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December 13, 2005

The Honorable Susan Bucher
Representative, District 88
2240 Palm Beach Lake Boulevard, Suite 102
West Palm Beach, Florida 33409-3403

Dear Representative Bucher:

You request this office's opinion regarding the interpretation of section 723.083, Florida Statutes.

Section 723.083, Florida Statutes, states:

> No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

As this office recently noted, the plain language of section 723.083, Florida Statutes, requires an agency with zoning authority to make a determination that adequate facilities exist for the relocation of mobile home owners before approving any application for rezoning or taking any official action resulting in the removal or relocation of mobile home owners.[1] For example, in *Williams v. City of Sarasota*,[2] a municipal ordinance aimed at closing a municipally-owned mobile home park and evicting residents was held to be invalid because the municipality did not comply with the provisions of section 723.083.

Thus, the statute imposes an affirmative duty on agencies with zoning authority to make a determination that suitable facilities exist for the relocation of mobile home owners. The statute, however, does not define "suitable" facilities or prescribe a method by which such agencies are to make such a determination.[3]

I would, however, note that in 1986, then Attorney General Jim Smith issued an informal opinion regarding the interpretation of section 723.083, Florida Statutes.[4] Noting that the statute provides that a zoning authority must determine the existence of adequate mobile home parks or other suitable facilities for the relocation of mobile home *owners* (as opposed to the relocation of mobile homes), the opinion concluded that nothing in the statute expressly precludes a zoning authority from considering facilities other than mobile home parks such as apartments and trailer parks.

The use of the term "or other suitable facilities" following "mobile home parks" supports such an interpretation. Had the Legislature sought to restrict the statute's relocation provisions to only mobile home parks, the use of the term "other suitable facilities" would have been mere surplusage. Statutory language is not to be assumed to be surplusage; rather, a statute is to be construed to give meaning to all words and phrases contained within the statute.[5] Thus, it appears that the statute contemplates that facilities other than mobile home parks may be considered in determining whether "other suitable facilities" exist.

The 1986 informal opinion to Cook also addressed the factors that should be considered in determining the suitability of the relocation facilities. A review of the legislative history surrounding the enactment of the statute indicated a concern by the Legislature that many who could not afford conventional housing were being forced out of mobile home parks as parks were being sold when the land became more valuable for commercial and residential use and local zoning authorities were reluctant to approve new zoning for such parks.[6]

Based upon such a review of the legislative intent, the informal opinion concluded that the phrase "adequate mobile home parks or other suitable facilities" referred to relocation facilities that are appropriate to the financial and other needs of the specific population of mobile home owners who were being displaced by the rezoning.[7] Thus, in making a determination as to whether such facilities were available, the zoning authority would have to consider the financial abilities of the mobile home owners to relocate to other facilities. The informal opinion also concluded that the zoning agency should only consider facilities within its territorial jurisdiction, recognizing that the extraterritorial powers of a county must be expressly authorized by statute.[8]

The statute has not been amended since the informal opinion was issued, nor do there appear to be any appellate judicial decisions contrary to the conclusions reached in that opinion. Accordingly, until and unless the Legislature seeks to amend the statute, it appears that the conclusions reached in the 1986 opinion are still valid. In

light of the inquiries recently received by this office regarding this statute, however, the Legislature may wish to clarify its intent.[9]

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

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[1] *See* Inf. Op. to Representative Leslie Waters, dated November 14, 2005. As noted in that opinion, there are several provisions in Chapter 723, Florida Statutes, which provide notice and safeguards to mobile home owners who may be subject to removal and relocation due to a change of use of the mobile home park land. *See* s. 723.061(1)(d), Fla. Stat., requiring 6 months notice of a projected change in use and need to find other accommodations. *And see* s. 723.061(2), Fla. Stat., stating that homeowners may object to a change of use by petitioning for administrative or judicial remedies within 90 days of receiving notice or they will be barred from taking any subsequent action to contest the change in use; however, this does not prevent a homeowner from objecting to a zoning change at any time. *See also* s. 723.0612, Fla. Stat., providing for relocation expenses to a mobile home owner required to move due to a change in use of the land under s. 723.061(1)(d).

[2] 780 So. 2d 182 (Fla. 2nd DCA 2001).

[3] When a general power has been granted to a public officer unaccompanied by definite directions as to how the power is to be exercised, such a grant implies the right to employ the means and method necessary to comply with the statute. *See In re Advisory Opinion to the Governor*, 60 So. 2d 285 (Fla. 1952); *see also* Ops. Att'y Gen. Fla. 81-100 (1981) and 85-38 (1985).

[4] Inf. Op. to Van Cook, Pinellas County Attorney, dated January 3, 1986.

[5] *See, e.g., Terrinoni v. Westward Ho!*, 418 So. 2d 1143 (Fla. 1st DCA 1982); *Unruh v. State,* 669 So. 2d 242 (Fla. 1996) (as a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless); Ops. Att'y Gen. Fla. 95-27 (1995); 91-16 (1991) (operative language in a statute may not be regarded as surplusage); 91-11 (1991) (statute must be construed so as to give meaning to all words and phrases contained within that statute).

[6] As the opinion notes, s. 83.760(4), Fla. Stat. (1983), was the predecessor statute to s. 723.083, Fla. Stat., and except for amendments which do not materially affect the issue under consideration, the provisions of s. 723.083 are substantially the same as those contained in s. 83.760(4). Section 83.760(4), Fla. Stat. (1983), was enacted by s. 4, Ch. 74-160, Laws of Florida.

[7] *See Ervin v. Peninsular Telephone Company*, 53 So. 2d 647 (Fla. 1951) (duty in construction of statutes is to ascertain Legislature's intention and effectuate it); Op. Att'y Gen. Fla. 85-74 (1985) (legislative intent is the polestar by which a court must be guided in interpreting statutory provisions). *And see Smith v. Ryan*, 39 So. 2d 281 (Fla. 1949); *State Board of Accountancy v. Webb*, 51 So. 2d 296 (Fla. 1951) (in construing a statute, courts look at the purpose of the legislation, examining such things as the history of the act, evil to be corrected, intention of the law-making body, the subject regulated, and the object to be obtained); Op. Att'y Gen. Fla. 99-61 (1999). *See also Alexdex Corporation v. Nachon Enterprises, Inc.,* 641 So. 2d 858 (Fla. 1994) (legislative history of a statute may be used to clarify ambiguity and illuminate legislative intent).

[8] *See* Ops. Att'y Gen. Fla. 91-25 (1991) (counties, municipalities, and special districts may not act beyond their respective boundaries in the absence of an express statutory grant) and 85-103 (1985) (state officer is officer whose duties and powers are coextensive with territorial limits of state; county officers are those whose exercise of power is confined to limits of the county); *cf.* Art. VIII, s. 2(c), Florida Constitution, provides that the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

[9] Senate Bill 934 has been filed for consideration during the 2006 legislative session. The bill would amend s. 723.083 to require that the existence of adequate mobile home parks or other suitable facilities shall be substantiated in a written document, and that the agency make a written good faith estimate of the fiscal benefits, include annual increases in property taxes or other revenue sources and any nonrecurring revenues or fees, including, but not limited to, impact fees, permit fees, connection fees, utility charges, or other revenues.

State of Florida
Office of the Attorney General

Informal Legal Opinion

Number: INFORMAL
Date: November 14, 2005
Subject: Mobile homes, displacement of residents

The Honorable Leslie Waters
Speaker Pro Tempore
Representative, District 51
Colonial Bank Building
5511 Park Street North, Suite 101
St. Petersburg, Florida 33709

Dear Representative Waters:

You have asked whether section 723.083, Florida Statutes, is superseded by section 163.3177, Florida Statutes, when a county or municipality has included adequate sites for future housing, including mobile homes, in its comprehensive plan. Of particular concern is the displacement of mobile home residents when mobile home parks are redeveloped for other purposes. The following general comments are provided to be of assistance.

Section 723.083, Florida Statutes, states:

"No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners."

Section 163.3177, Florida Statues, sets forth required and optional elements of comprehensive plans under the "Local Government Comprehensive Planning and Land Development Regulation Act."[1] Pursuant to the act, counties and incorporated municipalities have the power and responsibility, among other things, to plan for future development and growth.[2] Among the required elements of a comprehensive plan, section 163.3177(6)(f)1., Florida Statutes, among other things provides:

"A housing element consisting of standards, plans, and principles to be followed in:

d. The provision of adequate sites for future housing, including housing for low-income, very low-income, and moderate-income families, *mobile homes* , and group home facilities and foster care facilities, with supporting infrastructure and public facilities." (e.s.)

The plain language of section 723.083, Florida Statutes, requires an agency with zoning authority to make a determination that adequate facilities exist for the relocation of mobile home owners before approving any application for rezoning or taking any official action resulting in the removal or relocation of mobile home owners. I have found no statutory provisions that exempt a county or municipality that has a comprehensive plan with a housing element providing for adequate sites for mobile homes from the requirements of section

723.083. There are several provisions in Chapter 723, Florida Statutes, however, which provide notice and safeguards to mobile home owners who may be subject to removal and relocation due to a change of use of the mobile home park land.[3]

While a review of the statutes finds no support for concluding that section 163.3177, Florida Statutes, supersedes section 723.083, Florida Statutes, it may be advisable to consider clarifying legislation to ensure that mobile home residents are not displaced with inadequate provision for their relocation. I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 163.3161, Fla. Stat.

[2] Section 163.3167(1)(a), Fla. Stat.

[3] *See* s. 723.061(1)(d), Fla. Stat., requiring 6 months' notice of a projected change in use and need to find other accommodations. Subsection (2) of the statute states that homeowners may object to a change of use by petitioning for administrative or judicial remedies within 90 days of receiving notice or they will be barred from taking any subsequent action to contest the change in use; however, this does not prevent a homeowner from objecting to a zoning change at any time. *See also* s. 723.0612, Fla. Stat., providing for relocation expenses to a mobile home owner required to move due to a change in use of the land under s. 723.061(1)(d).

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32301

JIM SMITH
Attorney General
State of Florida

January 3, 1984

Mr. Van B. Cook
County Attorney
Pinellas County
315 Court Street
Clearwater, Florida 33516

RE: Counties-Mobile Homes-meaning of phrase "adequate mobile home parks or other suitable facilities." §723.083, F.S. (1984 Supp.).

Dear Mr. Cook:

This is in response to your request made on behalf of the Pinellas County Board of County Commissioners for an opinion on substantially the following question: What is the meaning of the phrase "adequate mobile home parks or other suitable facilities" as used in §723.083, F.S. (1984 Supp.)?

Your inquiry states that the Board of County Commissioners of Pinellas County has concerns regarding the interpretation of the phrase "adequate mobile home parks and other suitable facilities" in §723.083, F.S. (1984 Supp.), in acting upon applications for rezoning involving mobile home parks. Section 723.083, formerly §83.760(4), F.S. 1983, was originally enacted by §4, Ch. 74-160, Laws of Florida. Except for amendments made by §3, Ch. 76-81, Laws of Florida, which do not materially affect the issue under consideration, the provisions of the 1974 law are substantially identical to those contained in §723.083, which provides that "[n]o agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of mobile home owners."

The fundamental rule to which all others are subordinate in construction of statutes is that intent thereof is law and should be ascertained and effectuated. American Bakeries Co. v. Haines City, 180 So. 524 (Fla. 1938); Parker v. State, 406 So.2d 1089 (Fla. 1981) (legislative intent is the polestar by which courts must be guided in interpreting statutory provisions). The legislative intent must be primarily determined from the plain language of the statute, as the Legislature must be presumed to have working knowledge of the English language and to express its intent by the use of words found in the statute. S.R.G. Corporation v. Department of Revenue, 355 So.2d 687 (Fla. 1978); Thayer v. State, 335 So.2d 815 (Fla. 1976).

Section 723.083, F.S. (1984 Supp.) clearly provides that the zoning authority must determine the existence of adequate mobile home parks or other suitable facilities for relocation of mobile home owners. Nothing in the language of the statute expressly precludes the zoning authority from considering facilities other than mobile home parks. If the Legislature had intended such, it could have so indicated by adding after "suitable facilities" the phrase "for the relocation of their mobile homes," or adding after "for the relocation of mobile home owners" the phrase "and their mobile homes." The phrase, "other suitable facilities for the relocation of the mobile home owners," in the absence of any qualification, includes all facilities suitable for the relocation of mobile home owners. See, Florida-State Racing Commission v. McLaughlin, 102 So.2d 574 (Fla. 1958) (use of a general comprehensive term indicates an intent to include everything embraced in the term); State v. City of Jacksonville, 50 So.2d 532 (Fla. 1951); Florida Industrial Commission v. Growers Equipment Co., 12 So.2d 888 (Fla. 1943).

The factors to be considered by the zoning authority in determining the "suitability" of relocation facilities are not expressly set forth in the statute. The legislative intent as to the application of these terms must therefore be determined from the evil to be corrected, the intention of the lawmaking body, and the purpose sought to be accomplished. State v. Webb, 398 So.2d 820 (Fla. 1981); Lanier v. Bronson, 215 So.2d 776 (4 D.C.A. Fla., 1968); Maryland Casualty Co. v. Marshall, 108 So.2d 212 (1 D.C.A. Fla., 1958). The political and social conditions of the

community for whom the law was enacted may also be considered in determining legislative intent. State ex rel. Parker v. Lee, 151 So. 491 (Fla. 1933).

Prior to the enactment of Ch. 74-160, Laws of Florida, the Governor's Task Force on Mobile Homes published its findings on the mobile home industry. The Task Force found that the industry had undergone phenomenal growth from the 1950's to the 1970's and that in 1970, 4.9% of year round housing units were mobile homes, with the percentage increasing. Report of the Governor's Task Force on Mobile Homes, March 1974, at 1, 2. The Task Force also found that although mobile homes could be relocated, they were not really mobile, but were placed in mobile home parks with an expectation of permanency. Task Force Report, at 70. The Task Force also acknowledged the low cost of mobile homes, and their availability to those who could not afford conventionally built housing. Task Force Report, at 76. These findings of the Task Force were reiterated by the legislative committees in discussing the enactment of Ch. 74-160, Laws of Florida. Tape Recordings, House Judiciary Committee and its Subcommittee on Business Regulation, April 15, 23, 24, and 25, 1974, Series 424, Box 14, Archives of State Library. During these hearings information was placed before the committees that in many areas of the state, the populations of many mobile home parks were composed primarily of senior citizens on fixed incomes. Tape Recordings, April 15, 1974.

The Governor's Task Force noted a reduction in land being used for mobile home parks. The reasons cited were that many mobile home parks were sold as the land became more valuable for commercial and residential development, and zoning authorities were reluctant to approve new zoning for mobile home parks. Task Force Report, at 72, 73, and 76. Members of the committees discussed this trend and observed that individuals evicted from mobile home parks due to changes in zoning would be unable to afford other types of housing and consequently have nowhere to live. Tape Recordings, April 15, 1974. Thus, in light of the conditions which existed at the time of the enactment of Ch. 74-160, Laws of Florida, which the Legislature sought to address, it appears that the legislative intent in using the phrase "adequate mobile home parks or other suitable facilities" was that the relocation facilities be appropriate to the financial and other

needs of the specific population of mobile home owners who would be displaced by rezoning.

In your letter you present three possible factual determinations which might be reached by the Board of County Commissioners in considering an application for rezoning of a mobile home park, and asked if the factual situations meet the requirements of §723.083, F.S. In the first factual situation presented, the Board determines that vacancies exist in other mobile home parks but the affected mobile home owners would not be accepted into such parks by virtue of the characteristics, age, or size of their mobile homes. In considering your example, I will assume that these mobile home parks are the only facilities available for the relocation of mobile home owners. This factual situation was specifically discussed by members of the legislative committee in their consideration of §4, Ch. 74-160, Laws of Florida. Tape recordings, April 15, 1974. Information was placed before the committee at that time that in the situation described, displaced mobile home owners may effectively be precluded from relocating in a mobile home park due to the lack of financial resources which would be required to comply with the park's rules and regulations. Tape recordings, April 15, 1974. Thus, in making a determination as to whether or not the mobile home parks are adequate, the zoning authority would necessarily have to consider the financial abilities of the mobile home owners who may have to relocate, repair or replace their mobile homes. APPROPRIATE

In the second situation you present, a determination is made that no adequate mobile home parks exist, but other facilities such as apartments, trailer parks, and boarding houses exist for the relocation of the mobile home owners. As stated hereinabove, I am of the opinion that the statute does not preclude a determination that the facilities described in your example are suitable, if the mobile home owners to be displaced have the financial and other resources to allow them to relocate to other facilities.

In your third factual situation you state that the Board finds that adequate mobile home parks or other suitable facilities

exist for the relocation of the mobile home owners only outside of the territorial limits of the county. Generally, zoning and planning powers of a county are restricted to its territorial limits, unless the Legislature expressly authorizes the county to exercise its zoning powers extraterritorially. See, AGO 071-388 (municipal zoning powers are restricted to territorial limits unless extraterritorial powers are expressly authorized by statute). Such express authorization is not provided in §723.083, F.S. (1984 Supp.), or elsewhere in Ch. 723, F.S.; nor does the Local Government Comprehensive Planning and Land Development Regulation Act, §§163.3161-163.3215, provide such authorization. See, §163.3171(2), F.S. as amended by §4, Ch. 85-55, Laws of Florida. To decide that mobile home parks or other suitable facilities for displaced mobile home owners exist in other counties would require that the county make planning decisions which impact upon areas not within its jurisdiction. Thus the fact that there are adequate mobile home parks or other suitable facilities outside of the territorial limits of the county should not, in my opinion, be a factor in deciding whether to rezone a mobile home park.

In summary, unless and until legislatively or judicially determined otherwise, I am of the opinion that the phrase "adequate mobile home parks or other suitable facilities" in §723.083, F.S. (1984 Supp.), includes all alternative housing which is appropriate to the needs, primarily financial, of the specific population of mobile home owners to be displaced.

Sincerely,

JIM SMITH
Attorney General

JS/THF/dmbh