Town council members, term of office

Number: INFORMAL

Date: December 13, 2006

Ms. Anne Dalton
Town of Fort Myers Beach
2044 Bayside Parkway
Fort Myers, Florida 33901

Dear Ms. Dalton:

This is in response to your recent letter requesting assistance in determining the length of terms for town council members who were elected in November, 2005. You state that the Town of Fort Myers Beach in 2001 amended its charter to change the election date for members of the town council from November to March. As a result of this amendment, the town council, without referendum, extended the term of office of council members from three years to four years. The town was sued for taking such action and the resulting judgment in January, 2005 directed the town to have an election as soon as possible. Due to delays, the election was held in November, 2005 and those elected began serving their terms.

The town now is faced with complying with the court's order to keep the terms of office at three years and maintaining the elections in March, thereby creating terms falling short of or extending beyond three years depending upon which year the next election is held.

Section 100.3605(2), Florida Statutes, states:

"The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes."

Section 100.3605, Florida Statutes, was created and section 166.021(4), Florida Statutes, was amended by Chapter 95-178, Laws of Florida, to authorize the amendment of a special law or municipal charter for the purpose of changing election dates and qualifying periods for candidates without referendum approval. The legislative history of this amendment reveals an intent to allow "for the adjustment of terms of office necessitated by such date changes. . . ."[1] It would appear, however, that the Town of Fort Myers Beach acted beyond this legislative authorization by not merely adjusting the terms of office to accommodate the new election date, but formally extending the term of office from three years to four. But for the town’s action, the terms of the officers elected on the new election date in March would have ended three years later in March. You indicate that two council seats are up for election in March, 2007, but apparently this 2007 election and terms of office would not be affected by the town's previous action.

This office has previously commented on the ability of a municipality to change the date of election without referendum approval under section 100.3605, Florida Statutes. In Attorney

General Opinion 2000-61, it was recognized that a city by ordinance without referendum approval could change its election date from April to November and extend the terms of the sitting commissioners to November. In contrast, in Attorney General Opinion 2001-81, the town wished to change the dates of the qualifying period as well as the terms of office for future council members from two years to three. Noting that in Attorney General Opinion 2000-61 only the sitting officers' terms were extended due to the change in the date of the election, this office concluded that the change in the term of city council members from two years to three did not fall within the exception recognized in sections 166.021(4) and 100.3605, Florida Statutes.[2]

While this office does not interpret local codes and charters, the following observations are offered. As reflected in the provisions of the town's charter you have provided, the terms of office for all sitting council members when the change in the date of elections was made were extended from the November when such term would have ended to the following March (*e.g.*, council members elected in November, 2000 have terms to March, 2004; council members elected in November, 2001 have terms to March, 2005), thereby extending such terms by four months. This office has not been provided a copy of the court's order requiring an election as soon as possible to correct the terms of those individuals who presumably were elected in November, 2001 and must assume that nothing in that order alters the three-year term of office prescribed by the town's charter as beginning at the first council meeting following the general election held on the second Tuesday in March. Accordingly, the term for a council member elected in November, 2001 would have ended in March, 2005 when a successor should have been elected. Moreover, I have found no authority that would allow the town's negligence in holding a timely election to alter the term of office as set forth in the town's charter. It would appear, therefore, that those council members elected at the November, 2005 election were elected to serve a term that would have begun in March, 2005 and will end in March, 2008.

I trust that these informal comments are of assistance to you in resolving the question you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* House of Representatives Committee on Ethics and Elections Final Bill Analysis & Economic Impact Statement on HB 2209 (passed by the Legislature as Ch. 95-178, Laws of Florida), dated May 10, 1995, stating:

"HB 2209 authorizes amendment of a municipal charter or special act without referendum for the purpose of changing municipal election dates and qualifying period for candidates and for the adjustment of terms of office necessitated by such date changes. . . ."

[2] *See also* Op. Att'y Gen. Fla. 2003-52 (2003).