Charter amendment by petition, town's dissolution

Number: INFORMAL

Date: August 03, 2007

The Honorable Janet A. McConnell Beier
Cedar Grove Town Commissioner
2805 East 17th Street
Cedar Grove, Florida 32405

Dear Commissioner Beier:

You ask about the efforts of the citizens of Cedar Grove to dissolve the town. According to your letter, the supervisor of elections is requiring an opinion from this office before he will start verifying signatures.

This office is authorized to render opinions to public officials on questions relating to their own official duties.[1] This office, however, has not received a request from the supervisor of elections as to his duties under the state statutes on this issue. Moreover, as discussed in this office's Statement Concerning Attorney General Opinions, a copy of which is enclosed, requests "relating to the powers and duties of a public board or commission (or other collegial public body) should be requested by a majority of the members of that body." Thus, any question relating to the duties of the town commission should be requested by a majority of the members of the commission. It should be noted, however, that Attorney General Opinions are intended to address only questions involving the interpretation of state law, not questions of fact or mixed questions of fact and law. Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters, or proposed legislation rather than the provisions of state law.

In an effort to be of assistance, however, I would generally note that section 165.051(1), Florida Statutes, provides that the charter of any existing municipality may be revoked and the municipal corporation dissolved by either:

"(a) A special act of the Legislature; or

(b) An *ordinance* of the governing body of the municipality, approved by a vote of the qualified voters."[2] (e.s.)

Subsection (2) of the statute states:

"If a vote of the qualified voters is required, the governing body of the municipality or, if the municipal governing body does not act within 30 days, the governing body of the county or counties in which the municipality is located, shall set the date of the election, which shall be the next regularly scheduled election or a special election held prior to such election, if approved by a majority of the members of the governing body of each governmental unit affected, but no

sooner than 30 days after passage of the ordinance. Notice of the election shall be published at least once each week for 2 consecutive weeks prior to the election in a newspaper of general circulation in the municipality."

Pursuant to section 165.061(3), Florida Statutes, the dissolution of a municipality must meet the following conditions:

"(a) The municipality to be dissolved must not be substantially surrounded by other municipalities.
(b) The county or another municipality must be demonstrably able to provide necessary services to the municipal area proposed for dissolution.
(c) An equitable arrangement must be made in relation to bonded indebtedness and vested rights of employees of the municipality to be dissolved."[3]

Whether the above conditions have been met in any given instance present a mixed question of law and fact which this office cannot resolve.

Your letter refers to section 166.031, Florida Statutes, which provides in subsection (1):

"The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose."

Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State.[4]

This office has consistently stated that the charter amendment provisions in section 166.031, Florida Statutes, prevail over conflicting provisions in a municipal charter.[5] For example, in Attorney General Opinion 02-79, this office stated that a municipal charter may not conflict with the provisions of section 166.031, Florida Statutes, which guarantees to electors of a municipality the right to petition the municipality to amend any part or all of the municipal charter with the exception of that part describing the municipality's boundaries. In Attorney General Opinion 74-69, this office concluded a city council may not look beyond the valid form of an initiative petition in order to determine whether it should be placed on a ballot.[6] This office, however, does not generally review the language of a proposed charter amendment.

I hope that the above informal comments may be of assistance to you in resolving this issue. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

Enclosure

---

[1] *See* s. 16.01(3), Fla. Stat.

[2] *Cf.* Art. VIII, s. 2(a), Fla. Const. (municipalities may be established or abolished and their charters amended pursuant to general or special law; however, when a municipality is abolished, provision shall be made for the protection of its creditors). *And see* s. 165.022, Fla. Stat., stating:

"It is the purpose of this act to provide viable and usable general law standards and procedures for forming and dissolving municipalities in lieu of any procedure or standards now provided by general or special law. The provisions of this act shall be the exclusive procedure pursuant to general law for forming or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by s. 6(e), Art. VIII of the State Constitution. Any provisions of a general or special law existing on July 1, 1974, in conflict with the provisions of this act shall not be effective to the extent of such conflict."

[3] *See* s. 165.071(3), Fla. Stat., providing:

"The dissolution of a municipal government shall transfer the title to all property owned by the preexisting municipal government to the county, which shall also assume all indebtedness of the preexisting municipality, unless otherwise provided in the dissolution plan. The county is specifically authorized to levy and collect ad valorem taxes in the same manner as other county taxes from the area of the preexisting municipality for repayment of any assumed indebtedness through a special district created for such purpose in accordance with chapter 189."

And see s. 165.081, Fla. Stat. (any special law or ordinance enacted, and any dismissal of petition made, pursuant to Ch. 165, Fla. Stat., shall be reviewable by certiorari; no appeal may be brought after the effective date of an incorporation or dissolution).

[4] Section 166.031(2), Fla. Stat. The statute further provides that such amendments are effective on the date specified therein or as otherwise provided in the charter.

[5] *See, e.g.,* Ops. Att'y Gen. Fla. 93-23 (1993), 88-30 (1988), 77-135 (1977), and 79-80 (1979).

[6] Attorney General Opinions from 1974 to date are available on this office's website at www.myfloridalegal.com / AG Opinions.