

Municipal charter, changing election date

Number: INFORMAL

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Mr. Patrick G. Gilligan
Ocala City Attorney
1531 Southeast 36th Avenue
Ocala, Florida 34471

Dear Mr. Gilligan:

You ask whether a provision in the City of Ocala charter that was previously amended by referendum may be amended by ordinance without a referendum. The charter provision relates to the dates of run-off elections.

This office has previously rendered Attorney General Opinion 2001-43 in which it was determined that the city must submit to referendum an amendment to a provision in the city charter that was previously amended by referendum approval. That portion of the city charter related to the election date of the council president, as well as the president's powers and duties. Since the amendment was made after 1973, it was concluded that it could be amended only in accordance with section 166.031, Florida Statutes, requiring a referendum for approval. While superficially, it may appear that the date of the amendment dictated the result in the opinion, of equal importance is the fact that the charter provision also related to the powers and duties of the council president, While section 166.021, Florida Statutes, grants broad home rule powers to municipalities, subsection (4) of the statute, in pertinent part, states:

"nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election *except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates*, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. . . ." (e.s.)

The emphasized language was added to section 166.021(4), Florida Statutes, in 1995 along with the creation of section 100.3605, Florida Statutes. Section 100.3605(2), Florida Statutes, was created to read:

"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."

Thus, the Legislature has made it clear that a municipality by ordinance may change the dates for qualifying and the election of its governing body without the need for referendum approval. This conclusion is confirmed in Attorney General Opinion 2001-81, where this office found that a referendum was not needed to change the date of municipal elections, but would be necessary to alter the term of council members from two to three years. To the extent an amendment to a charter affects the election date or qualifying period for candidates, therefore, no referendum approval is required.

I trust that these informal comments will assist you in resolving the questions that have arisen.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk