

or enforcing jurisdiction or governmental functions which are permitted *by statute* to be made in a specified manner. Inasmuch as there are no statutory provisions with respect to the publication of minutes of meetings of a county commission, I am of the view that, until determined otherwise by a court of competent jurisdiction, a board of county commissioners may lawfully contract for the publication of the minutes of its meetings for the information of, and as a service to, the citizens of the county at rates below those specified in §50.061.

073-488—December 26, 1973

MUNICIPALITIES

INCREASING PENSION BENEFITS UNDER ORDINANCE WITHOUT REFERENDUM

To: Thomas H. Anderson, Miami Shores Village Attorney, Miami

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

May the Miami Shores Village Council increase the pension benefits to retired employees when the pension fund, although authorized by a special law, is set up by ordinance?

SUMMARY:

The Miami Shores Village Council may increase the pension benefits to retired municipal employees without a referendum of the electors when the pension fund, although authorized by a special law, is established by ordinance, so long as the one-mill limitation fixed by the ordinance on the amount of the village's contribution to such fund is not exceeded.

A special law provides that a municipal pension plan for the employees of the village may be established by ordinance, and that the council may make contributions of public moneys on "such terms and conditions as it may see fit." Chapter 27740, 1951, Laws of Florida. The ordinance effectuating the provisions of such special act says that the contribution to the pension fund shall not exceed one mill on the dollar on all taxable property in the village. Ordinance No. 273, §19. The council now wishes to increase the benefits to retired employees but still remain below the one-mill limit fixed by the ordinance. I assume, for the purposes of this opinion, that the contemplated increase in retirement benefits within the one-mill limitation is actuarially feasible.

Assuming the applicability of Ch. 73-129, Laws of Florida, to the instant question, a municipality may not, without a referendum, change any provision in a special law which affects "any rights of municipal employees." Section 166.021(4), F. S. Attorney General Opinion 073-427 held that, in general, pension plans set out in municipal charters (or special laws) come under the definition of rights of municipal employees. Therefore, any special law or charter which sets up a pension plan can only be changed by way of referendum of the electorate. In addition, Ch. 27740, *supra*, provides that the ordinance establishing the pension fund shall not be thereafter amended in such a way as to increase the amount which the village is to contribute to the fund without the approval of the electorate. It might also be noted that under Art. V, §5.03, of the Dade County Charter, municipalities within Dade County can amend their charter only by referendum of the electors and pursuant to the procedures therein prescribed.

In the instant case, however, the special act merely authorizes a pension fund. The fund is established and the amounts to be paid by the city and to the employees

are found in the *ordinance*. An ordinance is not subject to the same requirements under §166.021(4), *supra*, as is a charter or special act. Therefore, the village council may raise the benefits to retired municipal employees within the one-mill limitation set by ordinance without a referendum of the electors.

073-489—December 26, 1973

ADMINISTRATIVE LAW

POWER OF AGENCY TO ADOPT ADMINISTRATIVE RULE MUST COME FROM STATUTORY AUTHORITY

To: Mallory E. Home, Senate President, Tallahassee

Prepared by: Michael Parrish, Assistant Attorney General

QUESTIONS:

1. Is expressed and specific statutory authority necessary for the promulgation of an administrative rule or regulation of a board or agency of the state which affects the rights and interests of the general public or any segment thereof?
2. If the above is answered in the affirmative, is §14-60.09 of the rules of the Florida Department of Transportation an effective promulgation authorized by a sufficient grant of statutory authority?
3. If question 2 is answered in the negative, should the Florida Department of Transportation be allowed to continue to enforce §14-60.09 of its rules and regulations?

SUMMARY:

An administrative agency of the state must have specific statutory authority in order to promulgate rules and regulations. Neither §330.29, F. S., nor the statutory sections therein cited appear to provide statutory authority for the Department of Transportation to adopt Rule 14-60.09, relating to airspace zoning regulations.

AS TO QUESTIONS 1 AND 2:

As noted in your letter, there is ample authority for the proposition that an administrative board or agency of the state must have specific statutory authority in order to promulgate rules and regulations.

As you observed, the Supreme Court of Florida has held:

Administrative authorities are creatures of statute and have only such powers as the statute confers on them. Their powers must be exercised in accordance with the statute bestowing such powers, and they can act only in the mode prescribed by statute. [Edgerton v. International Company, Inc., 89 So.2d 488 (Fla. 1956).]

Accord: Lewis v. Florida State Board of Health, 143 So.2d 867 (1 D.C.A. Fla., 1962), in which the court said, at pp. 875 and 876:

The rule-making power of the Board is limited to the making of rules and regulations necessary to the enforcement of the act. It is incumbent upon an agency relying on an act as authority for its regulations to prescribe only such regulations as come within the specifications laid down.

The particular agency rule about which you inquire is §14-60.09 of the Rules of the Florida Department of Transportation, which rule reads in pertinent part:

Airspace zoning jurisdiction is jointly assumed with other political