

members, nor can a public officer make a contract, affecting the public, with a firm or corporation of which he is an officer.

Decisions illustrative of this rule are *City of Miami v. Benson*, 63 So.2d 916 (Fla. 1953) (contract by the city to sell bonds to its agent, advisor, and employee); *Watson v. City of New Smyrna Beach*, 85 So.2d 548 (Fla. 1956) (construction contract between city and the construction-firm partner of a city commissioner); and *City of Leesburg v. Ware*, 153 So. 87 (Fla. 1934) (purchase of bonds by city bond trustees through secretary from bank of which secretary was an officer). The fact that the transaction is open and aboveboard and that there is no suggestion of bad faith, fraud, or corruption is irrelevant. As noted in *City of Miami v. Benson*, 63 So.2d at 919,

The question here is *not* whether the contracts in question were entered into in bad faith, or corruptly, or for the purpose of perpetrating a fraud upon the taxpayers, but rather—are the contracts against public policy and, therefore, void?

As noted in AGO 071-281, §112.314 contains no exceptions to its prohibitions (such as abstention from voting) as does §839.091, F. S., in counties of less than 100,000 population. The prohibition of §112.314(1) is absolute. Thus, even though the particular circumstances here would not appear to give the official any advantage over other purchasers, it must be concluded that it is a prohibited transaction under §112.314(1) and as a matter of public policy.

Accordingly, your question is answered in the negative.

073-440—November 28, 1973

MUNICIPAL HOME RULE POWERS ACT

APPLICABILITY TO DADE COUNTY MUNICIPALITIES

To: Thomas H. Anderson, Miami Shores Village Attorney, Miami

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Is Miami Shores Village bound by the provisions of §166.041(6), F. S., as created by Ch. 73-129, Laws of Florida?

SUMMARY:

Since there is a constitutional provision prohibiting the legislature from amending or repealing the charter of any municipality in Dade County, no such municipality is bound by the provisions of §166.041, F. S., as created by Ch. 73-129, Laws of Florida.

Section 166.041, F. S., as created by Ch. 73-129, Laws of Florida, provides a uniform procedure for the adoption of municipal ordinances and resolutions.

Article VIII, §11(1)(g), State Const. 1885, incorporated into Art. VIII, §6(e) State Const. 1968, contains a provision to the effect that:

(1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:

(g) Shall provide a method by which each municipal corporation in

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