

Municipalities, charter amendment subject to referendum

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Subject:

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Ms. Dolores D. Menendez
Cape Coral City Attorney
Post Office Box 150027
Cape Coral, Florida 33915-0027

RE: MUNICIPALITIES–CHARTERS–REFERENDUM–change in charter provision providing salary of mayor and city council subject to referendum requirement. s. 166.031, Fla. Stat.

Dear Ms. Menendez:

You ask the following question:

May the City Council of the City of Cape Coral amend the city charter by ordinance, and without referendum, to change the amount of salary or compensation paid to the mayor and City Council members?

You state that the charter for the City of Cape Coral was approved by referendum in 1970. The city charter was subsequently amended and readopted in 1993 by referendum. Section 4.08 of the charter currently provides for the compensation and expenses of the mayor and city council:

"(a) The annual salary of the Mayor shall be twenty cents (\$.20) per registered city elector, and the salary of Council members shall be seventeen cents (\$.17) per registered City elector. The number of registered City electors shall be determined November 1st of each year and salaries adjusted thereafter.

(b) The council members and mayor shall receive their actual and necessary expenses incurred in the performance of their duties of office."

The City Council is interested in amending the above provision to change the amount of salary for the mayor and council members, and a question has arisen as to whether such a change must be approved by referendum.

For charters adopted after July 1, 1973, any amendment of those provisions would be subject to the procedures in section 166.031, Florida Statutes, which includes a requirement that a proposed amendment be subject to approval by referendum of the voters.[1] Subsection (1) of section 166.031, Florida Statutes, provides:

"The governing body of a municipality may, by ordinance, or the electors of a municipality may,

by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose."

This office has consistently concluded that charters or charter provisions adopted or readopted subsequent to the adoption of the Municipal Home Rule Powers Act in 1973 must comply with the procedures set forth in section 166.031, Florida Statutes.[2] As noted above, the charter for the City of Cape Coral was readopted in 1993. Thus, the procedure for amending the city charter would be governed by the provisions of section 166.031, which require that an ordinance passed by the governing body of the city amending the charter be approved by referendum of the voters.

In light of the above, I am therefore of the opinion that the City Council of the City of Cape Coral may not amend the city charter by ordinance, and without referendum, to change the amount of salary or compensation paid to the mayor and City Council members.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

[1] *But see* ss. 166.021(4) and 100.3605(2), Fla. Stat., permitting changes in the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates without referendum approval. The change of election dates or qualifying periods for candidates is not at issue in the instant inquiry.

[2] See Ops. Att'y Gen. Fla. 03-52 (2003), 03-36 (2003), 01-43 (2001), and 75-223 (1975). See also Op. Att'y Gen. Fla. 88-30 (1988) (charter amendment provisions in s. 166.031, Fla. Stat., prevail over conflicting provisions in a municipal charter) and Op. Att'y Gen. Fla. 79-80 (1979) (city commission may not unilaterally amend its charter as it is bound by the provisions in s. 166.031, Fla. Stat.). Cf. s. 166.031(3), Fla. Stat., authorizing the amendment of a municipal charter pursuant to s. 166.031, Fla. Stat., notwithstanding any charter provisions to the contrary.