Municipal Charter, initiative petitions

Number: INFORMAL

Date: January 03, 2007

The Honorable Jeffrey H. Atwater
Senator, District 25
824 US Highway 1, #210
North Palm Beach, Florida 33408

Dear Senator Atwater:

You have asked about the amendment of a municipal charter by citizens' initiative. Your inquiry is prompted by a situation that has arisen in Riviera Beach in which the citizens are seeking to amend the city charter by petition. The following comments are offered in an effort to be of some assistance.

Section 166.031, Florida Statutes, provides for the amendment of a municipal charter adopted or readopted after the effective date of the Municipal Home Rule Powers Act in 1973.[1] Subsection (1) of the statute states:

"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." (emphasis supplied)

This office has consistently stated that the charter amendment provisions in section 166.031, Florida Statutes, prevail over conflicting provisions in a municipal charter.[2] Section 166.031(3), Florida Statutes, itself, provides that a municipality may amend its charter as described above, even if the charter itself provides otherwise:

"*A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary.* This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law. . . ." (emphasis supplied)

While the subsection refers to the statute as supplemental to other laws relating to the amendment of municipal charters, this office has previously stated that the reference in section 166.031(3), Florida Statutes, to "laws" refers to other state statutes relating to the amendment of municipal charters and would not authorize a municipality by ordinance or charter to alter the terms of section 166.031.[3] Furthermore, a provision in the city charter that limits the number of petition gatherers to no more than five persons is not contained in section 166.031. Therefore,

citizens availing themselves of the procedures in section 166.031 are not limited by the strictures of the city charter.

Thus, the provisions for amending a charter contained in section 166.031, Florida Statutes, prevail over conflicting provisions in a municipal charter and that the provisions of the statute may be utilized to amend a municipal charter notwithstanding a municipal charter provision to the contrary.

I trust that the above informal comments may be of some assistance.

Sincerely,

L. Clayton Roberts
Deputy Attorney General

LCR/tjw

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[1] *See* s. 166.021(4) and (5), Fla. Stat., relating to municipal charters adopted prior to the effective date of the Municipal Home Rule Powers Act.

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

[3] *See* Op. Att'y Gen. Fla. 88-30 (1988). *And see Grapeland Heights Civic Association v. City of Miami*, 267 So.2d 321, 324 (Fla. 1972) ("'law' in our constitution means an enactment by the State Legislature . . . not by a City Commission or any other political body"); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977) (term "provided by law" means provided by statute).