

Municipalities; use of municipal seal

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Subject:
Municipalities; use of municipal seal

Mr. Nicholas F. Tsamoutales
Cocoa Beach City Attorney
1900 Palm Bay Road, Northeast
Suite G
Palm Bay, Florida 32905-7538

RE: MUNICIPALITIES--SEALS--authorization by municipality of use of municipal seal. s. 165.043, Fla. Stat.

Dear Mr. Tsamoutales:

You have requested my opinion on substantially the following question:

Is the City of Cocoa Beach, which has designated an official seal pursuant to section 165.043, Florida Statutes, authorized to enter into agreements allowing the manufacture, use, or display of a facsimile or reproduction of the municipal seal and for the payment of a fee to the municipality for the privilege of doing so?

In sum:

Section 165.043, Florida Statutes, authorizes the City of Cocoa Beach to enter into agreements for the manufacture, use, and display of the municipal seal for other than official use. In the absence of any prohibition against the City of Cocoa Beach imposing a fee for the unofficial use of the municipal seal I cannot say that the city is precluded from imposing such a fee.

The City of Cocoa Beach has designated an official municipal seal pursuant to section 165.043, Florida Statutes:

"The governing body of a county or municipality may, by ordinance, designate an official county or municipal seal. The manufacture, use, display, or other employment of any facsimile or reproduction of the county or municipal seal, except by county or municipal officials or employees in the performance of their official duties, without the express approval of the governing body is a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083."

This statute was enacted in 1991 and the title of the enabling legislation indicates that its purpose was not only to authorize the adoption of an official seal but also to "restrict[] its use without the express approval of the governing body[.]"[1] The language of the statute clearly

contemplates the official use of such a seal, and the use of the seal for other purposes with the express approval of the governing body.

In terms similar to those used in section 165.043, Florida Statutes, the Department of State is made custodian of the Great Seal of the State of Florida and charged with its custody, use, and protection.[2] In accomplishing these duties and responsibilities the Department of State has adopted administrative rules regulating the use of the Seal of the State of Florida.

As this office noted in an informal opinion to Mr. Don Bell, General Counsel for the Department of State, "the state statutes appear to have granted the Department of State broad discretion [in the use of the state seal]."[3] The opinion states:

"The statute thus authorizes the department to grant anyone's application upon a showing of good cause for the seal's use for a proper purpose. The statute does not specify what constitutes 'good cause' or 'proper purpose'; rather the interpretation of those terms appears to be left to the discretion of the Department of State."

The department has adopted administrative rules prescribing an application form to request approval from the department for use of the seal and provides an official contact for filing these forms.[4] Standards for approval are specified, and in determining what constitutes a proper purpose, the rule sets forth the minimum factors to be considered:

- "(a) the specific item to be manufactured;
- (b) the manner in which the Seal is to be displayed on the item to be manufactured;
- (c) the nature of the proposed use, including manner, purpose and place of use;
- (d) whether the public would tend to be misled by the appearance of the Seal on the product to believe that the product carries official State sanction or approval;
- (e) whether the use of the Seal would tend to mislead the public into believing that a person, meeting, project or event carries official State sanction or approval;
- (f) whether the dignity of the Seal will be preserved if approval is granted."[5]

In addition, the rule prohibits use of the seal for certain purposes:

- "(5) In no event shall approval be given for the use of the Seal for the following:
- (a) political or campaign purposes;
 - (b) stationery other than official government stationery;
 - (c) decorative automobile license tags;
 - (d) business cards other than official government business cards;
 - (e) designation of landmarks not listed in the National Registry of Historical Places or designated as a historical site under a local ordinance;
 - (f) t-shirts, jackets or other clothing which might lead the public to believe that the person wearing such apparel is an official of the state;
 - (g) publications other than official government publications or publications serving a governmental purpose; or
 - (h) advertising and news releases."[6]

The rule provides penalties for the submission of false or inaccurate information and provides

that the department may revoke its approval relating to the use of the Seal under certain circumstances.[7]

Your question also suggests that the City of Cocoa Beach would like to impose a fee for the unofficial use of the municipal seal. No consideration of a fee is contained in section 165.043, Florida Statutes. However, section 166.021(1), Florida Statutes, recognizes the home rule powers granted to municipalities in Article VIII, section 2(b), of the Florida Constitution, stating that they "may exercise any power for municipal purposes, except when expressly prohibited by law." Thus, the City of Cocoa Beach must make a determination that imposing a fee for the unofficial use of the municipal seal will serve a municipal purpose in order to justify such action.

In sum, section 165.043, Florida Statutes, grants the governing body of a municipality the authority to designate an official municipal seal and the discretion to allow the use of such a seal for other than official purposes. The City of Cocoa Beach may wish to consider adopting administrative rules, such as those promulgated by the Department of State for use of the state seal, prior to approving the unofficial use of the municipal seal. Further, the imposition of a fee for the unofficial use of the municipal seal must be found by the city to serve a municipal purpose.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] See Title to Chapter 91-59, Laws of Florida.

[2] See s. 15.03, Fla. Stat.

[3] See Informal Opinion to Don Bell, dated March 7, 1997.

[4] Rule 1-2.0021, Fla.R.Admin.P.

[5] Rule 1-2.0021(4), Fla.R.Admin.P.

[6] Rule 1-2.0021(5), Fla.R.Admin.P.

[7] Rule 1-2.0021(6), Fla.R.Admin.P.