

073-474—December 19, 1973

MUNICIPAL HOME RULE POWERS ACT

PERMISSIBLE EFFECTIVE DATE OF MUNICIPAL ORDINANCES

To: Charles K. Allan, City Attorney, Naples

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

May a municipality specify an effective date on ordinances and resolutions which would be less than ten days?

SUMMARY:

Under Ch. 73-129, Laws of Florida, a municipality may specify an effective date on ordinances which would be less than ten days.

Section 166.041, F. S. [the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida], sets up procedures for the adoption of ordinances and resolutions. This procedure is meant to be a "uniform method for adoption and enactment of municipal ordinances and resolutions and shall be taken as cumulative of other methods now provided by law. . . ." Section 166.041(6). Included in the new law is the provision that "all ordinances or resolutions passed by the governing body shall become effective ten days after passage or as otherwise provided therein." Section 166.041(4). Therefore, it follows that a municipality may specify that an ordinance will become effective on any date desired, but if no date is set, then the ordinance will take effect ten days after passage.

You may wish to note that a municipality can have requirements more stringent than provided in §166.041, *supra*, but may not reduce or lessen such requirements. Section 166.041(6).

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MUNICIPAL HOME RULE POWERS ACT

**AMENDMENT OF ORDINANCE PROVISION FORMERLY CONTAINED
IN CITY CHARTER TO ALLOW REMOVAL OF CITY
OFFICIALS FROM OFFICE**

To: David T. Price, Lauderdale City Attorney, Fort Lauderdale

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

May the mayor of the City of Lauderdale make appointments of new officers even though the present officers have not resigned, been removed, or otherwise vacated their offices?

SUMMARY:

The Charter of the City of Lauderdale provides that the mayor cannot suspend, and the city council cannot remove, any appointed officer except for cause as specified in the charter. Under Ch. 73-129, Laws of Florida, such charter provision is either repealed or has become an ordinance subject to amendment or repeal as other ordinances. Therefore, the city council may enact an ordinance amending or repealing the charter provision. Until such time as the council enacts an ordinance changing the charter provision, existing ordinances and charter provisions govern.

Under the Charter of the City of Lauderhill, §13, Ch. 59-1487, Laws of Florida, the mayor, subject to the approval of the city council, has the power to appoint city officers. The only provision for the removal of such officers is found in §15:

It shall be [the mayor's] duty to suspend any appointed officer except Councilmen, at any time for gross neglect or dereliction of duty

The city council may then remove the officer if the cause for removal is deemed sufficient.

The city also has an ordinance, No. 201(7)(a) Code of Ordinances, which states that:

The Police Chief, Fire Chief, the Director of Planning and Zoning, the City Clerk and other City Officials and Department Heads who the appointment is provided for by the Charter shall be appointed in accordance with the terms of the Charter. The term of the aforesaid City Officials shall run from the time of appointment until such time the Officials shall resign, reach retirement age or be removed from office in accordance with the terms of the Charter. Nothing contained herein shall be construed to provide for the expiration of the term of office of the aforesaid Officials upon the expiration of the term of the Mayor appointing the Official or the term of the Council Members approving such appointment.

Therefore, under the charter provision, the mayor cannot suspend and the city council cannot remove any officer except for cause as prescribed in the charter. The mayor may, of course, make appointments to the offices (subject to approval by the city council), but not until there is a vacancy in the office.

However, under the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, any special law or municipal charter relating to the power and jurisdiction of a municipality or limiting its power, with certain exceptions not applicable in this case, either becomes an ordinance of the municipality subject to repeal or amendment as are other ordinances, §166.021(5), F. S., or is repealed and nullified, §166.021(4). Therefore, it would appear that the city council could pass an ordinance changing the provisions of §§13 or 15 of the city charter. Section 7(a) of Ordinance No. 201 may also be changed. Until the council does enact an ordinance providing otherwise, §15 of the charter and §7(a) of Ordinance No. 201 continue to control. You may wish to note the uniform ordinance-passing procedures found in §166.041, F. S.

073-476—December 20, 1973

CIRCUIT COURT CLERKS

DUTIES TO RECORD CERTAIN INSTRUMENTS—PAYMENT OF FEES

To: Charles Tom Henderson, Counsel, Florida Association of Court Clerks, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is a circuit court clerk required to refuse to record a deed until the information form or twenty-five dollar fee in lieu thereof is filed with him, as provided by §195.027, F. S. [Ch. 73-172, Laws of Florida]?