Municipalities, filling vacancies

Number: INFORMAL

Date: October 13, 2011

Ms. Adonna S. Mullen
Parker City Clerk
1001 West Park Street
Parker, Florida 32404

Dear Ms. Mullen:

You ask on behalf of the Parker City Council whether the city council may, under the city charter, fill a vacancy on the city council by special election.

Your inquiry involves the interpretation of the city charter. The authority of the Attorney General to issue opinions is limited to public officials on questions relating to their official duties under state law. As discussed in this office's statement concerning Attorney General Opinions, a copy of which is enclosed, opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Instead, such requests will usually be referred to the attorney for the local government in question.

In an effort to be of some assistance, however, I would note that section 166.031(6), Florida Statutes, provides:

"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."

Thus, the statute requires that a municipality provide by ordinance or charter provision the method for filling vacancies. According to the information you provided to this office, the municipal charter provides that "[v]acancies in any office of the city shall be filled by vote of the city council and such vacancies shall be held until the next general election of the city."[1] (e.s.)

While it appears that the City of Parker was created by special act of the Legislature in 1967,[2] it is not clear whether the city charter has been readopted since the effective date of the Municipal Home Rule Powers Act in 1973. It has been the position of this office, expressed in a number of Attorney General Opinions, that charters or charter provisions adopted or readopted subsequent to the adoption of the Municipal Home Rule Powers Act in 1973 must comply with the procedures set forth in section 166.031, Florida Statutes.[3] For pre-1973 charters which have not been readopted, this office concluded in Attorney General Opinion 75-158 that a town council could not amend its pre-1973 charter establishing the manner in which vacancies in the offices of mayor and town council member were filled without an approving referendum since such provisions relate to "the manner of their election" and thus fall within the exception

contained in section 166.021(4), Florida Statutes.[4]

I hope that the above informal advisory comments may be of assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

Enclosure

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[1] Section 3(8), Ch. 67-1887, Laws of Fla.

[2] See Ch. 67-1887, Laws of Florida.

[3] See Ops. Att'y Gen. Fla. 03-52 (2003), 03-36 (2003), 01-43 (2001), and 75-223 (1975). See also Op. Att'y Gen. Fla. 88-30 (1988) (charter amendment provisions in s. 166.031, Fla. Stat., prevail over conflicting provisions in a municipal charter). And see s. 166.031(1), Fla. Stat., providing that 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." But see s. 166.031(5), Fla. Stat., stating that "[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."

[4] While s. 166.021(4) and (5), Fla. Stat., seeking to implement the grant of home rule powers to municipalities by Ch. 166, Fla. Stat., modified, repealed, or converted into ordinances many provisions of municipal charters which constituted limitations on, or related exclusively to, the power or jurisdiction of municipalities in existence at the time of the adoption of the act, s. 166.021(4) provides that nothing in Ch. 166 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 s. 166.031, Fla. Stat.