

Law Enforcement -- Interlocal Agreements

Number: AGO 2013-24

Date: October 09, 2013

Subject:
Law Enforcement -- Interlocal Agreements

Mr. Keith M. Poliakoff
Town Attorney
Town of Southwest Ranches
200 East Las Olas Boulevard
Suite 1700
Fort Lauderdale, Florida 33301

RE: LAW ENFORCEMENT – MUNICIPALITIES – INTERLOCAL AGREEMENTS – transfer of law enforcement powers to other municipality. s. 166.0495, Fla. Stat.

Dear Mr. Poliakoff:

On behalf of the Town of Southwest Ranches, you ask the following questions:

1. May a municipality enter into an interlocal agreement, pursuant to section 163.01, Florida Statutes, with a neighboring municipality within the same county for the provision of law enforcement services?[1]
2. Does section 166.0495, Florida Statutes, obviate the need for dual referenda when one municipality transfers its law enforcement powers to another municipality?

In sum:

Section 166.0495, Florida Statutes, provides the general law authorization for extra-territorial exercise of police powers enabling a municipality to enter into an interlocal agreement to obtain law enforcement services from an adjoining municipality within the same county, without requiring dual referenda for approval.

Section 2(c), Article VIII, Florida Constitution, provides, that the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law." In response to a number of previously issued Attorney General Opinions concluding that municipalities were not authorized to grant extra-territorial law enforcement powers to their officers, absent a grant by special or general law from the Legislature, section 166.0495, Florida Statutes, was enacted. Section 166.0495, Florida Statutes, specifically addresses the use of interlocal agreements for a municipality to provide law enforcement services to another municipality:

"A municipality may enter into an interlocal agreement pursuant to s. 163.01[2] with an adjoining municipality or municipalities within the same county to provide law enforcement services within

the territorial boundaries of the other adjoining municipality or municipalities. Any such agreement shall specify the duration of the agreement and shall comply with s. 112.0515, if applicable. The authority granted a municipality under this section is in addition to and not in limitation of any other authority granted a municipality to enter into agreements for law enforcement services or to conduct law enforcement activities outside the territorial boundaries of the municipality."

Passage of section 166.0495, Florida Statutes, therefore, provides the general law authority required by section 2(c), Article VIII, Florida Constitution, for a municipality to exercise its law enforcement powers outside its jurisdictional boundaries through an interlocal agreement with adjoining municipalities within the same county. While there is a general requirement in section 4, Article VIII, Florida Constitution, for dual referenda when a municipality, county, or special district contracts for or transfers a function or power to another governmental entity, the section recognizes that such a transfer or contract may be effected "as otherwise provided by law."

Nothing in the plain language of section 166.0495, Florida Statutes, its legislative history,[3] or section 163.01, Florida Statutes, indicates dual referenda requirement for approval of such an interlocal agreement.

Accordingly, in light of the authority granted in section 166.0495, Florida Statutes, for municipalities to enter into contracts for the provision of law enforcement services, it is my opinion that the Town of Southwest Ranches may enter into an interlocal agreement for the provision of law enforcement services with an adjoining municipality within the same county, as provided in section 166.0495, Florida Statutes, without approval by dual referenda.

Sincerely,

Pam Bondi
Attorney General

PB/tals

[1] This office has also received a request from the Town of Davie for an analysis and resolution of an apparent conflict between Op. Att'y Gen. Fla. 96-78 (1996) and s. 166.0495, Fla. Stat. See Letter from Mr. John C. Rayson, dated July 15, 2013.

[2] Section 163.01, Fla. Stat., the Florida Interlocal Cooperation Act of 1969, authorizes public agencies to enter into interlocal agreements in order to exercise any "power, privilege, or authority which such agencies share in common and which each might exercise separately."

[3] See Final Bill Research & Economic Impact Statement, CS/HB 1075, House of Representatives, as revised by the Committee on Community Affairs, dated October 24, 1997, stating the Legislature's intent:

"This bill provides the general law authorization, required by section 2, Article VIII, State Constitution, for the extra-territorial exercise of police powers by municipalities. The bill creates section 166.0495, F.S., to authorize a municipality to enter into an interlocal agreement,

pursuant to section 163.01, F.S., with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the adjoining municipality or municipalities.

The bill requires that the agreement specify its duration and clarifies that this new authority is an expansion of, rather than a limitation on, a municipality's authority to enter into agreements for law enforcement services or conduct law enforcement services outside its own territorial boundaries. Any transfer of functions between municipalities does not affect the rights of law enforcement officers in any retirement or pension fund."

I would note also that the bill analysis reflects that there would be no fiscal impact by passage of the bill and that the bill "does not require the expenditure of funds by counties or municipalities."