Voter approval of municipal ordinances

Number: INFORMAL

Date: May 11, 2011

Ms. Maura Kiefer
Treasure Island City Attorney
The Alexander Building
535 Central Avenue
St. Petersburg, Florida 33701

Dear Ms. Kiefer:

On behalf of the City of Treasurer Island, you ask several questions relating to the validity of a charter provision requiring voter approval to change or repeal any ordinance previously enacted or repealed by the electorate.[1]

It appears that the City of Treasure Island currently has such a provision in its charter. According to your letter the city charter was adopted in 1978, after the adoption of the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes.[2] Article VII of the city charter provides for citizens initiatives. Pursuant to section 7.01 of the charter, the qualified electors of the city have the authority to propose ordinances and to require reconsideration of any adopted ordinance with certain exceptions.[3] Section 7.07(c) of the city charter provides:

"Amending or repealing initiative or referendum laws. Any local ordinance voted into effect, or repealed, by the electorate pursuant to initiative or referendum procedures as set forth in this Charter, shall only be subsequently amended or repealed by the electorate at the polls. This section shall be retroactive, as allowed by general law. This section shall not be construed to prevent the city commission from adopting Charter amendments, or initiated ordinances, through the procedures set forth above in sections 6.02(a)[4] and 7.01, respectively."

Your inquiries thus relate to the validity of an existing city charter provision. This office has no authority to comment upon the validity of an existing charter provision; rather, this office must presume the validity of any duly enacted provision until and unless a court of competent jurisdiction declares otherwise.[5] Accordingly, this office must decline to comment upon the issues raised in your letter.

In an effort to be of some assistance, however, I would note that this office has generally recognized the authority of a city to amend its charter to limit or restrict the exercise of specific corporate, legislative, and governmental powers.[6] For example, in Attorney General Opinion 90-38, this office concluded that a city charter could be amended to require referendum approval for the issuance of municipal bonds. In your letter, you recognize the 2006 decision of the Florida Supreme Court in *Citizens for Responsible Growth v. City of St. Pete Beach*,[7] in which the Court upheld the proposed municipal charter amendments that, among other things, required referendum approval for changes in development plans and comprehensive plans or amendments.

I note that you also refer to the 1984 decision of the Fifth District Court of Appeal in *Gaines v. City of Orlando*,[8] in which the court concluded that a proposed amendment to the city charter that would make the *charter*, if amended as proposed, not subject to repeal except by another referendum election of the registered voters of the city, conflicted with the Municipal Home Rule Powers Act. In reaching this conclusion, the court cited section 166.031(1) and (3), Florida Statutes. As this office recognized in Attorney General Opinion 02-79, section 166.031, Florida Statutes, relates to amendment of the municipal charter and establishes the right of the electors to submit proposed amendments to the municipal charter. It does not establish a right for electors to submit proposed amendments to, or to propose, municipal ordinances. Thus, this office concluded:

"State law neither requires nor prohibits citizens' initiatives for the passage of municipal ordinances. Under the broad home rule powers granted to municipalities, it appears that a municipality could authorize such initiatives. In authorizing such initiatives, it would appear to be within the power of the municipality under its charter to prescribe those areas in which ordinances may be proposed." (citations omitted)

I trust you will understand that the duties of this office are prescribed by law. I hope, however, that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

Enclosure: Statement of Policy

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[1] You set forth three questions: 1) whether s. 166.021(3), Fla. Stat., preempts such a charter provision; 2) whether such a charter provision violates Art. VI, s. 5, Fla. Const.; and 3) whether the city's charter provision conflicts with s. 166.021(3), Fla. Stat. Section 166.021(3) recognizes the authority of the legislative body of a municipality to enact legislation concerning any subject matter upon which the state Legislature may act, except as provided therein. Article VI, s. 5 of the Florida Constitution, relates to the holding of primary, general, and special elections.

[2] The Municipal Home Rule Powers Act was created by Ch. 73-129, Laws of Fla.

[3] Subsections (a) and (b) of s. 7.01, Treasure Island City Charter, provide:

"(a) Initiative. The qualified electors of the city shall have power to propose ordinances to the commission and, if the commission fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

(b) Referendum. The qualified electors of the city shall have power to require reconsideration by the commission of any adopted ordinance and, if the commission fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees."

[4] This provision relates to amending the city charter.

[5] *See* this office's statement concerning Attorney General Opinions, a copy of which is enclosed, stating that "[i]n order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance."

[6] Op. Att'y Gen. Fla. 82-101 (1982). *And see* Ops. Att'y Gen. Fla. 09-12 (2009) (voter approval of capital projects); 10-02 (2010) (limitation on expenditures). *But see* Op. Att'y Gen. Fla. 86-89 (1986) (attempt to amend a charter to provide that no ad valorem taxes on real and personal property could be imposed without referendum approval would violate s. 195.207, Fla. Stat., prohibiting a municipal charter provision limiting the governing body's authority to levy ad valorem taxes).

[7] 940 So. 2d 1144 (Fla. 2d DCA 2006).

[8] 450 So. 2d 1174 (Fla. 5th DCA 1984).