

Department of
ELDER AFFAIRS
STATE OF FLORIDA



Ron DeSantis
Governor

Richard Prudom
Secretary

November 4, 2020

Ms. Julie F. Klahr
3099 E. Commercial Blvd, Suite 200
Fort Lauderdale, FL 33308

Dear Ms. Klahr,

Thank you for your correspondence of October 29th to the General Counsel, Department of Elderly Affairs (DOEA). While §120.54(5)(b)2 Florida Statutes and Florida Administrative Code Rule 28-109 allow for an “Agency” to use media technology to conduct a meeting, this would not apply to your Area Agency on Aging (AAA) as it is not considered an “Agency” under §120.52(1), Florida Statutes, and cannot avail itself of the use of this rule to avoid in-person meetings. While you are correct that the Area Agency on Aging of Broward County is delegated authority by DOEA pursuant to §430.203(4), Florida Statutes as a “contracting agency.” This is not the same as an “Agency” as defined by §120.52(1), Florida Statutes. This premise was affirmed in *First Quality Home Care v. Alliance for Aging*, 14 So. 3d 1149 (Fla. Dist. Ct. App. 2009) which found that a AAA was not a state agency governed by the APA’s statutory procedures. Also, please refer to section 26 of the January - December 2020 contract for services between your organization and DOEA which states that your organization “shall not hold themselves out as employees or agents of the Department without prior specific authorization from the Department” (§26, p. 7).

Additionally, §20.41(6) and (8), Florida Statutes specifically provides that AAA’s are described as non-governmental, “independent not-for-profit corporations,” are “subject to chapter 119, relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.” This distinction and specific requirement that AAA’s meet the requirements of ss. 286.011-286.012, further establishes that your AAA is not subject to the protections of an “Agency” under §120.52(1) and is not an Agent under the jurisdiction of the Administrative Procedures Act (APA), chapter 120, Florida Statutes, for administrative redress.

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As a private entity that is subject to the laws of Florida concerning Government in the Sunshine, under at least the circumstance noted above, the obligations for your Agency to be bound by the terms of its contracts with DOEA also require it to follow the Florida law on all Government in the Sunshine obligations, which means, at a minimum, that your organization comply with its contractual obligations. Procedures for attendance at meetings should be included in your organizations by-laws or other controlling documents. Thank you for your attention to this matter. Please feel free to contact my office if you want to discuss this matter further.

Sincerely,

/s/ John R. Capra

John R. "Jack" Capra
Deputy General Counsel
Florida Department of Elder Affairs

cc: Patricia Gleason, Florida Attorney General's Office