

The special act in question, Ch. 65-1443, Laws of Florida, did not provide a "permissive" or "alternative" method for the city's police and fire department pension plan. It specifically created the pension fund for employees of the police and fire departments of the city and established a system of retirement, disability, and death benefits for these employees. This being so, under the rule referred to above, the City of Daytona Beach may not, by home rule ordinance, repeal or amend the legislative directive in this respect.

The question of whether a municipality may effect an amendment or repeal of a special act by an amendment to its municipal charter is not so easily resolved. Under Art. VIII, §2, State Const., municipalities may be established or abolished "and their charters amended pursuant to general or special law." And §166.17, F.S. 1971, authorizes the governing body of a municipality to initiate proposed amendments to its charter (except that part describing the boundaries of the city) by a three-fifths vote, subject to referendum approval by a majority of those voting in the election. It was said in *City of St. Petersburg v. English*, 45 So. 483 (Fla. 1907), that a city's "charter" consists of the creative act "and all laws in force relating to the corporation, whether in defining its powers or regulating their mode of exercise." And in AGO 071-177 I noted that, when an amendment to a municipal charter is incorporated therein, it will have the same force and effect as if originally incorporated therein, that is, the force and effect of law. When applied in the situation here present, this would mean that the amended charter act, being later in point of time than the 1965 special act, would supersede the earlier act under the rule that, if there is a positive repugnance between two acts, the later act must control. *Tamiami Trail Tours v. Lee*, 194 So. 305 (Fla. 1940).

Here, §80 of the city's charter act, Ch. 67-1274, Laws of Florida, expressly provides that the city's police and fire department employee pension fund shall be organized and operated under the provisions of Ch. 65-1443, *supra*. I understand that it is desired to amend the 1965 act so as to extend to old members of the pension fund plan the same right to "delayed retirement" as is presently held by new members of the plan under §6.3 of Ch. 65-1443, *supra*.

Such an amendment could certainly be made by a special legislative act amending the city's charter act; and I am inclined to the view that it could be done also by the joint action of the municipality's governing body and the electorate of the city in adopting an amendment to the city's charter act, as authorized by §166.17, *supra*.

073-50—March 9, 1973

CHIROPRACTIC

ACUPUNCTURE NOT WITHIN SCOPE OF PRACTICE

To: Dr. Paul Vogel, Administrative Coordinator, Florida State Board of Chiropractic Examiners, Miami

Prepared by: S. Strom Maxwell, Assistant Attorney General

QUESTION:

Does the practice of acupuncture fall within the scope of practice of chiropractic as outlined in Ch. 460, F.S.?

SUMMARY:

Pending legislative clarification or a judicial determination to the contrary, the practice of acupuncture is not within the scope of the practice of chiropractic as prescribed by Ch. 460, F. S., and a chiropractic physician is not authorized to practice acupuncture for anesthetic purposes in examining, analyzing, and diagnosing the

human living body and its diseases as outlined in §460.11(2)(a), F. S., or in adjusting, manipulating, or treating the human body as outlined in §460.11(2)(b) and (4), F. S., or in the practice of chiropractic as defined in §460.11(1), F. S.

In order to answer your question, the term "acupuncture" must first be defined. Acupuncture is still virtually unknown in this country and is not defined in any of the standard medical dictionaries or books of reference. However, the following composite is a general definition of acupuncture:

Acupuncture involves the insertion of a sharp needle into subcutaneous tissues of certain areas of the body in such a way as to produce an anesthesia or diminution of pain sensation of other areas removed from the site of the subcutaneous puncture by means of some type of static electricity or direct electrical impulse.

In other words, needles are inserted at key nerve points in the body and then vibrated to induce analgesia-insensibility to pain. Additionally, according to *The Case for Unorthodox Medicine*, by Inglis, Berkley Medallion Book 1969, p. 113:

... acupuncture is based on the belief that the body contains certain channels through which energy flows. Through these meridians (not to be confused with nerve channels) the life force normally functions uninterruptedly. But if any part of the body is suffering from some disorder, the flow in the meridian concerned will diminish, disturbing the body's equilibrium and causing illness—not necessarily at the site of the originally disturbed organ.

On the meridians, however, there are certain surface points where if fine needles are inserted—not deeply but just far enough into the flesh not to fall out—and left there for some minutes, they act like spurs on a horse's flank. The nerve fibers of the autonomic nervous system are stimulated, the impulse goes to the lower centers of the brain and then back again to the diseased organ which is restored to its normal balance.

According to *U.S. News and World Report*, March 13, 1972:

Acupuncture—a centuries-old Chinese medical practice that relieves aches and pains—has recently become widely used in surgery in other parts of the world. The Peking Union Medical College and other Chinese Medical Universities claim that acupuncture in addition to the above purposes of anesthesiology may be used to cure various diseases or ailments, *i.e.*, deafness, lung diseases, cancer and arteriosclerosis.

Although not defined in standard medical works, as hereinabove noted, *The Random House Dictionary of the English Language*, Unabridged Edition, defines acupuncture as being a Chinese medical practice that attempts to cure illness by puncturing specified areas of the skin with needles, and as the puncturing of a tissue with a needle for the purpose of drawing off fluids or relieving pain.

Having attempted to define the term as best I can from sources available to me, I will now turn to your question.

First of all, the practice of chiropractic is a privilege and not a right. The Florida Legislature in §460.001, F. S., has succinctly set out the legislative intent and purpose regarding the practice of chiropractic in Florida:

(1) It is hereby declared that the practice of chiropractic is a privilege which is subordinate to the authority of the legislature to enact reasonable laws to regulate the practice thereof to protect the public health. The practice of chiropractic is declared to be a matter in

the interest of public health, safety and welfare; that to merit confidence of the public and to protect the public from being misled by incompetent, unscrupulous practitioners, the legislature has enacted laws that will insure that only such chiropractic physicians who are qualified shall be granted the privilege to practice.

and enacted Ch. 460, *supra*, as an exercise of the police powers of the state in the interest of the public health, safety, and welfare of the people. Section 460.001(4), F. S.

Section 460.11(2)(a) and (b), *supra*, provides:

(2) Any chiropractic physician who has complied with the provisions of this chapter may:

(a) Examine, analyze and diagnose the human living body and its diseases by the use of any physical, chemical, electrical, or thermal method, and use the x-ray for diagnosing, and may use any other general method of examination for diagnosis and analysis taught in any school of chiropractic recognized and approved by the Florida state board of chiropractic examiners.

(b) Chiropractic physicians may adjust, manipulate, or treat the human body by manual, mechanical, electrical or natural methods, or by the use of physical means, physiotherapy (including light, heat, water or exercise) or by the oral administration of foods and food concentrates, food extracts, and may apply first aid and hygiene, *but chiropractic physicians are expressly prohibited from prescribing or administering to any person any medicine or drug or from performing any surgery except as hereinabove stated or from practicing obstetrics.* (Emphasis supplied.)

Acupuncture, therefore, is not specifically authorized in the above sections either as a method of treatment or form of anesthesiology. Acupuncture, as the practice of chiropractic, cannot be authorized by implication or innuendo. Chiropractic is a profession regulated by law for the protection of the general public. The statute defines chiropractic for all purposes to be a

. . . non-combative principle and practice consisting of the science of the adjustment, manipulation and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated or treated thus restoring the normal flow of nerve impulse which produce normal function and consequent health. [Section 460.11(1), F. S.]

Chiropractic and the practice of chiropractic have been judicially defined in at least three instances by the highest tribunals in the states in which the opinions have been rendered as follows:

"Chiropractic" is a system of adjustment, consisting of palpation of the spinal column to ascertain vertebral subluxations, followed by the adjustment of them by hand in order to relieve pressures upon nerves at the intervertebral foramina, so that nerve force may flow freely from the brain to the rest of the body; and the practice of chiropractic constitutes the practice of medicine. [State Board of Medical Examiners v. McHenry, 69 So.2d 592 (La. App. 1953) at 596.]

The practice of "chiropractic" is a method of detecting and correcting by manual or mechanical means structural imbalance, distortion or subluxations in the human body to remove nerve

interferences where such is the result of or related to distortion, misalignment or subluxation of or in the vertebral column. [Chiropractic Association of New York, Inc. v. Hilleboe, 228 N.Y.S.2d 358 (App. Div. 1962) at 360.]

Chiropractic is a system or the practice of adjusting the joints, especially of the spine, by hand for the curing of disease. The term itself is one of art, which makes use of "Chiro," a Greek combining form meaning, "hand." [Jacobsen v. Board of Chiropractic Examiners, 337 P.2d 233 (3 D.C.A. Cal. 1959)].

A chiropractic physician is not authorized by statute to administer drugs or medicine to alleviate pain. See §460.11(2)(a) and (b), *supra*. Additionally, the chiropractor may not perform surgery nor practice obstetrics. While it is true that the chiropractor may use any physical, chemical, electrical, or thermal method and x-ray to examine, analyze, and diagnose the human living body, these are external means used in the practice as adjuncts and preparatory to adjustment or manipulation of the body structure. Acupuncture is obviously an internal method or procedure involving the puncturing of tissue in an effort to cure illness or to relieve pain. It would not appear to be the adjustment, manipulation, or treatment of vertebral subluxations or malpositioned articulations and structures, or the adjusting of the physical representative of the primary cause of disease, as defined and referred to in §460.11(1) and (4), F. S.

I am, therefore, unable to say that acupuncture is an electrical or mechanical means to diagnose or treat the human body within the meaning of §460.11, *supra*. And as persuasively stated in *State v. Grayson*, 92 N.W.2d 272 (Wis. 1958) at 277:

... use of diagnostic instruments as taught in chiropractic colleges and generally used in chiropractic practice, as well as purely relaxing adjuncts such as heat lamps or hot towels, used preparatory to adjustment, are permissible in practice of "chiropractic," but that use of instruments or machines, constituting specific therapies in themselves ... are considered outside the scope of chiropractic practice ...

The statutes are to be construed strictly in the interest of the general health, safety, and welfare of the people of Florida. Since the term acupuncture is practically unknown in this country or is at least "ill defined," and is not within the statutory definition of chiropractic (§460.11(1), F. S.), the chiropractic physician is not expressly authorized by law to utilize this method or procedure in examining or diagnosing or treating the human living body.

Accordingly, unless and until your question is legislatively or judicially resolved to the contrary, I am of the opinion that the practice of acupuncture is not within the scope of the practice of chiropractic as prescribed by Ch. 460, F. S., and that a chiropractic physician is not authorized to practice acupuncture for anesthetic purposes in examining, analyzing, and diagnosing the human living body and its diseases as outlined in §460.11(2)(a), *supra*, or adjusting, manipulating, or treating the human body as provided for in §460.11(2)(b) and (4), *supra*. A chiropractic physician is also prohibited by law from performing any surgery.

Since the question of whether the practice of acupuncture in an attempt to cure illness or disease or to relieve pain properly falls within the prescribed scope of practice of the medical, osteopathic, or chiropractic professions is one for determination by the respective licensure boards, I would recommend that the Board of Medical Examiners, Board of Osteopathic Medical Examiners, and the Board of Chiropractic Examiners form a commission, if possible, for further discussion to define terms more accurately and precisely and to determine

whether acupuncture is an acceptable means of anesthesiology or treatment of human diseases, and, if found to be, whether it falls within the authorized scope of practice of some or all of the respective schools or systems of the healing arts. Each board should, following a discussion and clarification of terms, establish by rule or regulation whether acupuncture may or may not be utilized by its practitioners.

073-51—March 12, 1973

PUBLIC RECORDS

PERSONNEL FILES OF CIVIL SERVICE EMPLOYEES

To: *Henry B. Sayler, Senator, 21st District, St. Petersburg*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General*

QUESTION:

May the personnel files of civil service employees (including employment applications, confidential inquiries made of employers, references, etc.) be maintained under two separate headings—the first to include general qualifications and employment histories which would be open to the public, and the second to contain investigative reports and similar data which would not be available for general inspection as an exception to §119.01, F. S.?

SUMMARY:

The personnel files of civil service employees (including employment applications, confidential inquiries made of employers, references, etc.) may not be maintained under two separate headings—the first to include general qualifications and employment histories which would be open to the public, and the second to contain investigative reports and similar data which would not be available for general inspection.

To the extent that any part of AGO 050-510 is inconsistent with this opinion, said AGO 050-510 is hereby superseded.

Your question is answered in the negative.

Section 119.01, F. S., provides that all state, county, and municipal records shall at all times be open for a personal inspection by any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.

Reference was made in your letter to AGO 050-510, Oct. 31, 1950, Biennial Report of The Attorney General, 1949-1950, p. 165, which stated that a dual filing system on merit system employees could be maintained and that the files containing investigative reports and similar data would not have to be made available for general inspection as an exception to §119.01, *supra*. However, since that opinion was rendered, not only has the career service commission replaced the merit system, but the legislature enacted Ch. 67-125, Laws of Florida, which amended Ch. 119, F. S., by, among other things, adding §119.011.

Section 119.011(1), *supra*, defines public records to mean all documents, papers, letters, maps, books, tapes, photographs, films and sound recordings or other material, regardless of physical forms or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. "Agency" is defined by §119.011(2) to mean any state, county, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

In AGO 071-243 it was held that reports made by engineers in connection with the collapse of the roof of a school building and received by a school board as part of