Municipal Charter amendment, election change

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Date: April 02, 2013

Subject:
Municipal Charter amendment, election change

Mr. Thomas J. Wohl
Swaine & Harris, P.A.
425 South Commerce Avenue
Sebring, Florida 33870-3702

RE: MUNICIPALITIES – CHARTERS – ELECTIONS – TERMS OF OFFICE – QUALIFICATIONS – REFERENDUM – amendment of charter to change election dates and terms of office. ss. 100.3605 and 166.021(4), Fla. Stat.

Dear Mr. Wohl:

As the City Attorney for the City of Arcadia, you have asked for my opinion on substantially the following questions:

1. May the Arcadia City Council, pursuant to sections 100.3605 and 166.021(4), Florida Statutes, amend the Arcadia City Charter by ordinance to move the dates of city elections from the first Tuesday after the third Monday of September of each odd year to the first Tuesday after the first Monday of November of each even year to coincide with federal, state, and county elections, and to extend the terms of the sitting municipal officers resulting from said date change?

2. May the Arcadia City Council, pursuant to section 166.021(4), Florida Statutes, amend the Arcadia City Charter by ordinance to include term limits to the qualifications to be eligible to hold office on the Arcadia City Council?

In sum:

1. The Arcadia City Council, acting pursuant to sections 100.3605 and 166.021(4), Florida Statutes, may amend the Arcadia City Charter by ordinance and without referendum for the purpose of changing municipal election dates and qualifying periods for candidates and for the adjustment of terms of office necessitated by such date changes.

2. The Arcadia City Council, may not, pursuant to section 166.021(4), Florida Statutes, amend the Arcadia City Charter by ordinance to include term limits to the qualifications for eligibility for holding office on the city council as such a change constitutes a change in the municipal charter which would affect "the terms of elected officers[,]" and, as provided in the statute, must be accomplished by approval by referendum pursuant to section 166.031, Florida Statutes.

Question One

According to your letter, the Charter of the City of Arcadia, Florida, was adopted by Chapter 5080, Laws of Florida 1901, and has not been readopted. The Arcadia City Council is considering amending the city charter by ordinance to move the dates of city elections from September of each odd year to November of each even year to coincide with federal, state, and county elections to avoid the expense of a special election and to take advantage of increased voter turnout for those elections. You are aware that this office has issued a number of opinions on sections 100.3605 and 166.021(4), Florida Statutes, advising that such a change is authorized, but are particularly concerned that the proposed change in the Arcadia City Charter would have the effect of extending the terms of sitting municipal officers by more than one year.

Section 166.031, Florida Statutes, sets forth the procedures to be followed in amending municipal charters and requires that a proposed amendment shall be subject to referendum approval by the voters. For charters adopted prior to July 1, 1973, and not subsequently readopted, section 166.021, Florida Statutes, repealed or changed into ordinances many of the limitations contained in such charters.[1] Subsection (4) of the statute, however, provided that nothing in Chapter 166, Florida Statutes, the Municipal Home Rule Powers Act, was to be construed as permitting any changes in a special law or municipal charter that affected certain subject matters set forth therein, including "the terms of elected officers," without referendum approval as provided in section 166.031, Florida Statutes.

Thus, for charters adopted after July 1, 1973, and for charter provisions relating to the terms of elected officers adopted prior to that date and not subsequently readopted, any amendment of those provisions would be subject to the procedures in section 166.031, Florida Statutes. Accordingly, this office concluded in Attorney General Opinion 94-31 that the city commission of the City of Tallahassee could not amend its charter by ordinance to provide for a change in the date on which municipal elections would occur and extend the terms of the sitting officers affected by the change.

However, in response to this opinion, the Florida Legislature, during the 1995 legislative session, introduced legislation to amend section 166.021, Florida Statutes. Section 1 of Chapter 95-178, Laws of Florida, amended section 166.021(4) 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. . . ." (e.s.)

In addition, Chapter 95-178, *supra*, created section 100.3605, Florida Statutes, relating to the conduct of municipal elections.[2] Subsection (2) of section 100.3605 provides:

"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."[3]

Accordingly, this office in Attorney General Opinion 2000-61 concluded that a city may amend its city charter by ordinance to move the dates of city elections from April to November to coincide

with federal, state, and county elections, and to extend the terms of the sitting commissioners to November.[4]

Thus, as discussed above, prior to the 1995 amendment to section 166.021(4), Florida Statutes, and the creation of section 100.3065, Florida Statutes, a change in the charter prescribing the qualifying and election dates for municipal officers, and the resulting change in the term of office for sitting officers, required amendment according to the provisions of section 166.031, Florida Statutes, regardless of when such provisions were adopted. The legislative history of the 1995 legislation amending section 166.021(4) and creating section 100.3065, however, indicates an intent that municipalities are authorized to amend their charters, whether those charters were adopted before or after July 1, 1973, to change the election dates and qualifying periods for candidates, including any changes in terms of office necessitated by such amendment, without a referendum. Nothing in these statutes or in the legislative history related to their enactment places a restriction on this authority based on the increase in term required for the "orderly transition of office" affected by the ordinance.

Accordingly, I am of the opinion that pursuant to sections 166.021(4) and 100.3605, Florida Statutes, the Arcadia City Council may amend its city charter by ordinance to move the dates of city elections from the first Tuesday after the third Monday of September of each odd year to the first Tuesday after the first Monday of November of each even year to coincide with federal, state, and county elections, and to extend the terms of the sitting municipal officers resulting from this date change without voter approval by referendum. The date upon which the city charter was adopted or the length of the extension of terms of officers affected by the ordinance do not suggest a different conclusion.

Question Two

However, while the Arcadia City Council may amend its city charter by ordinance to move the dates of city elections and to extend the terms of the sitting municipal officers resulting from this date change, a charter amendment to impose term limits on the future officers serving on the Arcadia City Council would not come within the statutory exceptions discussed above and would require voter approval by referendum.

In Attorney General Opinion 2001-81, the City of Punta Gorda proposed to change the term of office for city council members from two years to three years. The opinion, construing sections 166.021(4) and 100.3605, Florida Statutes, relied on the exception for "orderly transition of office *resulting from such date changes*" to conclude that a provision relating to sitting officers falls within the exception.[5] (e.s.) That opinion recognized, however, that a proposed charter amendment proposing to lengthen official terms of office and applying to future city council members would not come within the exception recognized in sections 166.021(4) and 100.3605, Florida Statutes, and would require referendum approval.

Likewise, I do not read the exception in sections 166.021(4) and 100.3605, Florida Statutes, to authorize a municipality by ordinance to adopt term limits applying to future city council members without a referendum. Section 166.021(4), Florida Statutes, requires that charter amendments outside the scope of the exception be submitted to voters for approval in accordance with section 166.031, Florida Statutes. In addition, section 166.021(4), Florida Statutes, requires

referendum approval of any pre-1973 charter provisions affecting the terms of elected officers.[6]

Therefore, I am of the opinion that while voter approval by referendum is not required for the City of Arcadia to change the date of municipal elections and extend the terms of sitting officers resulting from this date change, the city must seek referendum approval for an amendment to the Arcadia City Charter to impose term limits on city council members in the future.

Sincerely,

Pam Bondi
Attorney General

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[1] *And see* Op. Att'y Gen. Fla. 03-52 (2003), in which this office concluded that the City of Lauderdale Lakes, with a charter possibly adopted prior to adoption of the Municipal Home Rule Powers Act and not readopted after the effective date of the act, was authorized by ss. 166.012(4) and 100.3605, Fla. Stat., to amend its city charter by ordinance to move the dates of city elections from March to November.

[2] Section 2, Ch. 95-178, Laws of Fla.

[3] *See* House of Representatives Committee on Ethics and Elections Final Bill Analysis & Economic Impact Statement on HB 2209 (passed by the Legislature as Ch. 95-178, Laws of Fla.), dated May 10, 1995, stating:

"HB 2209 authorizes amendment of a municipal charter or special act without referendum for the purpose of changing municipal election dates and qualifying period for candidates and for the adjustment of terms of office necessitated by such date changes. . . ."

And see the title for Ch. 95-178, Laws of Fla., stating in pertinent part:

"An act relating to municipal elections; amending s. 166.021, F.S.; authorizing amendment of a special law or municipal charter for the purpose of changing election dates and qualifying periods for candidates, including any changes in terms of office necessitated thereby, without referendum; creating s. 100.3605, F.S.; . . . providing for change of qualifying periods and election dates by ordinance and for the orderly transition of office; providing an effective date."

[4] *Compare* Op. Att'y Gen. Fla. 01-81 (2001), in which this office was asked whether the exception afforded by ss. 166.021(4) and 100.3065, Fla. Stat., applied to a change in the dates of the qualifying period as well as the terms of office for council members from two years to three years. This office noted that in Op. Att'y Gen. Fla. 00-61 (2000), only the sitting officers' terms were extended due to the change in the date of the election; the term of office of future officers, however, remained the same; however, in Op. Att'y Gen. Fla. 01-81 (2001), the city was interested in changing the term of office for future council members. This office concluded that the change in term of city council members from two years to three years did not fall within the

exception recognized in ss. 166.021(4) and 100.3605; thus, such a change would have to be submitted to the voters for approval.

[5] *See* Op. Att'y Gen. Fla. 01-81 (2001), *and see* Op. Att'y Gen. Fla. 00-61 (2000).

[6] Section 166.021(4), Fla. Stat., provides:

"The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It 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 and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, 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, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed."