Local governments, preference to local contractors

Number: INFORMAL

Date: January 30, 2012

The Honorable Dana Young
Florida House of Representatives, District 57
2209 West Bay to Bay Boulevard, Suite 202
Tampa, FL 33629

Dear Representative Young:

Thank you for your letter of August 1, 2011, requesting an Attorney General's Opinion on the issue of local governments adopting preference ordinances favoring local contractors. Attorney General Bondi has asked me to respond.

Regrettably, this matter is one that may not be addressed directly at the request of someone other than the public official or entity whose powers are questioned, that is, a local governmental entity. Moreover, this office lacks the statutory authority to render legal opinions to a private entity or individual, even though a public official has made the request on their behalf.[1]

The Florida Statutes currently contain numerous examples of state statutes authorizing preferential treatment of contractors and providers of goods and services and the Florida Attorney General's Office has, on a number of occasions, issued formal opinions on this subject. I am enclosing copies of two relatively recent Attorney General Opinions on this matter and providing the following informal comments in an effort to assist you. While my comments are general and directed to municipal legislation, similar arguments could be made for other local governmental agencies.

Section 2(b), Article VIII of the Florida Constitution provides, in part that:

"Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."

The Florida Supreme Court has stated that this constitutional provision "expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services."[2] The Court stated, in *State v. City of Sunrise*, that the only limitation on the power of municipalities under this constitutional section is that such power must be exercised for a valid municipal purpose. As determined by the Court, "[l]egislative statutes are relevant only to determine limitations of authority" and municipalities need no further authorization from the Legislature to conduct municipal government.[3]

Pursuant to section 166.021(1), Florida Statutes, municipalities are granted "the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal

purposes, except when expressly prohibited by law." Thus, municipalities may legislate to the same extent and on the same subjects as the Legislature so long as they do not address subjects preempted to the state or county or conflicting with existing statutes or the Constitution.

The Florida Legislature has enacted numerous statutes providing preferential treatment for various groups: veterans of military service, minority business enterprises, Florida licensed professionals, and members of Indian Tribes.[4] *See, e.g.*, s. 110.2135, Fla. Stat., Florida's veterans preference statute; s. 255.102, Fla. Stat., providing preferences for minority business enterprises; s. 255.25(3)(h), Fla. Sat., providing a preference to Florida licensed brokers; s. 285.711, Fla. Stat. (2009), Part XVIII G, Gaming Compact Between Seminole Tribe and State of Florida. Commodities manufactured, grown, or produced in Florida are given special treatment in the statutes.[5] Foreign manufacturers with factories in Florida who employ over 200 resident employees are provided preference in section 287.092, Florida Statutes. These examples are provided to illustrate the extent to which the Florida Legislature has adopted preferential legislation and to suggest how broadly local governmental entities may legislate in this area under their home rule powers.

With regard to judicial decisions addressing local preference ordinances, the Fifth District Court of Appeals case, *City of Port Orange v. Leechase Corporation*,[6] may provide some direction. In that case, the district court reviewed the legality of a municipality's bidding ordinance giving preference to bidders whose principal places of business were located within the municipality. The lower court had found the ordinance to be flawed as against public policy. The district court reversed, finding no contravening public policy established by the state or federal constitutions, or by state statute, that would preclude the municipality from enacting such an ordinance. Given the existence of a duly enacted ordinance that the municipality had followed, the court refused to evaluate the wisdom of the ordinance's enactment. The district court distinguished these circumstances from those in *Marriott Corporation v. Metropolitan Dade County*,[7] where the court reversed the county commission's award of a contract to a local bidder who was not the lowest bidder when there existed a permanent resolution (tantamount to an ordinance) providing for the competitive bidding of such contracts with no provision for local preference.

I trust that these informal comments and the copies I am enclosing may be helpful to you in advising your constituents.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/gh

Enclosures: AGO's 2002-03 and 2001-65
Policy Statement Concerning Attorney General Opinions

---

[1] *See* Department of Legal Affairs Statement Concerning Attorney General Opinions (copy enclosed).

[2] *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

[3] *Supra* at 1209. *See also City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

[4] *See, e.g.*, s. 110.2135, Fla. Stat., Florida's veterans preference statute; s. 255.102, Fla. Stat., providing preferences for minority business enterprises; s. 255.25(3)(h), Fla. Sat., providing a preference to Florida licensed brokers; s. 285.711, Fla. Stat. (2009), Part XVIII G, Gaming Compact Between Seminole Tribe and State of Florida.

[5] *See* s. 287.082, Fla. Stat.

[6] 430 So. 2d 534 (Fla. 5th DCA 1983).

[7] 383 So. 2d 662 (Fla. 3d DCA 1980).