

Sept. 22, 2004

Mr. David Grix  
Fishing For Freedom  
Panacea, Florida, and Boynton Beach, Florida

RE: Florida Fish and Wildlife Conservation Commission rulemaking questions

Dear Mr. Grix:

On Sept. 17, 2004, you emailed a question to the Sea Grant Law Center about whether the Florida Fish and Wildlife Conservation Commission (FWCC) is bound by Fla. Stat. § 370.025, which concerns FWCC rulemaking. You also asked about the importance of the purpose and intent of a constitutional amendment. This email contains the results of my research into your questions.

Please be aware that the Sea Grant Law Center cannot provide formal legal representation, that I am not licensed to practice law in the State of Florida, and that you and the Law Center do not have an attorney-client relationship. This email, therefore, is not formal legal advice. However, I sincerely hope it helps you in understanding the legal issues with which you are concerned.

As I understand it, you have three questions:

- (1) (1) In *Caribbean Conservation Corp. v. Fla. FWCC*, does the Florida Supreme Court hold that FWCC must obey Fla. Stat. § 370.025?
- (2) (2) Even if the court did not specifically say so, is FWCC nonetheless bound by Fla. Stat. § 370.025?
- (3) (3) What is the most important part of a constitutional amendment?

**1. In *Caribbean Conservation Corp. v. Fla. FWCC*, does the Florida Supreme Court hold that FWCC must obey Fla. Stat. § 370.025?**

The short answer to your first question is “no.” That does not mean that FWCC is not bound by the statute; it only means that the question was not raised or answered in the case. (The full citation for the case is *Caribbean Conservation Corp. v. Fla. FWCC*, 838 So.2d 492 (Fla. 2003).) However, the court did confirm that FWCC must abide by Florida’s Administrative Procedure Act (Fla. Stat. tit. X, ch. 120) when it makes rules.

At issue in *Caribbean Conservation Corp.* was the constitutionality of two Florida statutes, § 20.331(6)(c) and § 370.025(4). Sec. 20.331(6)(c) requires FWCC “to accord to any party whose substantial interests will be affected by any action of the commission in the performance of its statutory duties or responsibilities” the procedures required by the Administrative Procedure Act. Typically, this means that an agency must give notice to the public when it is going to make certain kinds of rules, and give the public the opportunity to be heard. You are already familiar with § 370.025(4), in which the state

legislature clarified the FWCC's rulemaking authority. The court held that both of these statutes are constitutional (with the exception of the portion of § 20.331(6)(c)(1) that refers to species "of special concern"). The court did not specifically address whether the FWCC must obey § 370.025 when making gear rules.

## **2. Even if the court did not specifically say so, is FWCC nonetheless bound by Fla. Stat. § 370.025?**

While the *Caribbean Conservation Corp.* court was not faced with the question of whether FWCC is bound by § 370.025, the court did quote an earlier decision in which it said that "the Commission's rulemaking power is circumscribed only by the requirement in [§ 370.027] that the Commission act reasonably pursuant to the policy and standards in section 370.025." *Caribbean Conservation Corp. v. Fla. FWCC*, 838 So.2d at 496 (quoting *State v. Davis*, 556 So.2d 1104, 1106 (Fla. 1990)). It appears that the court in *State v. Davis* recognized that the statute applies to FWCC.

The plain language of the statute also shows that it applies to FWCC. In § 370.025 the legislature instructs FWCC to make annual recommendations to the governor and legislature; describes standards with which FWCC rules must be consistent; and clarifies the extent of FWCC's constitutional rulemaking authority. FWCC's own administrative regulations state that § 370.025 "affect[s] the operation of the Commission." Fla. Admin. Code Ann. r. 68B-1.009.

You said in your original email that you have "a document signed by Executive Director Ken Haddad stating they, the FWC, do not use or have to use FS 370.025." Without seeing the document I cannot speculate on what Mr. Haddad might have meant. However, I feel safe in saying that § 370.025 applies to FWCC.

## **3. What is the most important part of a constitutional amendment?**

In your second email to the Law Center you asked about the importance of a constitutional amendment's purpose and intent. Questions about purpose and/or intent usually arise when a court is trying to decide how a law applies to a specific set of facts, and the law is not clear.

Whenever a court is applying a constitution to a set of facts, the most important thing is the actual text of the constitution itself. If the text is clear, then there is no need for the court to consider anything else. If the text of the constitution does not clearly address the facts at hand, then the court may look beyond the text to make its decision. The court will try to determine the intent of the framers and the voters, and interpret the amendment so as to give effect to that intent. *Williams v. Smith*, 360 So.2d 417, 419 (Fla. 1978).

In short, the text of the amendment is the most important thing. The amendment's purpose (which is really just another way of saying "the intent of the framers and voters"), becomes relevant only if the text is not clear with respect to the facts at hand.

I hope this information is useful to you, Mr. Grix. If you have any further questions, please feel free to email me directly at [jeclomon@olemiss.edu](mailto:jeclomon@olemiss.edu). Thank you very much for bringing your question to the Sea Grant Law Center.

Sincerely,  
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Mississippi-Alabama Sea Grant Legal Program