

Migrant housing, county permit fee

Number: INFORMAL

Date: December 13, 2006

Ms. Katherine English
Hendry County Attorney
Post Office Drawer 1507
Fort Myers, Florida 33902-1507

Dear Ms. English:

On behalf of the Hendry County Board of County Commissioners you ask whether the county may impose a local permit fee for residential migrant housing and migrant labor camps in addition to permit fees prescribed by state law. You state that Hendry County currently has between 130 and 140 migrant farmworker housing units which are required to be inspected at a minimum of two times per quarter. The county's Department of Environmental Health (department) is responsible for such inspections and has historically been funded from permit fees and a state grant. This office has been advised by the Florida Department of Health (DOH) that the county departments collect the permit fees and use them to cover the cost of implementing the program.[1] The state grant, however, was not available this year, leading to a shortfall in funding for the department. To cover the cost of inspections, the department has asked the county to require a local annual permit fee of \$125.00 for residential migrant housing and camps. This would be in addition to the state permit, which ranges from \$125.00 to \$500.00 depending on the number of occupants. The county commission has unanimously approved the imposition of such a fee, but has asked that this office comment on its legality before the board goes forward with enactment of an ordinance, in light of the provisions of section 381.00896, Florida Statutes.

State law provides that any person who establishes, maintains, or operates a migrant labor camp or residential migrant housing must obtain a permit from the Florida Department of Health.[2] A schedule of application fees for such permits is set forth in section 381.0084, Florida Statutes, as follows:

"(1) Each migrant labor camp operator or owner of residential migrant housing who is subject to s. 381.0081 shall pay to the department the following annual application fees:
(a) Camps or residential migrant housing that have capacity for 5 to 50 occupants: \$125.
(b) Camps or residential migrant housing that have capacity for 51 to 100 occupants: \$225.
(c) Camps or residential migrant housing that have capacity for 101 or more occupants: \$500."

The collected fees must be deposited into the County Health Department Trust Fund for use in the migrant labor camp program and DOH "shall use those fees solely for actual costs incurred in enforcing ss. 381.008-381.00895." [3] The statute further provides specific situations when the imposition of the permit fee will be suspended for the next annual permitting period.[4] Pursuant to section 381.0086, DOH is required to adopt rules to protect the health and safety of migrant farmworkers and other migrant labor camp or residential migrant housing occupants. In regard to

inspections of such camps and housing, Rule 64E-14.004(4), Florida Administrative Code, provides:

"(4) Inspections. Migrant labor camps and residential migrant housing shall be inspected at least twice quarterly during periods of occupancy except housing authorities which shall only be inspected twice annually. Migrant farmworker occupied mobile homes in a mobile home park meeting the 5 or more migrant requirement, will be inspected and required to meet the migrant program standards when issued a revised Mobile Home/RV Park and Residential Migrant Housing Permit. . . ."

The Legislature, therefore, has set forth a schedule of permit fees to be collected from migrant labor camps or residential migrant labor housing and authorized DOH to adopt rules to implement the requirements of the statute. In addition, section 381.00896, Florida Statutes, sets forth a policy that prohibits discrimination against farmworker housing facilities by counties and municipalities. In pertinent part, it provides:

"(3) A municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.
(4) This section does not prohibit the imposition of local property taxes, water service and garbage collection fees, *normal inspection fees*, local bond assessments, *or other fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.*" (e.s.)

Thus, in addition to prescribing the permit fees that may be collected from migrant labor camps and residential migrant labor housing, the Legislature has stated that local governments may not enact land use ordinances that discriminate against migrant housing facilities and may only impose taxes, fees or assessments which are imposed on other dwellings of the same type in the same zone. This office has been advised that several counties with migrant farmworker housing facilities have imposed additional inspection fees for such housing.

While there is a clear intent to protect migrant farmworker housing from discrimination, there is a practical impact of funding the statutorily prescribed inspections that local health departments must conduct on behalf the DOH. Despite the apparent inadequacy of funds generated by the permit fees prescribed by statute to cover the cost of such inspections, it would appear questionable under the present statutory scheme that additional inspection fees may be imposed. It may be advisable, therefore, to seek legislative clarification in this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

[1] Email from Mr. Leslie Harris, Bureau of Community Environmental Health, Department of Health, April 11, 2006.

[2] Section 381.0081(1) and (2), Fla. Stat. See also s. 381.008(2), Fla. Stat., defining "Department" for purposes of the statute as "The Department of Health and its representative county health departments."

[3] Section 381.0084(2), Fla. Stat.

[4] Section 381.084(3), Fla. Stat., states that any existing migrant labor camp or residential migrant housing that is substantially renovated or newly constructed is exempt from the annual application fee for the next annual permit, as well as those facilities that during a permit year have no major deficiencies cited by the department, no uncorrected deficiencies, and no administrative action taken against it.