City charter, form of government

Number: INFORMAL

Date: October 09, 2009

Ms. Toni L. Craig
Fort Walton Beach City Attorney
908 Pineview Boulevard
Fort Walton Beach, Florida 32547

Dear Ms. Craig:

The Office of Attorney General Bill McCollum has received your letter of December 9, 2008, including the changes to be made to the city charter and asking whether such information would change the conclusion made in this office's informal opinion issued December 9, 2008.

The informal opinion quotes Attorney General Opinion 77-135 which stated that the term "form of government," as used in section 166.021(4), Florida Statutes,

"was intended to refer to one of the basic organizational forms as exemplified in the above quotation and that the referendum requirement regarding changes in the form of government is not invoked unless there is a change from one basic form to another (e.g., from strong mayor form to city manager form). Thus, any contemplated change in a charter provision which was in existence on July 1, 1973, should be examined in the context of its effect on the basic form of government under which the municipality operates and should be considered in light of other changes which might be made at the same time. (Even though none of a number of changes--when considered alone--would constitute an actual change in the basic form of organization and overall distribution of powers, a number of such changes, when made at the same time and considered together, could effect a transfer of powers so substantial as to have the effect of changing the municipality's 'form of government,' thereby requiring a referendum.)."

The abolishment of two appointive officers and the departments such officers headed would not necessarily appear to constitute a change in the basic form of government of the city. However, it is not clear from the information provided to this office how the functions previously handled by such officers, who were appointed by the city council, not the city manager, and departments would now be handled. Nor is this office been advised as to whether under the charter either the director of finance or the recorder served on any appointive boards so as to implicate the provisions of section 166.021(4), Florida Statutes, relating to "matters prescribed by the charter relating to appointive board." To the extent, however, that the abolishment of the positions and departments does not contemplate a change in the allocation of the basic policymaking and administrative functions of municipal government, the provisions of section 166.021(4), Florida Statutes, relating to changes in the "form of government" would not appear to be implicated.

I hope that the above informal comments may be of assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t