Elections -- Candidates -- Referendum

Number: INFORMAL

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Mr. Timothy J. Sloan
Parker City Attorney
Post Office Box 2327
Panama City, Florida 32402-2327

Dear Mr. Sloan:

Thank you for contacting the Florida Attorney General's Office with questions relating to election provisions in the charter of the City of Parker. Attorney General Bondi has asked me to respond to your letter.

You have asked two questions. The first is essentially a request to revisit Attorney General Opinion 2010-54 which was addressed to the City of Parker and discussed the same question, *i.e*, whether a referendum is required to approve an amendment to the city charter that would require candidates seeking election to the council to designate which council seat they seek prior to the election. That opinion bases its conclusions on the language in section 166.021(4), Florida Statutes, that "nothing in Chapter 166, Florida Statutes, is to be construed as permitting any changes in a special law or municipal charter which affect certain subject matters specifically mentioned therein, including 'the terms of elected officers and *the manner of their election*' without referendum approval as provided in section 166.031, Florida Statutes." (e.s.) The opinion concludes that the revisions suggested constitute a change in the manner that Parker City Council members are elected and must be accomplished by referendum.

Your letter suggests that a charter provision was overlooked in our analysis which specifically authorizes "a change in the manner of elections through ordinance." While the Municipal Home Rule Powers Act provides broad powers of self-government for municipalities, those powers are limited by statute. As section 166.021(4), Florida Statutes, states: "[N]othing in this act shall be construed to permit any changes in a . . . municipal charter which affect . . . the terms of elected officers and the manner of their election[.]" Thus, the City of Parker may not act, under the provisions of the Municipal Home Rule Powers Act, in contravention of that statutory limitation.[1]

You also ask whether the amendment by referendum to change the manner of election of city council members would affect other provisions of the charter which were converted to ordinances by Chapter 166, Florida Statutes. As is provided in section 166.021(4), Florida Statutes:

"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." (e.s.)

Thus, the statute addresses those provisions which may not be changed without referendum.[2] Municipal charter provisions adopted prior to October 1, 1973, which did not affect the areas specified above were either repealed or converted into ordinances and, as was pointed out in Attorney General Opinion 2010-54, are subject to repeal or modification in the same manner as other ordinances. Any municipal charter provision adopted or readopted subsequent to that date may only be amended in accordance with section 166.031, Florida Statutes. You have advised us that the Parker City Charter has not been readopted since 1967 and, thus, any charter provisions which were converted into ordinances would be subject to repeal or modification as are other ordinances of the city.[3]

I trust that these informal comments will assist you in advising your client the City of Parker. This informal opinion is provided to you by the Department of Legal Affairs in an effort to be of assistance and the conclusions herein are those of the writer.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] It is the rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way. *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 31, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[2] *See Alsop v. Pierce, id.*, stating that "[w]hen the Legislature has prescribed the mode, that mode must be observed. When the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way."

[3] *And see* Ops. Att'y Gen. Fla. 93-23 (1993) (charter amendment provision was nullified and repealed or converted to an ordinance by passage of Municipal Home Rule Powers Act and

would have no effect upon amendments to city charter); 88-30 (1988) (charter amendment provisions in s. 166.031, Fla. Stat., prevail over conflicting provisions in a municipal charter); and 79-80 (1979) (city commission may not unilaterally amend its charter as it is bound by provisions in s. 166.031, Fla. Stat.).