

Increase in city officials salaries, pre-1973 charter

Number: INFORMAL

Date: December 15, 2008

Mr. Frank Wolland
Clerk, City of North Miami
776 Northeast 125th Street
Post Office Box 619085
North Miami, Florida 33261-9085

Dear Mr. Wolland:

You state that the salary of the city mayor and council members was increased by city ordinance. The city charter, however, specified the salary of such officers and was not amended until 2008 to remove such charter provision when such amendments were approved by the electorate. You ask what remedial action may be taken.

The authority of the Attorney General to issue opinions is limited to public officials on questions relating to their own official duties under state law. Questions as the validity of actions taken by the city council and what remedial actions should be taken would be matter relating to the duties of the city council and thus must be requested by a majority of the members of the council and accompanied by a memorandum of law prepared by the city attorney. Moreover, opinions of this office are limited to the interpretation of the provisions of state law; this office will respond to a specific legal question as to whether proposed actions is permissible under state law. This office, however, will not address questions of a speculative nature or questions of executive, legislative or administrative policy. I am enclosing a statement concerning Attorney General Opinions prepared by this office discussing when and to whom this office will issue opinions.

In an effort to be assistance, however, I would note that you state that the charter provision was adopted in 1969 and has not been subsequently amended. If the city charter has not been readopted since the effective date of the Home Rule Powers Act in 1973, section 166.021(4) and (5), Florida Statutes, would appear to be applicable. Those sections provide:

"(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, 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. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality *except as otherwise provided in subsection (4)* shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances." (e.s.)

Thus, municipal charter provisions adopted prior to 1973 which do not affect the above enumerated areas were either repealed or were converted into ordinances and are subject to modification or repeal as are other ordinances. Charters adopted or readopted subsequent to the adoption of the Municipal Home Rule Powers Act in 1973, however, may only be amended as provided in section 166.031, Florida Statutes. A change in the salary of the mayor or city council members would not appear to the terms of elected officers and the manner of their election or the distribution of powers among elected officers. As noted in section 166.021(4) and (5), Florida Statutes, with the exception of those enumerated areas, such provisions were repealed or became an ordinance of the municipality subject to modification or repeal as other ordinances.

This office has issued several opinions regarding the amendment of both pre-1973 and post-1973 charters. You may access this office's searchable database of opinions issued since 1974 at:<http://myfloridalegal.com/opinions>. You may also wish to discuss this matter further with the city attorney.

I trust you will understand that the duties of this office are prescribed by law. Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t