



FTC Opinion on Land Surveyors – Legislation & Fees

Submitted to the Ministry of Industry, Investment & Commerce

David Miller, Executive Director
August 31, 2012

The Staff of the Fair Trading Commission has reviewed the legislation which regulates the practices of Land Surveyors. The objective was to identify the provisions relating to fees and to assess whether any of these provisions might be anti-competitive or, at least, could have an effect that conflicts with any of the provisions of the Fair Competition Act (FCA) thereby preventing surveyors from acting independently and setting their fees.

Background

The Land Surveyors Act governs commissioned Land Surveyors in Jamaica 1944, hereafter referred to as “The Act.” This statute refers to and is supported by the *Land Surveyors Regulations 1971* and the *Land Surveyors Amendment Act 2005*. The Act establishes a board that is responsible for, among other duties: maintaining proper standards of professional conduct.

Fees

Section 35 of the Land Surveyors Act states that:

“Every surveyor shall, subject to any special agreement to the contrary, be entitled to recover such fees as may be prescribed.”

This means that primarily, and despite the facility for prescribing fees, Surveyors have the right to enter into their own contracts at the rates of their choosing. This supersedes the statutory power to prescribe a minimum; which serves only as a default for the event that a surveyor does not have a special agreement.

Section 43(h) of the Act empowers the Land Surveyors Board to make regulations with respect to the scale of Surveyors’ fees. It provides:

*“The Board with the approval of the Minister may make regulations generally for giving effect to the provisions of this Act and, without prejudice to such general power, may make regulations with respect to the following matters –
(h) the scale of surveyors’ fees...”*

At Rule 45 of the Land Surveyors Regulations 1971 it is stated:

“The fees specified in the Fourteenth Schedule shall be the minimum fees which a surveyor is entitled to recover.”

The minimum scale of fees is set out in the schedule – ranging from the lowest fee for single plots in rural surveys being J\$30.00 to the highest fee of \$126 for over 25 acres. There are no other relevant provisions that speak to fees within the legislation.

Analysis

Section 35 of the Act essentially confers on Surveyors the autonomy to enter into agreements and thereby to determine their own fees for a particular transaction. This general right is supported by a default position whereby certain minimal or baseline fees have been set as an entitlement only if a surveyor does not exercise this option.

The stated objective of the FCA in its long title is to provide for the maintenance of encouragement of competition in the conduct of trade, business, and the supply of services in Jamaica to provide consumers with competitive prices and product choices.

By creating the facility by which Surveyors can charge their own fees by way of private contract and making this provision paramount, the provision is in tandem with the objectives of the FCA. It does not appear to conflict with the legislation. Particularly, Surveyors may compete with each other in the setting of fees and by varying the terms of the contract. The legislative scheme of the Act does not appear to be in breach of the FCA. Neither does the provision appear to be in breach of any specific provisions of the FCA.

Conclusion

At this time, it is our view that there is no conflict with the provisions of the FCA. Specifically, the legislation which governs Surveyors does not appear to prevent Surveyors from acting independently and setting their own fees. Accordingly, we do not see the need for recommendations to effect any changes in the legislation.