Municipal Home Rule Powers Act

Number: AGO 74-18

Date: November 04, 1998

Subject:
Municipal Home Rule Powers Act

RE: MUNICIPAL HOME RULE POWERS ACT--AUTHORITY TO ENACT MUNICIPAL ORDINANCE AT VARIANCE WITH GENERAL LAW

To: Dwight W. Severs, City Attorney, Titusville

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

What is the effect of the Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, regarding a municipality's authority to enact legislation varying from s. 112.061, F. S.?

SUMMARY:

A municipality may, pursuant to Ch. 73-129, Laws of Florida, enact per diem and travel allowances which vary from s. 112.061, F. S.

Section 112.061, F. S., provides per diem and travel allowances that may be paid to certain public officers and employees. Municipalities are included within this section. It appears that there is no provision in the Titusville Charter establishing per diem or travel allowances and that the city wishes to enact an ordinance increasing the travel expenses for its officers and employees from those fixed by s. 112.061.

The Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, gives broad home rule powers to municipalities. It provides essentially that, with certain exceptions, municipalities can enact any legislation concerning any subject matter upon which the state legislature may act. Attorney General Opinions 073-267 and 073-276. Since there is no *express* preemption of this subject matter to the state in s. 112.061, *supra*, (even though the desire for a "uniform system" is mentioned as the legislative intent), a municipality may enact an ordinance providing for travel and subsistence allowances different from those fixed in s. 112.061 pursuant to Ch. 73-129, *supra*.