

Removal of City Attorney

Number: INFORMAL

Date: November 19, 1998

Mr. Paul J. Marino
Town Attorney
Orange Park Center
696 First Avenue North
Suite 304
St. Petersburg, Florida 33701

RE: ATTORNEYS--MUNICIPAL OFFICERS AND EMPLOYEES--removal of city attorney.

Dear Mr. Marino:

You have asked this office for guidance regarding provisions in the Charter for the Town of Kenneth City which relate to the appointment and removal of the city attorney.

The Charter for the Town of Kenneth City provides that "[t]he town attorney shall be appointed by the mayor with the approval by the majority of the council." [1] However, nothing in the charter speaks to the removal of the town attorney. There has been discussion between the city attorney, the mayor, and the city council regarding procedures for the removal of the city attorney but there has been no resolution of this situation.

The memorandum of law you have provided to the mayor on this issue cites the Law of Municipal Corporations by Eugene McQuillin for the proposition that "in the absence of legislation, government employment can be revoked at the will of the appointing officer." [2] Further, that authority states that

"if a municipal officer is appointed or elected, as by a council or board, and no definite term is prescribed, he or she holds at the will or pleasure of his or her superior or the appointing or electing authority; hence the power for removal may be exercised at any time by such agency. In such case, the power of removal is regarded as incident to the power of appointment or election." [3]

However, I would note that both of these propositions are directed toward officers rather than employees of the city. You have advised this office that the city attorney for the Town of Kenneth City is a contract appointee for the city. [4]

The general rule regarding public employees is that

"unless restricted by law, or dismissal results in the violation of a valid contract, the power of a city or town to remove its employees is like that of the private corporation or individual. The officer or head of a department or board may dismiss subordinates and employees at-will, and notwithstanding limitations in this respect, in the interest of efficient and economical

administration, positions and places may in good faith be abolished and the subordinates or employees removed without notice and hearing." [5]

You have advised this office that no contract for employment exists between the Town of Kenneth City and the town attorney and that, historically, the town attorney serves pursuant to an at-will appointment.

This office has found no analogous situations in Florida case law to which we may direct your attention. Rather, the cases which you have cited in your memorandum appear to involve situations where the city charter contained provisions specifying the authority to remove employees or officers. [6] This is not the case with the Charter of the Town of Kenneth City.

In the absence of any contract provision specifying a term of employment and removal procedures or charter or ordinance provisions setting out the method for removing such contract appointees the Town of Kenneth City may wish to rely on the discussion from McQuillin cited above. However, this office would strongly suggest that charter amendments specifying the procedure for removal of the town attorney should be considered in order to avoid future controversies of this nature.

I trust that these informal comments will be helpful to you in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Article V, s. 5.01, Charter for the Town of Kenneth City.

[2] Section 12.229.30, The Law of Municipal Corporations, Third Edition, Eugene McQuillin.

[3] Section 12.249, McQuillin *id.*

[4] *Compare* Op. Att'y Gen. Fla. 70-13 (1970) in which this office determined that a city attorney is an officer.

[5] Section 12.250, McQuillin *supra* at n. 2.

[6] *Compare Baynard v. Windom*, 63 So. 2d 773 (Fla. 1952) (in dispute between city manager or civil service commission regarding appointment and removal of employees under civil service system, city manager was found to be have authority under special act to remove employees; *City of Miami v. White*, 165 So. 2d 790 (Fla. 3d DCA 1964) (city charter gave city manager power to appoint and remove and city manager had authority to dismiss police officer and was not bound by civil service board's recommendation for suspension).