

Transfer of power by municipality

Number: AGO 83-96

Date: January 06, 1998

Subject:
Transfer of power by municipality

Mr. Edwin Peck
Town Attorney
Town of North Redington Beach
9165 U.S. 19 North
Pinellas Park, Florida 33565

RE: MUNICIPALITIES--Referendum on unnegotiated and alternative proposals for transfer of municipal function or power by or from unidentified transferor and transferee unauthorized

Dear Mr. Peck:

This is in response to your request for an opinion on substantially the following question:

May the Town of North Redington Beach submit for approval, by a vote of the electors, a resolution authorizing the transfer of power under any of several unnegotiated and alternative proposals prior to an actual agreement and prior to actually knowing which municipality will be part of the transfer and without knowing whether or not the Town of North Redington Beach will be the transferor or the transferee?

You state in your letter that the Town of North Redington Beach is currently involved in negotiations with two adjacent towns to provide police services in your municipality. These negotiations may result in one of the following proposals:

1. For the Town of North Redington Beach to purchase part of an adjacent town's police department, and thereafter, both towns jointly operate the police department for services in both municipalities.
2. For the Town of North Redington Beach and one or both of the adjacent towns to create a new police department to provide services within the municipal limits of the parties involved.
3. For the Town of North Redington Beach to contract with an adjacent municipality to provide police services within the municipal limits of North Redington Beach.

Your question is controlled by s. 4 of Art. VIII, State Const., which provides:

"By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the

electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law." (e.s.)

In the absence of any specific constitutional or judicial direction on the above stated question, I am unable to conclude that s. 4 of Art. VIII, State Const., authorizes or contemplates a referendum on unnegotiated and alternative proposals or on a resolution to approve the transfer of a municipal power or function from or to another municipality when the identity of the transferor and the transferee municipality is unknown at the time such referendum is held. The constitutional provision appears to require a resolution by each of the transferor and transferee governments with respect to the function or power to be transferred to or contracted to be performed by one or the other of such governments, and then holding a referendum of the electors of each of the transferor and transferee governments on their respective resolutions. The constitutional provision authorizes only a transfer of particular powers or functions from one government to another, or a contract to perform particular powers or functions by one of the contracting governments. Nothing in this opinion should be construed to conclude that any plan or procedure other than that prescribed in the Constitution is approved; no opinion is expressed as to the legality of the proposals in your inquiry. Section 4 of Art. VIII makes no provision for conducting such a referendum with unidentified and unknown transferors or transferees on unnegotiated and alternative proposals such as the several proposals set forth above. When a constitutional provision enumerates the things on which it is to operate, it impliedly excludes from its operation all things not expressly mentioned therein. Moreover, when it expressly provides the method of doing a thing, it impliedly prohibits the thing being done in another manner. See *Interlachen Lakes Estate, Inc. v. Snyder*, 304 So.2d 433, 434 (Fla. 1973); *In re Advisory Opinion of the governor Civil Rights*, 306 So.2d 520, 523 (Fla. 1975); *Advisory Opinion to Governor*, 22 So.2d 398 (Fla.1945).

In conclusion, it is therefore my opinion that, unless and until judicially determined otherwise, a municipality is not authorized by s. 4 of Art. VIII, State Const., to submit unnegotiated and alternative proposals to a referendum of its electors for the transfer of a municipal function or power or for a contract for the performance of such function or power by one or the other of the transferor and transferee governments when the identity of the transferor government and the transferee government is unknown at the time the referendum is held.

Sincerely,

Jim Smith
Attorney General

Prepared by:

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