Referenda -- Charters

Number: INFORMAL

Date: June 03, 2016

Ms. Dawn E. Perry-Lehnert
Town Attorney
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

Dear Ms. Perry-Lehnert:

On behalf of the Town of Fort Myers Beach, you ask whether a provision in the town's charter established by special act may be amended by referendum and whether a charter provision thus removed may be re-enacted by referendum to ensure that the Florida Department of Revenue will recognize the town's eligibility to receive revenue sharing.

In sum, this office must presume the validity of the repeal of a provision in the town's charter by referendum and would advise that the re-enactment of the provision by referendum would be controlled by section 166.031, Florida Statutes. Whether the Florida Department of Revenue will recognize the town's eligibility to receive revenue sharing through re-enactment of the charter provision is a determination to be made by that agency, not this office.

Initially, I would note that this office must presume the validity of actions which have been taken by a public official or entity and will not render a legal opinion on such a matter. In this instance, you state that the town has held a referendum which removed a section from the town's charter relating to revenue sharing pursuant to section 218.23, Florida Statutes. This office, therefore, offers no comment on the validity of the repeal of the charter provision.

A municipality possesses home rule power to enact legislation concerning any subject upon which the state Legislature may act except, among other things, any subject that is expressly prohibited by the Constitution or any subject that is expressly preempted to state or county government by the Constitution or by general law.[1] The term "express," as used in section 166.021, Florida Statutes, has been construed to mean a reference that is distinctly stated and not left to inference.[2]

Municipal charters may be amended pursuant to general or special law.[3] Section 166.031, Florida Statutes, addresses the means by which a municipality may amend its charter:

"(1) The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at

the next general election held within the municipality or at a special election called for such purpose.
(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State. All such amendments are effective on the date specified therein or as otherwise provided in the charter.
(3) A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law. A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2).
(4) There shall be no restrictions by the municipality on any employee's or employee group's political activity, while not working, in any referendum changing employee rights.
(5) A municipality may, by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter and amend provisions or language out of the charter which has been judicially construed, either by judgment or by binding legal precedent from a decision of a court of last resort, to be contrary to either the State Constitution or Federal Constitution.
(6) Each municipality shall, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. Such ordinance or charter provision shall also provide procedures for filling a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office." (e.s.)

This office has previously stated that a municipal charter adopted or readopted after the enactment of the Municipal Home Rule Powers Act in 1973 must be amended in accordance with section 166.031, Florida Statutes.[4] The Town of Fort Myers Beach and its charter were created by special act in 1995.[5] Accordingly, the town must amend its charter pursuant to section 166.031, Florida Statutes.[6]

Whether re-enactment of the previously deleted section in the town's charter will be recognized by the Florida Department of Revenue for purposes of revenue sharing under section 218.23, Florida Statutes, is a question which would more appropriately be addressed to that agency. This office will not comment on the authority or actions of a public entity absent a request from that entity.[7]
Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 166.021, Fla. Stat.

[2] *See Edwards v. State*, 422 So. 2d 84, 85 (Fla. 2d DCA 1982); Op. Att'y Gen. Fla. 84-83 (1984). *Cf. Pierce v. Division of Retirement*, 410 So. 2d 669, 672 (Fla. 2d DCA 1982).

[3] Section 2(a), Art. VIII, Fla. Const.

[4] See Ops. Att'y Gen Fla. 75-223 (1975); 97-53 (1997); and 2001-15 (city may amend its charter to remove requirement that city commissioner reside within the city only if approved by referendum of qualified electors of the municipality).

[5] Chapter 95-494, Laws of Fla.

[6] A municipality, however, derives no taxing authority from its home rule power, as such is authorized by general law pursuant to Art. VII, s. 9(a), Fla. Const. *Cf. City of Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1 (Fla. 1972); *Belcher Oil Company v. Dade County*, 271 So. 2d 118 (Fla. 1972); *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 319 n.7 (Fla. 1976); Ops. Att'y Gen. Fla. 80-87 (1980) and 93-35 (1993).

[7] See "Frequently Asked Questions About Attorney General Opinions," s. III, "Persons to Whom Opinions May Be Issued" at http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad#persons.