# Municipal election -- align with state general election

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**Subject:**
Municipal election -- align with state general election

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Dear Mr. Bauman and Ms. Kopp:

As the City Attorneys for the City of Destin ("City"), you have requested an opinion regarding substantially the following question:

> Does the City Council of the City of Destin possess the legal authority to move its election day, by ordinance and without referendum, from a date in March of even-numbered years to a date on the first Tuesday following the first Monday in November of even-numbered years to align the election of the City's municipal officers with the state general election?

In sum:

> Pursuant to sections 100.3605(2), 101.75(3), and 166.021(4), Florida Statutes (2019), the Destin City Council is authorized to align the election of the City's municipal officers, by ordinance and without referendum, with the state general election.

Background

Section 3.03 of the Destin City Charter, adopted in 1990, provides that the "regular election of the mayor and city council members shall be held on the day of the State General Election in even-numbered years." In 1992, however, the Legislature passed a special law, chapter 92-270, Laws of Florida, that provided for uniform filing and election dates for seven municipalities located in Okaloosa County, Florida, including the City of Destin.[1] In pertinent part, it

establishes that "[a]ny election relating to a municipal officer" in those municipalities is set for the "second Tuesday in March."[2] Because “municipal ordinances must yield to state statutes,”[3] the City’s irreconcilable charter provision was effectively preempted by the controlling requirement of chapter 92-270 at that time.[4] The City, consistent with chapter 92-270, has since held its municipal elections on the second Tuesday in March. In 2006, the City of Destin adopted Ordinance Number 06-03-CC, codified at Section 9.04 of the City of Destin Code of Ordinances, which provides “Elections for members of the city council and for the office of mayor shall be held on the second Tuesday in March in each even numbered year.”

The City now proposes to align its municipal elections by ordinance to be concurrent with the state general election, and asserts that, pursuant to sections 166.021(4), Florida Statutes, and 100.3605(2), Florida Statutes, it may do so. Counsel for the Okaloosa County Supervisor of Elections has expressed a concern about the potential conflict between these generally applicable statutes and chapter 92-270.[5]

Analysis

In 1995, the Legislature enacted chapter 95-178, Laws of Florida, which created section

100.3605, Florida Statutes, which provides:

> (1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality’s election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.
> (2) The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes.

Thus, absent a conflicting special act, charter or ordinance provision, the Florida Election Code governs, and a municipality may by ordinance change its election date for members of its governing body.

Chapter 95-178 also amended section 166.021(4)—which defines municipal powers—to read in pertinent part:

> [N]othing in this act shall be construed to permit any changes in a special law or municipal charter which affect...the terms of elected officers and the manner of their election *except for 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 approval by referendum of the electors as provided in s. 166.031....

(Emphasis added.)

Then, in section 23 of chapter 2008-95, Laws of Florida, the Legislature amended section 101.75(3), Florida Statutes, which now provides:

> (3) Notwithstanding any provision of local law or municipal charter, the governing body of a municipality may, by ordinance, move the date of any municipal election to a date concurrent with any statewide or countywide election. The dates for qualifying for the election moved by the passage of such ordinance shall be specifically provided for in the ordinance. The term of office for any elected municipal official shall commence as provided by the relevant municipal charter or ordinance.

Thus, this office has opined that a change in election dates permitted by sections 100.3605 and 101.75(3) may be accomplished by ordinance without referendum. Fla. Atty. Gen. Op. 2013-05.

The question raised by the City, and by the counsel for the Okaloosa County Supervisor of Elections, is whether the previously enacted special law, chapter 92-270, precludes the application of these later enacted statutes of general applicability to the municipalities that fall within the scope of the special law.

Where there exists a genuine conflict which cannot be harmonized between a special law and general law, a special law or local law will control over a later general law unless provisions of the general law show an intent to supersede the local law and are not merely inconsistent with it. [6] Such an intent is plain from the language of section 101.75(3), Florida Statutes, adopted in 2008, which permits municipalities to, "by ordinance, move the date of any municipal election to a date concurrent with any statewide or countywide election", "[n]otwithstanding any provision of local law or municipal charter." If chapter 92-270 is a "local law," then the City is authorized, by section 101.75(3), to align the election of the City's municipal officers with the state general election.

A "local law" is one "relating to, or designed to operate only in, a specifically indicated part of the state."[7] Because chapter 92-270 operates only in seven municipalities in Okaloosa County, it is a "local law." Because the City is authorized to move the date of its municipal election notwithstanding this local law, sections 100.3605, 101.75(3) and 166.021(4) all permit the City to do so by ordinance and without referendum.

Accordingly, I am of the opinion that, pursuant to sections 100.3605(2), 101.75(3), and 166.021(4), the Destin City Council is authorized to align the election of the City's municipal officers with the state general election by ordinance and without referendum.

Sincerely,

Ashley Moody

Attorney General

AM/tlm

[1] Section 1 of chapter 92-270 reflects this intent to establish uniform filing and election dates:

> It is the intent of this act to provide for uniform filing and election dates for all municipal elections to elect municipal officers in the Cities of Cinco Bayou, Crestview, Destin, Fort Walton Beach, Laurel Hill, Mary Esther, and Shalimar in Okaloosa County. It is not the intent of this act to determine the length of term of any such municipal office.

[2] Ch. 92-270, Laws of Fla., § 3.

[3] *Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014). "Although municipalities and the state may legislate concurrently in areas that are not expressly preempted by the state, a municipality's concurrent legislation must not conflict with state law." *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993).

[4] "Such 'conflict preemption' comes into play 'where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute.'"*City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928 (Fla. 2013) (quoting 5 McQuillin Mun. Corp. § 15:16 (3d ed. 2012)).

[5] See letter dated May 31, 2019, from Mike Chesser, Attorney for the Supervisor of Elections, to Mr. Paul Lux, Okaloosa County Supervisor of Elections, Re: Time for Holding City of Destin Municipal Elections.

[6] *See City of St. Petersburg v. Siebold*, 48 So. 2d 291, 292-93 (Fla. 1950); *State ex rel. D'Alemberte v. Sanders*, 85 So. 333, 335-36 (Fla. 1920).

[7] *See Venice HMA, LLC v. Sarasota Cty.*, 228 So. 3d 76, 80 (Fla. 2017), *reh'g denied*, No. SC15-2289, 2017 WL 4545964 (Fla. Oct. 12, 2017) (*citing* Fla. Dep't of Bus. *& Prof'l Reg. v. Gulfstream Park Racing Ass'n*, 967 So. 2d 802, 807 (Fla. 2007), *quoting State ex rel. Landis v. Harris*, 120 Fla. 555, 163 So. 237, 240 (1934)).