Municipalities, charter amendment

Number: INFORMAL

Date: December 13, 2006

The Honorable Joseph G. Phillips
Vice President, McIntosh Town Council
Post Office Box 137
McIntosh, Florida 32664–137

Dear Mr. Phillips:

You raise several questions regarding the legality of a proposed amendment to the McIntosh Town Charter that would limit the expansion of the town's historic district.

By law, this office is authorized to render opinions only to public officials on questions of law relating to the requesting officer's own duties. This office, however, will not comment upon the validity on a charter or code provision and has in the past declined to comment upon the constitutionality of a proposed charter amendment.[1]

As discussed in this office's Statement Concerning Attorney General Opinions, a copy of which is enclosed, questions relating to the powers and duties of a public board or commission (or other collegial public body) should be requested by a majority of the members of that body. Moreover, such a request should be accompanied by a memorandum of law prepared by the town's attorney.

In an effort to be of some assistance, however, I would generally note the following. Section 166.021, Florida Statutes, seeks to implement the broad home rule powers granted by Article VIII, section 2(b) of the Florida Constitution, by providing that "municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." As stated in subsection (4) of that statute, "[i]t is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter."

Thus municipalities may legislate concurrently in areas that are not expressly preempted by the state provided that a municipality's concurrent legislation does not conflict with state law. As the Florida Supreme Court in Rinzler v. Carson,[2] stated: "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden." Conflict, however, does not exist merely because a local regulation is more stringent than the statute or regulates an area not covered by the statute. Rather, legislative provisions are inconsistent if, in order to comply with one provision, a violation of the other is required.[3]

In Attorney General Opinion 82-101, this office determined whether a municipal charter could be

amended to limit or restrict the exercise of specific corporate, legislative and governmental powers. In that opinion, citizens objected to a city's practice of transferring revenues from water and sewer operations to the city's general fund to be used for general municipal operating purposes. This office concluded that the charter could be amended to prohibit the transfer of any utility revenues to the general fund, thereby limiting the city's power.

Similarly in Attorney General Opinion 90-38, this office stated that a city's charter could be amended to require referendum approval for the issuance of all municipal bonds. While in Attorney General Opinion 86-89, this office concluded that a municipality may not amend its charter to provide that no ad valorem tax on real property or tangible personal property may be levied without referendum approval, since such a charter amendment limits the authority of the municipality's governing body to levy such tax, such a conclusion was based on the language of section 195.207, Florida Statutes, which specifically provides:

"No municipal charter may prohibit or limit the authority of the governing body to levy ad valorem taxes . . . . Any word, sentence, phrase, or provision, of any special act, municipal charter, or other law, that prohibits or limits a municipality from levying ad valorem taxes within the millage limits fixed by s. 9, Art. VII of the State Constitution, . . . is hereby nullified and repealed."

Section 166.031, Florida Statutes, guarantees to electors of a municipality the right to petition the municipality to amend any part or all of the municipal charter with the exception of that part describing the municipality's boundaries. This office in Attorney General Opinion 74-69 has stated that the duties of a city council under section 166.031, Florida Statutes, to place an initiative proposal on the ballot are ministerial only and vests no discretion in the city council. Thus, the council may not look beyond the valid form of an initiative petition in order to determine whether it should be placed on a ballot.

Regarding the interpretation of the Florida election laws, such inquiries should be directed to the Florida Division of Elections, which pursuant to section 106.23, Florida Statutes, is authorized to issue advisory opinions regarding the interpretation of those statutes. It appears from your letter that you have already contacted the division and been advised that the petition committee did not have to register as a political committee.

You may wish to discuss this matter further with the town attorney. Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] *See, e.g.*, Op. Att'y Gen. Fla. 95-32 (1995).

[2] 262 So. 2d 661, 668 (Fla. 1972).

[3] *See City of Kissimmee v. Fla. Retail Federation, Inc.*, 915 So. 2d 205 (Fla. 5th DCA 2005) (generally the fact that local legislation imposes additional requirements on a person or business is not evidence of conflict): *Jordan Chapel Freewill Baptist Church v. Dade County*, 334 So. 2d 661, 664 (Fla. 3rd DCA 1976); *F.Y.I. Adventures v. City of Ocala*, 698 So. 2d 583 (Fla. 5th DCA 1997) (if no issue of preemption, conflict with state statute is given a very strict and limited meaning; they must contradict each other in the sense that both legislative provisions cannot co-exist, *i.e.*, in order to comply with one, a violation of the other is required).