Moving the dates of Municipal Elections absent voter approval

Number: AGO2025-01

Commissioner Miguel Angel Gabela
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Dear Commissioner Gabela:

As a Commissioner for the City of Miami who is concerned about whether an upcoming vote of the Commission would be inconsistent with the Florida Constitution, you submitted a letter to my office on June 5, 2025. In your letter and accompanying memorandum, you ask whether the Commission may pass a motion allowing municipal elections to move from odd-numbered to even-numbered years, in the absence of voter approval. You further ask whether the Commission may otherwise change the terms of office for elected officials, also without voter approval. Section 16.01(3), Florida Statutes (2024) provides me with discretion to consider and respond to inquiries from a local government officer, such as yourself, on any question of law relating to the official duties of the requesting officer.

Background

Given the City of Miami's status as a municipality within Miami-Dade County, longstanding, specific provisions of the Florida Constitution apply to your inquiries. Consistent with the Constitution's authority, both Miami-Dade County and the City of Miami enacted charters that govern certain matters and contain procedures.

Florida Constitution

Article VIII, section 6 of the Florida Constitution, which was last revised in 2018, refers to the County's Home Rule Charter. The provisions state, in part, as follows:

> Section 6. Schedule to Article VIII. --
>
> a. This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.
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> * * * * *
>
> (e) CONSOLIDATION AND HOME RULE. Article VIII, Sections 9, 10, 11 and 24, of the Constitution of 1885, as amended, shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that cou[1]nty shall expressly

> adopt a charter or home rule plan pursuant to this article. All provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended.

This current section is unique in its reference to the Constitution of 1885 and in its application to Metropolitan Dade County, in particular. Article VIII, Section 11 of the 1885 Constitution provides, in part, as follows:

> SECTION 11. Dade County, home rule charter.—(1) The *electors* of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:
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> * * * * *
>
> (g) Shall provide a *method* by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors *this method shall be exclusive* and the Legislature *shall have no power* to amend or repeal the charter of any municipal corporation in Dade County.[i]

The Constitution also includes express authority for the County's development of a method for establishing new municipal corporations or other governmental units.[ii] It further includes authority to "pass ordinances" relating to the affairs, property and government of the County, or collection of taxes, consistent with general law.[iii]

The Constitution of 1885 further clarifies that the County's authority, however, does not render it immune to the applicability of general law. Subsection (5) provides that "nothing in this section shall limit or restrict" the Legislature's authority to enact general laws concerning Dade County or any municipality in Dade County.[iv] It also states no provision in the home rule charter of Dade County may conflict with any provision of "this Constitution" nor with any "applicable general laws now applying to Dade County" except as provided in section 11 of the 1885 Constitution.[v] The subsection further reiterates the charter of any *municipality* in Dade County must not conflict with the Constitution "or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County."[vi] Similarly, subsection (6) of section 11 states the Legislature has unrestricted authority to enact general laws that might "relate to" Dade County or municipalities within it as they do any other county or municipality, insofar as such legislation concerns "county or municipal affairs." The subsection states such general laws will supersede any part of the home rule charter, municipality's charter or any ordinance enacted pursuant to the charter that conflicts with section 11.[vii]

The Constitution appears to have anticipated conflict between general law and potential provisions of the charter, as it also includes the following subsection:

(9) It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, *except as expressly provided herein* and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.[viii]

County Home Rule Charter and City of Miami Charter

Consistent with the Constitution's provision of authority to the County regarding establishing and overseeing municipalities within the County, the current Miami-Dade County Home Rule Amendment and Charter directs municipalities within the County to develop a method for considering charter amendments. The County's charter further provides that, except for changes to municipal boundaries, any municipality in the County may adopt, amend or revoke a charter for its own government, provided the municipality adheres to the process set forth in section 6.03.

The process by which a municipality may amend its charter requires, within 120 days of the municipality's adoption of a resolution or receipt of a petition of ten percent of qualified electors of the municipality, drafting by a method determined by municipal ordinance a proposed charter amendment, revocation or abolition and submitting such proposal at a special election between 60 days and 120 days of submission of the draft.[ix] The charter also provides that each municipality has authority to exercise *all* powers regarding its local affairs, as long as such exercise is consistent with the County Home Rule Amendment and Charter.[x]

As for the City of Miami, its municipal charter sets forth specific election dates and lengths of term for the mayor and commissioners. Section 4 of the charter states the city commission maintains the authority to pass ordinances and adopt regulations and exercise all powers conferred upon the city *except* as provided in the charter.[xi] Section 4 goes on to state that the mayor shall be elected at large by the electors of the City and shall hold office for a term of four years.

Section 7 of the City's charter sets forth precise requirements for election of city commissioners and the mayor: it states a general municipal election for the mayor and city commissioners must be held the first Tuesday after the first Monday in November in odd-numbered years, unless the election is a runoff election. It further states, "[a]ll elections held in said city shall be conducted and held according to the provisions of the general election laws of the State of Florida, *except* as otherwise provided for in the Charter."[xii]

The City appears to have remained mindful of the distinction between charter provisions and ordinances, as it chose to include certain provisions in its charter, while making other provisions ordinances. Upon revising its charter, the City integrated former charter amendments as ordinances: section 50 of the City's charter designated certain former charter provisions as

ordinances. Similarly, the City considered and listed certain general laws as having local application in Subpart C of its charter, titled “Related General Laws of Local Application Which Have Assumed Ordinance Status.”

Method of Amending a Charter Provision

Section 11(1)(g) of the Florida Constitution of 1885, as described above, required Dade County to “provide a *method* by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter.” Section 11(1)(g) further provides, “this method shall be exclusive” upon its adoption. Dade County prescribed such a procedure by enacting section 6.03 of its Home Rule Charter, which unequivocally requires a proposed charter amendment, revocation, or abolition to be submitted to the electors of the municipalities.

The Third District Court of Appeal has addressed the defensibility and enforcement of certain procedural sections in the County’s Home Rule Charter. The court has stated the single-subject requirement of section 166.041(2), Florida Statutes (1999), could not apply to amendments to charters of municipalities located in the county, stating, “as the Home Rule Amendment makes the [procedure of section 6.03 of the Home Rule Charter] *exclusive*, no limiting provisions may be engrafted on it.”[xiii] This characterization of the “exclusive” phrase in the Constitution of 1885 applies both to the interpretation of section 6.03 of the county’s Home Rule Charter and any legislation that could undermine it.

The existing precedent of the Third District is consistent with other court opinions that acknowledge the unique nature of Miami-Dade County, due to the provisions in the Constitution of 1885. In *Metro Dade County v. City of Miami*, the Florida Supreme Court indicated the county’s Home Rule Charter allowed the county to conflict with state law, but only to the extent that such conflict is in the areas “specifically authorized” in the charter.[xiv] The Court rested its decision on the language of section 11 of the charter.[xv] Other court opinions similarly confirm the unique character of the county’s home rule authority.[xvi] This exceptional nature is most relevant to and its effects are most meaningful when considering questions of procedures or methods that apply to actions of the electorate.

General Law

General laws such as section 166.021, Florida Statutes (2024), and those in the Florida Election Code, codified at chapters 97-106, address amendments of election dates and terms. To the extent that such general laws contravene only the *method* that Miami-Dade County set forth for municipalities to amend their charters, such general laws must not apply. Permitting a general law to prevail over the narrow, express method that the County considered and expressly set forth for municipalities’ amendments to charters would not only render the provisions of Section 6.03 of the county’s charter meaningless, but it would also disregard the “exclusive” clause in section 11(1)(g) of the 1885 Florida Constitution.

It is well-settled in Florida that in almost every case, general laws will prevail over local governments’ provisions. In *Board of County Commissioners v. Wilson*, 386 So. 2d 556, 561 (Fla. 1980), the Florida Supreme Court held that although Dade County was authorized to create a home rule charter, general laws enacted after the county’s adoption of the charter would apply; as such, “it is the general law [that] supersedes the Home Rule Charter.” Since then, courts have

held that when a conflict exists between the county's charter and a general law of the state, general law prevails.[xvii] In contrast, courts have also recognized that the Legislature lacks power to regulate or control municipalities in Dade County by special or local acts, as they are distinct from general law.[xviii]

This instant opinion does not disrupt such precedent. Here, the question involves the *method* of a municipality amending its charter, rather than the substance of the amendment itself. To the extent that a party might regard section 166.021, Florida Statutes, as providing a means by which a municipality may amend its charter by way of simple adoption of an ordinance, this section conflicts with the Dade County Home Rule Charter. The charter specifies that the electors of municipalities must decide directly, by way of referenda, whether to amend their charters; in contrast, a decision in which the municipality's governing body alone purports to amend unilaterally the municipality's charter simply contradicts the county's charter.[xix] The fact that the result of the charter amendment might achieve a specific objective stated in a general law is of no consequence.

The interpretation of the Home Rule Charter's specific instructions for municipalities within Dade County to amend their charters is also consistent with the rationale of section 166.021. The section states that municipalities must have "governmental, corporate, and proprietary powers" that "enable them to conduct municipal government, perform municipal functions, and render municipal services."[xx] The municipalities in Dade County certainly have such powers in their abilities to amend their charters; in exercising such authority, they must adhere to the instructions in the county's Home Rule Charter. Disregarding such instructions would not only ignore section 6.03 of the Home Rule Charter, but would also contravene the 1885 Constitution, which the people of Florida have preserved and which remains enforceable.

Conclusion

If the City of Miami is to amend its charter, either to move the date of municipal elections or to change the terms of office for elected officials, then the change may only proceed by a vote of the electors, as described in Article VI, sectio 6.03 of the County's Home Rule Charter. The "exclusive" language of the 1885 Constitution in section 11(1)(g) prohibits charter amendments from proceeding by any method other than the one prescribed in the Home Rule Charter. The electorate of the City of Miami, by way of the County's provisions in the County Charter, has a direct role in amending its charter; ignoring this procedure would render meaningless the applicable provisions of the 1885 Florida Constitution.

Sincerely,

James Uthmeier
Attorney General

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[i] Fla. Const. § 11(1) (1885) (emphasis added).

[ii] Fla. Const. § 11(e) (1885).

[iii] Fla. Const. § 11(b) (1885).

[iv] Fla. Const. § 11(5) (1885).

[v] *Id.*

[vi] *Id.*

[vii] Fla. Const. § 11(6) (1885).

[viii] Fla. Const. § 11(9) (1885) (emphasis added).

[ix] Miami-Dade County, The Home Rule Amendment and Charter (As Amended Through November 8, 2016) at Article VI, Section 6.03, *Municipal Charters* (2016).

[x] Miami-Dade County, The Home Rule Amendment and Charter (As Amended Through November 8, 2016) at Article VI, Section 6.02, *Municipal Powers* (2016) (emphasis added).

[xi] City of Miami, Subpart A, The Charter, at § 4(a), *General description* (2024).

[xii] City of Miami, Subpart A, The Charter, at § 7, *Election of city commissioner and mayor* (2024) (emphasis added).

[xiii] *City of Miami v. Miami Ass'n of Firefighters, Local 587*, 744 So. 2d 555, 556 (Fla. 3d DCA) (citing *Miami Heat Ltd. Partnership v. Leahy*, 682 So. 2d 198 (Fla. 3d DCA), *appeal dismissed*, 686 So. 2d 576 (Fla. 1996)) (emphasis in original).

[xiv] 396 So. 2d 144, 148 (Fla. 1981).

[xv] *Id.* The Court further stated, "the metropolitan government of Dade County is unique in this state due to its constitutional home rule amendment." *Id.* at 146.

[xvi] *See Dade County v. Kelly*, 153 So. 2d 822 (Fla. 1963); *Dade County v. Young Democratic Club of Dade County*, 104 So. 2d 636 (Fla. 1958); *City of Sweetwater v. Dade County*, 343 So. 2d 952, 954 (Fla. 3d DCA 1977).

[xvii] *See generally, e.g.*, *Fried v. State*, 355 So. 3d 899, 910 (Fla. 2023); *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494 So. 2d 494 (Fla. 1999) (holding the county lacked authority to bring actions under county code provisions that conflicted with the Dry Cleaning Contamination Cleanup Act in an area not specifically reserved to the county in home rule amendment to the Florida Constitution).

[xviii] See *Dade County v. Dade County League of Municipalities*, 104 So. 2d 512, 517 (Fla. 1958), in which the Court stated, "[t]he plain objective" that the Constitution sought to accomplish by directing Dade County municipalities to make, amend or repeal their charters only as set forth in the county's charter was "to endow the people of Dade County with the power to exercise home rule in the matter of municipal charters and upon the adoption of the home rule charter to preclude for all time the control of the government of municipal corporations by special or local law."

[xix] Miami-Dade County, The Home Rule Amendment and Charter (As Amended Through November 8, 2016) at Article VI, Section 6.03, *Municipal Charters* (2016).

[xx] Section 166.021(1), Fla. Stat. (2024).