

073-58—March 13, 1973

## COUNTIES

### POWER TO GRANT FRANCHISE FOR GARBAGE COLLECTION

To: *Jim Glisson, Senator, 11th District, Tavares*

Prepared by: *Henry George White, Assistant Attorney General*

#### QUESTIONS:

1. May a nonchartered county grant an exclusive franchise authorizing a private utility corporation to collect garbage in a portion of the county?
2. Is there any limitation on the number of years for which a nonchartered county may grant such a franchise?

#### SUMMARY:

Article VIII, §1(f), State Const., and §125.01, F. S., give nonchartered counties a broad range of home rule powers which may be exercised unless otherwise limited by general or special law. These home rule powers include the authority to grant exclusive franchises for the collection of garbage and the authority to determine the number of years for which such franchises will be granted.

In answering your questions, it is assumed that the agreement between the county and the private utility corporation will actually constitute a "franchise" rather than a "contract" or a "concession." See AGO 072-317 and the authorities cited therein for a discussion of some of the differences between a franchise and a contract or concession. Based on the foregoing assumption, your first question is answered in the affirmative and your second in the negative.

Article VIII, §1(f), State Const. reads in part as follows: "Counties not operating under county charters shall have such power of self government as is provided by general or special law."

The statutory provisions concerning the powers of counties are contained in Ch. 125, F. S. Section 125.01 provides that the governing body of a county shall have the power to conduct county government and enumerates a wide range of powers which a county is free to exercise for the good of its citizens unless inconsistent with general or special law. The authority to grant exclusive franchises for the collection of garbage is not specifically mentioned in the statute. However, §125.01(3)(a) states that the powers enumerated in §125.01(1) should be construed to incorporate necessarily implied powers including, among others, the authority to enter into contractual obligations. Moreover, §125.01(3)(b) dictates that §125.01 be liberally construed in order to achieve the Constitution's objective of securing for counties a broad exercise of home rule powers.

In AGO 071-54 it was held that under the terms of Art. VIII, §1(f), State Const., and the provisions of Ch. 125, F. S., a nonchartered county may grant an exclusive franchise for the collection of garbage unless a general or special law expressly, or by necessary implication, prohibits it from doing so. I am aware of no general law which prohibits a nonchartered county from granting an exclusive franchise for garbage collection service. Each nonchartered county should examine the special laws pertaining to it to assure that such franchises are not prohibited. In the absence of any general or special law to the contrary, I have the view that the home rule powers contained in Art. VIII, §1, State Const., and §125.01 permit a nonchartered county to grant an exclusive franchise for the collection of garbage.

In reference to your second question, it must be noted that AGO 071-54, *supra*, did not discuss the allowable duration of exclusive franchises. Nevertheless, it appears that under the constitutional and statutory home rule powers discussed

above, the term of years for which an exclusive franchise may be granted is a discretionary matter entrusted to the governing body of a nonchartered county unless this discretion is limited by general or special law. While the authority of municipalities to grant certain franchises is limited to a period not to exceed thirty years (*see* §§167.06 and 180.14, F. S.), I am aware of no general law which likewise limits the discretion of nonchartered counties. Because garbage collection and disposal is a proprietary function, *Smoak v. City of Tampa*, 167 So. 528 (Fla. 1936), no issue is presented as to the right of a county's governing body to bind its successors to a long-term franchise. *Accord*: Attorney General Opinion 057-76. *See also*, *Daly v. Stokell*, 63 So.2d 644 (Fla. 1953). Thus, assuming the absence of a special law which restricts the term of years for which a nonchartered county may grant an exclusive franchise, it is my opinion that this is a matter which lies within the discretion of the governing body of such a county. And it is a fundamental rule that when a public body exercises a discretionary power delegated to it by law, its actions are presumed to be correct. *City of Miami Beach v. Cummings*, 266 So.2d 122 (3 D.C.A. Fla., 1972).

073-59—March 14, 1973

### ARREST

#### POWERS OF MUNICIPAL POLICE OFFICER WHEN OUTSIDE HIS JURISDICTION

*To: Robert W. Johnston, Chief of Police, Ft. Lauderdale*

*Prepared by: Reeves Bowen, Assistant Attorney General*

#### QUESTIONS:

1. When a municipal police officer has pursued a violator to a point outside of his municipality but within the same county pursuant to §901.25, F. S., may he there arrest another person who at that point violates an ordinance of the officer's municipality as an incident to the arrest of the pursued violator?

2. When a municipal police officer acting under the authorization of §901.25, F. S., pursues a violator from within such officer's municipality to a point outside of such municipality but within the same county, may he arrest third persons for committing felonies or misdemeanors in his presence but outside of his municipality, and, if he can do so, are such arrests to be made in his official capacity as a police officer or as a private citizen?

3. Would the legal principles enunciated in the answer to question 2 apply to a municipal police officer who goes outside of his municipality to some other place in the same county to serve a municipal court arrest warrant pursuant to §168.03, F. S.?

#### SUMMARY:

Unless specially provided by statute, a municipal ordinance has no force outside of the municipality that enacted it. There does not appear to be any general statute making such provision. Therefore, in the absence of a special statute making such provision, a municipal police officer engaged in making a fresh pursuit arrest outside of his municipality has no authority to give extraterritorial force to a municipal ordinance by arresting another person for violating such municipal ordinance outside of his municipality.

When a municipal police officer is on a fresh pursuit arrest mission outside of his municipality but in the same county, he may, in his official