Municipal charter, filling vacancies

Number: INFORMAL

Date: January 30, 2012

Mr. Layne Prebor
Worthington Springs Town Attorney
Post Office Box 517
Gainesville, Florida 32601

Dear Mr. Prebor:

On behalf of the Worthington Springs Town Council, you ask whether the remaining town council members may fill the vacancies on the town council in light of a provision in the town charter.

As discussed in this office's statement concerning Attorney General Opinions, available online at: http://myfloridalegal.com/opinions, opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law, nor will an opinion be issued on questions requiring a determination of the constitutionality of an existing statute or ordinance. It is not clear from your letter whether you are requesting the interpretation of the municipal charter or state law. This office generally requires a memorandum of law to accompany a request for an Attorney General Opinion. The memorandum of law, prepared by the requesting agency's attorney, should set forth the precise legal question(s) to be addressed and should contain a legal analysis, including citations to appropriate legal authority as well the attorney's conclusion, regarding the question(s) presented.

In an effort to be of some assistance, I would generally note that section 166.031(6), Florida Statutes, provides in pertinent part that "[e]ach municipality *shall*, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. . . ." (e.s.) This office in Attorney General Opinion 87-27 stated that Article VIII, section 2(b), Florida Constitution, does not prohibit municipal legislative bodies from filling vacancies thereon by appointment made by a majority vote of the remaining members, provided such authority is set forth in the municipal charter. I am enclosing a copy of the opinion for your review.

I hope that the enclosed opinion may be of some assistance. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

Enclosure