Firefighters' pension fund, city council member

Number: INFORMAL

Date: January 06, 2010

Mr. Daniel F. Mantzaris
de Beaubien, Knight, Simmons,
Mantzaris & Neal, LLP
332 North Magnolia Avenue
Orlando, Florida 32801

Dear Mr. Mantzaris:

As City Attorney for the City of Clermont, you have asked whether the City of Clermont's requirement that a member of the city council be appointed to the board of trustees of the city's police officers' retirement plan and to the firefighters' pension plan may violate the provisions of sections 175.061 and 185.05, Florida Statutes. Attorney General McCollum has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office will formally comment. Your inquiry relates to provisions of Chapters 175 and 185, Florida Statutes, and these statutes are to be interpreted and applied by the Division of Retirement of the Department of Management Services. This office will not comment on the responsibilities of another agency unless that agency joins in an opinion request. The Department of Management Services has been contacted and they have declined to join in your request for an opinion. Therefore, no Attorney General Opinion will be forthcoming on this matter. However, in an effort to assist you, I offer the following general comments.

Sections 175.061 and 185.05, Florida Statutes, provide for the appointment of the boards of trustees of the firefighters' pension trust fund and the municipal police officers' retirement trust fund. These statutory sections require that two members of the board shall be legal residents of the municipality and appointed by the governing body. Included as a provision of each of these statutes is a prohibition against the alteration of the provisions of the statutes by a municipality operating a chapter or local law plan under those chapters.[1]

Your memorandum of law relies on the concept of municipal home rule as authority for the City of Clermont to make these changes to the statutory requirements. 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*." (e.s.)

Sections 175.061(6) and 185.05(7), Florida Statutes, specifically state that the provisions of these sections may not be altered by a participating municipality. A common definition of the term "alter" is "to make different in some particular" or "to change; become different or modified."[4] Thus, using the common dictionary definition, a municipality cannot change or modify the specific provisions of section 175.061 or 185.05, Florida Statutes.

Further, this office has issued an informal opinion on a related issue in which we advised that "any attempt by a municipality to alter the terms of the special act or general law would be suspect and place in jeopardy the municipality's participation in the grant of state funds."[5] I am enclosing a copy of this Informal Attorney General Opinion for your review.

I trust that these informal comments will be helpful to you in discussing this matter with your client, the City of Clermont. Thank you for contacting this office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosure

---

[1] *See* s. 175.061(6) and 185.05(7), Florida Statutes.

[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* Webster's New Universal Unabridged Dictionary (2003) p. 60.

[5] *See* Inf. Op. to Robert D. Klausner dated November 5, 1991 (copy enclosed).