and

² This is due to the fact that subsection 553.80(7), Florida Statutes, was not adopted by the Florida Legislature until the 2005 Legislative Session.

³ The Florida Supreme Court on appeal specifically upheld this portion of the Fourth DCA's opinion, finding that the building permit fees should not be refunded.

⁴ Fees such as the building code enforcement and inspection fees authorized pursuant to sections 553.80 and 125.56, Florida Statutes, may be generally categorized as "regulatory fees." A regulatory fee is one that is imposed to recover the costs incurred in and is restricted for the purposes of regulating a particular activity, in this case, building inspections and enforcement of the Florida Building Code and Fire Prevention Code. See Homebuilders and Contractors Ass'n of Palm Beach County, 446 So. 2d 140 (Fla. 4th DCA 1983).

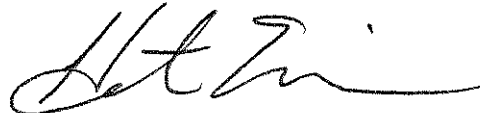
inspection fees to pay the salaries, benefits, and related costs for Wakulla County staff and personnel would be authorized so long as they may be directly or indirectly attributed to the cost of "enforcing the Florida Building Code" as defined in section 553.80, Florida Statutes. In the course of performing its duty to enforce the Florida Building Code, the Wakulla building department incurs costs for necessary administrative and legal oversight from County administration and the County Attorney's office. The building department also requires services from the County's facilities management, purchasing, the budget office, fire services (for fire inspection services), the County's external auditors, and other units within the County's organization in order to properly and effectively perform its duty in enforcing the Florida Building Code. Similarly, the building department is covered by the County's various insurance policies (property, vehicle, worker's compensation etc.) and other risk management functions.

In order to accurately calculate and document these general funds costs to the Wakulla County Buildings Department, Wakulla County conducts a cost allocation study. Wakulla County's cost allocation plan identifies, accumulates and distributes allowable direct and indirect general fund costs to the Building Department in order to calculate the full cost of providing these services. The plan comports with general governmental accounting practices and all costs included in the plan are supported by formal accounting records and findings to substantiate the propriety of the allocations in accordance with Office of Management and Budget Circular A-87.

The County's most recent cost allocation study identifies \$115,017 in general fund costs that are allocated to the building department from the following non-building cost centers: building use allocations, annual audit expenses, property insurance, fringe benefits, other insurance (comprehensive general liability, vehicles, inland marine, etc.), finance, facilities management, legal, management and budget, administration, commissioners, and non-departmental. Based on this plan, the costs allocated to the Wakulla County Building Department should be recoverable as direct or reasonable indirect costs in accordance with Section 553.80(7), Florida Statutes.

We look forward to your response. Please feel free to contact me if you have any questions.

Sincerely yours,



Heather J. Encinosa
Wakulla County Attorney

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