

Business Operations  
Ofelia San Pedro, Deputy Superintendent

**SUBJECT: REPORT TO THE BOARD ON PROPOSED MIAMI-DADE COUNTY ORDINANCE DEALING WITH MIAMI INTERNATIONAL AIRPORT**

**COMMITTEE: FACILITIES MANAGEMENT**

**Background**

At its meeting of September 8, 2004, the Board was presented with staff's review of the proposed Miami-Dade County (County) Ordinance dealing with Miami International Airport (the Ordinance). After discussing the item, the Board authorized the Superintendent and the Board Attorney to review the Ordinance and provide comments and suggested revisions to the Board of County Commissioners of Miami-Dade County prior to the date established for the hearing to discuss the Ordinance, and added the following items to staff's recommendations:

1. Reconfirm the School Board's interest to secure an automatic waiver to restrictions for building schools in the flight path.
2. Implement Board action of April 8<sup>th</sup>, convening a committee to secure authority to build educational facilities in the flight path zones.
3. Ask the County Commission to defer action on any ordinance until the School Board provides formal input.
4. Ask the Florida Attorney General to opine on the jurisdictional roles of county, school boards, and municipal governments relating to schools in the flight path.

**Additional Information**

Following is a chronology of events that have taken place since the Board action of September 8:

1. **September 14** - School District staff submitted a letter to Miami-Dade County outlining the Board's position. The County's Governmental Operations and Environmental (GOE) Committee also voted to postpone consideration of the Ordinance to the Committee's October 12 meeting in order to afford Commissioner Jose "Pepe" Diaz an opportunity to meet with the affected stakeholders.
2. **September 27** - School District scheduled the first meeting of the committee requested by the Board to secure authority to build educational facilities in the flight path zones. However, since at that time, the Cities of Doral, Miami, and

Miami-Dade County had not yet officially appointed representatives to the committee, there was no quorum and only informal discussion took place. Nevertheless, relevant stakeholders were represented and issues related to the Ordinance were discussed. The consensus was that it would be desirable to have the cities and the County officially appoint their representatives in time for the next meeting to take place October 21 at the Miami International Airport.

3. **October 4** - Miami-Dade County Commissioner Diaz convened a meeting in his office with stakeholders. Commissioner Diaz reiterated his commitment to continue working closely with affected stakeholders to address pending issues, while allowing the Ordinance to move forward.
4. **October 7** – School District convened and facilitated a meeting with the Cities of Miami and Doral to share comments.
5. **October 12** - The County's Governmental Operations and Environmental (GOE) Committee voted to withdraw the Ordinance, and instead allow the County's Transportation and Environmental Committee to be the official public hearing venue, at its October 18, 2004, meeting.
6. **October 14** - School District representatives and the City of Miami met separately with Commissioner Diaz to further discuss pending concerns and review suggested revisions to the Ordinance.
7. **October 18** - Miami-Dade County staff forwarded a revised ordinance to the District, incorporating items designed to address the School District's concerns. The County's Transportation and Environmental Committee heard the Ordinance item and passed it, with a 4-0 vote, to be considered by the full Board of County Commissioners at the meeting of November 30, 2004. School District staff made a brief presentation at the meeting, reiterating the Board's position.
8. **October 21** – School District staff convened the second committee meeting to secure authority to build educational facilities in the flight path zones. However, there was only one official representative at the meeting (City of Doral). Neither the City of Miami nor Miami-Dade County officially appointed representatives to the committee; as such, there was no quorum. Nevertheless, all stakeholders were represented and the issues related to the Ordinance were discussed. School District staff presented a comparative analysis below highlighting recent changes by County staff addressing the District's concerns.

### **Changes to Ordinance**

As noted above, School District staff has met extensively with Miami-Dade County staff and other stakeholders on the issue of schools in the flight path zones. To that end, Miami-Dade County staff has improved the Ordinance to broaden the School District's ability to construct educational facilities in the restricted areas. While the Ordinance has

not been modified to address all of the District's recommendations, substantial progress has been made. Below is a summary of the ordinance's evolution to date.

**PROPOSED MIAMI-DADE COUNTY ORDINANCE DEALING WITH MIA  
COMPARATIVE ANALYSIS**

<b>School Board Request</b>		<b>Original Ordinance</b>	<b>10/18/04 Ordinance</b>
<b>1</b>	In compliance with Florida Statutes, provision for any educational structure or site in existence as of July 1, 1993, to be specifically exempt from the ordinance	No provision included	Exemption provision included
<b>2</b>	Provision of an automatic administrative waiver in connection with additions to, or replacements of, schools located within the CA Zone, irrespective of when the original school was built	Expansions of existing schools as of the date of the ordinance permitted as long as it complies with section 33-337 (B)(2), (3) and (4)	Exemption granted for replacement or modification of an existing school, as long as, there is no increase in the total number of student stations and no expansion of the site
<b>3</b>	Provision of an automatic administrative waiver in connection with site selection, for prospective sites located only partially within the CA Zone	No provision included	Exemption granted for sites selected after date of ordinance, when no more than 49% of site is located within CA-B or CA-C and no portion of the site within the CA is designated to be used for classroom space
<b>4</b>	Provision for an automatic administrative waiver in connection with new sites located in urban areas to be developed as host sites for other overcrowded schools already located in the same general area	No provision provided	Exemption granted in CA-B and CA-C with restrictions of solely relieving overcrowding at an existing facility; limits capacity of new school not to exceed the reduction of the overcrowding facility and within 1 mile of existing facility
<b>5</b>	In compliance with Chapter 1013, Florida Statutes, which has specific requirements dealing with the development and construction of educational facilities by a School Board, incorporate language that reads: " <i>when not otherwise in conflict with Florida Statutes.</i> "	No provision provided	Exemption granted
<b>6</b>	Incorporation of language that reads: "all permits for public educational facility projects will be issued through the Miami-Dade County Public Schools Building Department, or other certified building department, at the election of Miami-Dade County Public Schools."	Permits through County or Municipality	Permits through Miami-Dade County Public Schools

School Board Request	Original Ordinance	10/18/04 Ordinance
<p>7 In the event a proposed educational facility is not specifically exempted from this proposed Ordinance, as noted in items 1 and 2 above, provision for the 25% threshold specified in Critical Approach Zones B and C, as determinants of expansion, modification or establishment of educational facilities, to specifically exclude non-occupied spaces such as bus drop-offs, parking lot expansions, play field improvements, etc. In addition, the Ordinance should allow for the 25% threshold to be met on a cumulative basis, rather than only one project.</p>	<p>Stipulated a limit based on 25% of the existing facility square footage. No provisions for cumulative effect. No distinction between classrooms and non-classroom space</p>	<p>Provides for 25% expansions based on square footage (non-classrooms), 25% of student stations (for classrooms) and no limits for on-site expansion of non-occupied spaces</p>

**Florida Attorney General Opinion**

The School Board Attorney forwarded to the Florida Attorney General a request for opinion on the jurisdictional roles of county, school boards, and municipal governments relating to the location and construction of schools in the flight path. The opinion, a copy of which is attached, states that the Attorney General: 1) will not issue opinions to one public agency about the duties of another public agency; and 2) when a request concerns several public agencies, all the concerned public agencies must join in the request.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, accept staff's report and direct the Superintendent to continue working with Miami-Dade County as it relates to further refinement of the flight path ordinance, prior to The Board of County Commissioners meeting of November 30, 2004.

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## MEMORANDUM

October 28, 2004

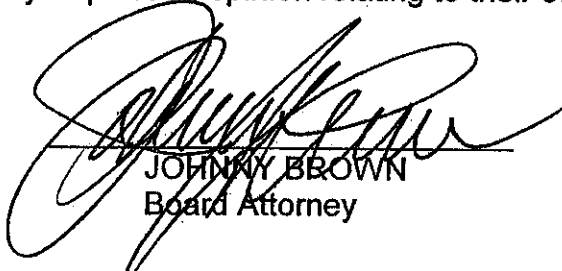
TO: Chair and Members of The School Board  
Of Miami-Dade County, Florida  
  
Rudolph F. Crew, Superintendent of Schools

FROM: Board Attorney's Office

SUBJECT: **REQUEST FOR ATTORNEY GENERAL'S OPINION REGARDING  
JURISDICTION TO ADMINISTER REGULATIONS FOR  
EDUCATIONAL FACILITIES WITHIN A FLIGHT PATH ZONE**

Attached hereto please find a response from the Office of the Attorney General to our request for a legal opinion regarding which political subdivision has jurisdiction to grant exceptions approving the construction of educational facilities within an airport flight path. The response states that the Attorney General will not issue opinions to one public agency about the duties of another public agency and when a request concerns several public agencies all public agencies concerned must join in the request.

Accordingly, to have an opinion issued by the Attorney General on this issue will require a joint request from all public entities affected by an airport hazard area, or a particular agency with an airport hazard area may request an opinion relating to their own duties.



JOHNNY BROWN  
Board Attorney

JB/sh

## Attachments

cc: Ms. Ophelia San Pedro  
Ms. Rose Diamond  
Ms. Ana Rijo-Conde  
Ms. Iraida R. Mendez-Cartaya  
Mr. Michael Levine  
Mr. Ivan Rodriguez  
Ms. Tabitha Fazzino

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CHARLIE CRIST  
ATTORNEY GENERAL  
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL  
Opinions Division

PL 01 The Capitol  
Tallahassee, Florida 32399-1050  
Telephone (850) 245-0158, SunCom 205-0158  
Fax (850) 922-3969, SunCom 292-3969

October 20, 2004

Mr. Johnny Brown  
Miami-Dade County School  
Board Attorney  
Miami-Dade County Public Schools  
Board Administration Building  
1450 Northeast Second Avenue, Room 400  
Miami, Florida 33132

Dear Mr. Brown:

You ask, on behalf of the Miami-Dade School Board, which political subdivision has jurisdiction to administer airport zoning regulations where the airport is owned by one political subdivision but is located wholly or partly outside its territorial limits in another political subdivision and where the two political subdivisions have not entered into an interlocal agreement or establishment of a joint airport zoning board. You also inquire whether a local ordinance relating to airport zoning regulations that obligates a school board to comply with a local building permitting process violates section 1013.371(1), Florida Statutes.

Pursuant to section 16.01(3), Florida Statutes, this office is authorized to render opinions to public officials and agencies on questions relating to their own official duties. Thus, this office will not issue opinions to one public agency about the duties of another public agency. When a request is received concerning the various powers and duties of several public agencies, this office requires that all the public agencies concerned join in such a request.

Your first inquiry concerns the responsibilities, not of the school board, but of several other political subdivisions. This office understands the concern of the school board which seeks to obtain an exception from the political subdivision administering the airport zoning regulations but may only issue an opinion to a public agency about its own duties. Moreover, as you are aware, section 1013.36(3), Florida Statutes, states that "[a]s provided in s. 333.03, the site (for construction of educational facilities) must not be located within any path of flight approach of any airport." Section 333.03(3), Florida Statutes, provides in part:

[A]irport zoning regulations shall be adopted which restrict new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway or a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. *Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.*" (e.s.)

Thus, the statute authorizes local governments with airport zoning authority to make specific findings detailing the reasons for allowing the construction of an educational facility or other incompatible uses within these areas. The granting of any such exceptions must be preceded by findings made by the governmental entity administering the airport zoning regulations.

Section 333.03(1)(a), Florida Statutes, provides that "every political subdivision having an airport hazard area within its territorial limits shall . . . adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area." For those airports owned or controlled by a political subdivision in which any airport hazard area is located wholly or partly outside the territorial limits, section 333.03(1)(b), Florida Statutes, requires the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located to either enter into interlocal agreements for the enforcement of airport zoning regulations or create a joint airport zoning board by ordinance or resolution to enforce airport zoning regulations.

The statute clearly contemplates that the political subdivisions will enter into an interlocal agreement or create a joint board. Should the political subdivisions fail to comply with such a statutory requirement, an action might be initiated in the courts to compel such compliance. The school board may also wish to consider addressing its concerns regarding the statute to the Legislature. I note, however, that Committee Substitute for Senate Bill 2572, passed during the 2004 legislative session which related to airport zoning and educational facilities, was vetoed by the Governor.

Mr. Johnny Brown  
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Your second question concerns the validity of a proposed Miami-Dade County ordinance establishing standards and providing for the approval of the siting and construction of public and private educational facilities within a certain proximity to the Miami International Airport. In the absence of Miami-Dade County joining in your request, this office must decline to comment upon this matter. I would note, however, that section 333.03(3), Florida Statutes, in authorizing political subdivisions to approve exceptions to the prohibition of the construction of an educational facility at either end of a runway of a publicly owned and used airport within a certain distance, provides only that such exception shall be granted if the political subdivision makes specific findings detailing "how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location."

Regarding the interpretation of section 1013.371, Florida Statutes, I would note that this office recently issued an opinion referring to this statute. In Attorney General Opinion 04-42, this office concluded that development on property owned by a district school board that is situated within the county must comply with the county's comprehensive land-use plan adopted pursuant to the Florida Local Government Comprehensive Planning Act and ordinances adopted to implement the plan, provided that the local land-use plan or the development permits required thereunder do not relate to or regulate the same subject as the Florida Building Code and Florida Fire Prevention Code. A copy of that opinion is enclosed. The provisions of the predecessor statute, section 235.26, Florida Statutes (2001), have also been interpreted by this office. You may access such opinions on this office's website at: [www.myfloridalegal.com](http://www.myfloridalegal.com) to reach a searchable database of opinions issued by this office since 1974.

Thank you for contacting the Attorney General's Office.

Sincerely,



Joslyn Wilson  
Assistant Attorney General

JW/tfi

Enclosure: Op. Att'y Gen. Fla. 04-42 (2004)



State of Florida  
Office of the Attorney General

Advisory Legal Opinion (Formal)

Number: AGO 2004-42  
Date: September 14, 2004  
Subject: Schools, county land development regulations

Ms. Karen O. Gaffney  
Hernando County School Board Attorney  
221 West Main Street, Suite D  
Inverness, Florida 34450

Mr. Garth C. Collier  
Hernando County Attorney  
Hernando County Government Complex  
20 North Main Street, Room 462  
Brooksville, Florida 34601

RE: SCHOOL DISTRICTS-COUNTIES-SCHOOL BOARDS-ZONING-LAND DEVELOPMENT REGULATIONS- ORDINANCES-COMPREHENSIVE PLAN-applicability of land development regulations to school board. s. 1013.371, Fla. Stat.

Dear Ms. Gaffney and Mr. Collier:

On behalf of the School Board of Hernando County and the Hernando County Board of County Commissioners, you have asked for my opinion on substantially the following question:

Is the Hernando County School Board required to comply with Hernando County land development ordinances relating to such matters as zoning and landscaping that implement the county's comprehensive plan?

According to your letter, county staff has advised school board staff that plans for new schools are subject to review for compliance with zoning and landscape ordinances and other land development regulations that implement the county's comprehensive plan. Although the district school board has indicated a desire to cooperate with the county's established development review process, the board believes that it is not required to comply with county ordinances based on its reading of section 1013.371(1)(a), Florida Statutes.

Section 1013.37, Florida Statutes, provides a state uniform building code for public educational facilities construction. Pursuant to the statute:

"A uniform statewide building code for the planning and construction of public educational and ancillary plants by district school boards and community college district boards of trustees shall be adopted by the Florida Building Commission within the Florida Building Code, pursuant to s. 553.73."

The Florida Building Code and the Florida Fire Prevention Code have been designated as the state uniform building codes for public educational facilities construction. [1] Section 1013.371(1)(a), Florida Statutes, requires that all educational facilities constructed by a school board are required to incorporate these codes and shall be "exempt from all other state building codes; county, municipal, or other local amendments to the Florida

Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees." This language was originally adopted in 1977 by Chapter 77-458, Laws of Florida, [2] subsequent to the adoption of the Local Government Comprehensive Planning and Land Development Regulation Act in 1975 and would prevail over any inconsistencies that might exist under sections 163.3161 - 163.3217, Florida Statutes, or a local land-use plan adopted thereunder. [3] Therefore, it is assumed for purposes of this opinion that the county's land-use ordinances do not apply to or regulate the same subject matter as the Florida Building Code and the Florida Fire Prevention Code.

Section 163.3161(5), Florida Statutes, however, sets forth the Legislature's intent that "adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act." (e.s.) Similarly, section 163.3194(1)(a), Florida Statutes, provides that, after a comprehensive plan or plan elements have been adopted "all development undertaken by, and all actions taken in regard to development orders by, governmental agencies" regarding land covered by the plan must be consistent with the plan. The definition of "governmental agency" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act includes "[a]ny school board or other special district, authority, or governmental entity." [4]

When a statute contains a definition of a word or phrase, that meaning controls and must be ascribed to the word or phrase whenever repeated in the statute, unless a contrary intent clearly appears. [5] Thus, as prescribed by section 163.3194(1), Florida Statutes, all development undertaken by, and all action taken regarding development orders by, school boards or school districts regarding land covered by the comprehensive plan or elements of the plan must be consistent with the plan or element.

The language of the statute is clear and unambiguous and indicates the Legislature's intent that school boards may be included within a local government's comprehensive plan. Section 163.3177(7)(e), Florida Statutes, provides that the land-use plan may include

"[a] public buildings and related facilities element showing locations and arrangements of . . . public schools, hospitals, libraries, police and fire stations, and other public buildings. This plan element should show particularly how it is proposed to effect coordination with governmental units, such as school boards or hospital authorities, having public development and service responsibilities, capabilities, and potential but not having land development regulatory authority. This element may include plans for architecture and landscape treatment of their grounds." (e.s.)

When the intent of the Legislature, as evidenced by the statute, is plain and unambiguous, there is no necessity to resort to statutory construction or interpretation, and effect need only be given to the plain meaning of its terms. [6]

While section 1013.371, Florida Statutes, expressly exempts educational facilities constructed by a school board from any county amendments to the Florida Building Code and Florida Fire Prevention Code; building permits and the fees for those permits; and ordinances, no provision generally exempts school boards from the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, sections 163.3161-163.3217,

Florida Statutes. Rather, the Legislature has made it clear that school districts and school boards are subject to local land development regulations enacted to implement local comprehensive land use planning and development.

Therefore, it is my opinion that development on property owned by a district school board that is situated within the county must comply with the county's comprehensive land-use plan adopted pursuant to the Florida Local Government Comprehensive Planning Act and ordinances adopted to implement the plan, provided that the local land-use plan or the development permits required thereunder do not relate to or regulate the same subject as the Florida Building Code and Florida Fire Prevention Code. [7]

Sincerely,

Charlie Crist  
Attorney General

CC/tgh

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[1] Section 1013.371(1)(a), Fla. Stat.

[2] As amended by s. 15, Ch. 77-458, Laws of Fla., s. 235.26(1), Fla. Stat., was created to read:

"All educational facilities constructed by a board shall incorporate the State Uniform Building Code for Public Educational Facilities Construction, and shall be exempt from all state, county, district, municipal, or local building codes, interpretations, building permits and assessments of fees for building permits, and ordinances."

[3] Cf., *Askew v. Schuster*, 331 So. 2d 297 (Fla. 1976); *Florida Association of Counties, Inc., v. Department of Administration, Division of Retirement*, 580 So. 2d 641 (Fla. 1st DCA 1991), approved, 595 So. 2d 42 (Fla. 1992) (last expression of Legislature will prevail in cases of conflicting statutes). And see s. 1013.37(5), Fla. Stat., which prohibits special acts or general laws of local application which propose to amend, alter, or contravene provisions of the State Building Code adopted pursuant to s. 1013.37, Fla. Stat.

[4] Section 163.3164(10)(d), Fla. Stat.

[5] *Racetrac Petroleum, Inc. v. Delco Oil, Inc.*, 721 So. 2d 376 (Fla. 5th DCA 1998); *Richard Bertram & Co. v. Green*, 132 So. 2d 24 (Fla. 3rd DCA 1961); *Vocelle v. Knight Brothers Paper Co., Inc.*, 118 So. 2d 664 (Fla. 1st DCA 1960); Ops. Att'y Gen. Fla. 85-98 (1985), 85-9 (1985), and 83-22 (1983).

[6] *M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000), *State v. Egan*, 287 So. 2d 1 (Fla. 1973). See also *Reino v. State*, 352 So. 2d 853 (Fla. 1977); *Ross v. Gore*, 48 So. 2d 412 (Fla. 1950) (when language of statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory construction, and the statute must be given its plain and obvious meaning).

[7] See Ops. Att'y Gen. Fla. 79-37 (1979) and 89-31 (1989) (development on

real property owned by district school board must comply with municipality's comprehensive land-use plan, provided plan or development permits do not relate to or regulate same subject as State Uniform Building Code for Public Educational Facilities Construction).