

073-478—December 21, 1973

MUNICIPAL HOME RULE POWERS ACT

EFFECT ON CHARTERS AND CHARTER AMENDMENTS

To: Charles W. Boyd, Representative, 96th District, Hollywood

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

What is the effect of Ch. 73-129, Laws of Florida, on municipal charters and charter amendments?

SUMMARY:

Under Ch. 73-129, Laws of Florida, municipal charter provisions relating to the creation or existence of a municipality, term of elected officials and the manner of their election, distribution of powers among elected officers, matters relating to appointive boards, any change in the form of government, or any rights of municipal employees can only be changed by a referendum of the electorate. Legislation in the areas of annexation, merger, and the exercise of extra-territorial powers must be enacted by the state legislature. All other municipal charter provisions are now either nullified and repealed, or have become ordinances.

Section 166.021(4), F. S., as created by Ch. 73-129, Laws of Florida, provides in part that certain areas of a city's charter cannot be changed without a referendum of the electorate. Such areas include:

. . . the creation or existence of a municipality, the terms of elected officers and the manner of their election, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees . . .

(The subject of annexation, merger, and exercise of extra-territorial power can only be changed by the legislature under Art. VIII, §2(c) of the State Constitution. Section 166.021(3) (a), F. S.). The items listed above become, in effect, the charter of the municipality. They can, as you mention, be changed as provided in §166.031, F. S.: by an ordinance of the governing body of the city or by petition signed by 10 percent of the electors. Under both of these methods, the amendment must be submitted to a referendum vote of the electorate. Any other limitation of powers upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is nullified and repealed by Ch. 73-129, *supra* [§166.021(4)], or becomes an ordinance of the municipality subject to modification or repeal as other ordinances. Section 166.021(5), *supra*.

073-479—December 21, 1973

PROBATE CODE

WHEN WILLS MAY BE SELF-PROVED

To: James L. Redman, Representative, 62nd District, Plant City

Prepared by: Michael Parrish, Assistant Attorney General

QUESTION:

Do the self-proving provisions of Ch. 73-8, Laws of Florida

[§731.071, F. S.], apply to wills executed and made self-proved prior to October 1, 1973, the effective date of the act?

SUMMARY:

A will executed in conformity with §731.07, F. S., prior to the effective date of Ch. 73-8, Laws of Florida (October 1, 1973), may be made self-proved at "any subsequent date," but an acknowledgment made for the purpose of proving its execution before the effective date of the act is without force or effect and proof of the execution thereof must be made in the manner required by §732.24, F. S., unless made self-proved subsequent to October 1, 1973, in the manner prescribed by §731.071, F. S.

Chapter 73-8, Laws of Florida [§731.071, F. S.], adds to the Florida Probate Law a new procedure for proving execution of wills which have been executed pursuant to the requirements of §731.07(1) and (2), F. S. Use of the new procedure makes a will self-proved and renders unnecessary the proof of will required by §732.24, F. S., as amended by Ch. 73-334, Laws of Florida.

It is clear from the language of Ch. 73-8, *supra*, that a will may be made self-proved in the manner provided by that act "at the time of its execution or at any subsequent date." (Emphasis supplied.) Accordingly, a will executed in conformity with §731.07(1) and (2), *supra*, prior to the effective date of Ch. 73-8 may be made self-proved "at any subsequent date" following the effective date of the new act (October 1, 1973).

It is an elementary rule of construction that "a statute is not to be given a retroactive effect, unless its terms show clearly that such an effect was intended. . . ." *City of Miami v. Board of Public Instruction, Fla.*, 72 So.2d 901 (Fla. 1954), at 904, and authorities there cited. *Accord*: Attorney General Opinion 057-279, interpreting another provision of the Probate Code, §734.041, F. S. An examination of the language of Ch. 73-8, *supra*, reveals nothing to indicate that the legislature intended to authorize the use of the self-proof procedure prior to the effective date of the act. I am, therefore, of the view that where a will has been *acknowledged* for the purpose of proving its execution or the attestation of a witness thereto before October 1, 1973, the effective date of Ch. 73-8, such acknowledgment is without force or effect and proof of execution of such a will must be made in the manner provided by §732.24, *supra*—or, of course, it may be made self-proved subsequent to October 1, 1973, in the manner prescribed in, and as authorized by, Ch. 73-8.

073-480—December 21, 1973

PUBLIC EMPLOYEES

**RIGHTS OF PUBLIC EMPLOYEE WHOSE JOB
HAS BEEN ABOLISHED**

To: *Elvin L. Martinez, Cochairman, Hillsborough County Legislative Delegation,
Tampa*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

What are the rights of former employees of the city court of Tampa, in light of Ch. 72-210, Laws of Florida, and what are the obligations of the county court, the state, or the city to such former employees regarding job protection?