

Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.

This is a constitutional provision and, of course, takes precedence over a general law. In an addendum to AGO 071-42, dated March 24, 1971, I held that the charters of the several municipalities situated in Dade County could only be modified in the manner set forth in the Dade County Home Rule Charter. Since the ordinance-passing procedures for Miami Shores Village (a municipality within Dade County) are contained in its charter, any changes in this procedure would be, in essence, a charter amendment. Under the State Constitution, the legislature cannot make laws effecting charter amendments in Dade County's municipalities, and, therefore, the provisions of Ch. 73-129, *supra*, relating to the procedures for passing ordinances are not applicable to Miami Shores Village—nor to any municipality within Dade County.

073-441—November 28, 1973

MUNICIPAL HOME RULE POWERS ACT

AMENDMENT OF CHARTER'S FRANCHISE—GRANTING LIMITATIONS

To: Marie Alice Crano, City Attorney, Frostproof

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Is it necessary, under Ch. 73-129, Laws of Florida, to hold a referendum of the electorate in order to change a provision of the city charter relating to limitations on the period for which a public utility franchise may be granted?

SUMMARY:

Under Ch. 73-129, Laws of Florida, it is not necessary to hold a referendum of the electorate in order to change a provision of the city charter relating to limitations on the period for which a public utility franchise may be granted.

The City of Frostproof has a charter provision prohibiting the granting of any franchise to any corporation for public utility purposes for a period longer than ten years, except when authorized by a referendum. Article XI, §163, Municipal Code; Ch. 8955, Art. X, §1, 1921, Laws of Florida.

The purpose of the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, is to secure for municipalities the broad exercise of home rule powers.

It is the further intent of the legislature to extend to municipalities the exercise of powers for municipal government, corporate or proprietary purposes not expressly prohibited by the constitution, general law or county charter, or by special law, and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. [Section 166.021(4), F. S.]

Franchises are not within the "expressly prohibited" category. Section 166.021(4), F. S., then lists several areas of a municipality charter which cannot be changed without a referendum of the electorate. None of these items concerns limitations on franchises. All other limitations on municipal power contained in a

charter are "nullified and repealed." If a time limitation on the granting of a franchise is considered a limitation on the power of the municipality, then such a provision is nullified and repealed under §166.021(4), and the governing body of the city may enact a new ordinance pertaining to the granting of franchises. If the franchise provision is not considered a limitation on the city's power, then under §166.021(5) it becomes an ordinance of the municipality "subject to modification or repeal as other ordinances." Under either section of the law, no referendum is necessary to enact such an ordinance.

073-442—November 28, 1973

COUNTY OFFICERS

COMPENSATION; DUAL OFFICEHOLDING

To: John C. Coniglio, Attorney for Sumter County Tax Assessor, Wildwood

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. May the clerk of the circuit court, the tax assessor, or the tax collector receive additional personal compensation in addition to the amount as set forth in Ch. 145, F. S., from the county for additional duties performed by that official?
2. May the clerk of the circuit court, the tax assessor, or the tax collector hold an additional appointed position created by the board of county commissioners, such as building inspector, and receive additional personal salaries or compensation for this service?

SUMMARY:

Under Ch. 73-173, Laws of Florida [Ch. 145, F. S.], a circuit court clerk, tax assessor, or tax collector may not be personally compensated, over and above his statutory salary, for the performance of official duties which he is required by law to perform, nor may he retain as personal compensation fees and commissions received by him for performing a public function in his official capacity. Pending legislative or judicial clarification, he should not be personally compensated for performing the duties of a position in the county government, official in nature, at the request of the board of county commissioners.

AS TO QUESTION 1:

Section 10 of Ch. 73-173, Laws of Florida [§145.17, F. S.], which was added as an amendment to the Uniform County Officials' Salary Act, Ch. 145, F. S., prohibits the county officials therein designated from accepting any additional personal compensation "for official duties"; and §13, *id.*, repeals all general or special laws to the extent that they require, authorize, or permit any such county official to receive other compensation "for the execution of his powers, functions and official duties." In AGO 073-360 I said that, in adopting these sections as a part of Ch. 145,

... the Legislature has expressed its clear intent that the county officials therein designated may not retain as *personal* income any fees or commissions or other compensation received by them for carrying out their official duties.

It was noted in AGO 073-360, *supra*, that a circuit court clerk could be compensated by the board of county commissioners for a special service which he performs personally and in his individual capacity without using any of the