

Municipalities, incorporation of City of West Park

Number: INFORMAL

Date: March 01, 2006

Ms. Wanda Greene Celestine
3908 Southwest 26th Street
West Park, Florida 33023

Dear Ms. Celestine:

The Attorney General has requested that this office review the materials you forwarded regarding the incorporation of the City of West Park.

Based upon the information provided, it appears that the City of West Park was created by special act of the Legislature and approved by the qualified electors residing within the proposed corporate area during the November 2, 2004 election.[1] Pursuant to the terms of the special act, the city was established March 1, 2005.[2]

Section 165.041(1)(b), Florida Statutes, requires that in order "[t]o inform the Legislature on the feasibility of a proposed incorporation of a municipality, a feasibility study shall be completed and submitted to the Legislature 90 days before the first day of the regular session of the Legislature during which the municipal charter would be enacted." The statute requires that certain elements be contained within the study including, among others, a list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services as well as evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation that, at a minimum, includes:

"a. Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.

b. A 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets."[3]

In 2003, a study was conducted to determine the feasibility of incorporating the unincorporated areas of Broward County that eventually became the City of West Park. The staff analysis for the special act creating the city noted a number of deficiencies with the feasibility study, including the failure to contain a 5-year operational plan that included proposed staffing, building acquisition and construction, debt issuance, and budgets, and to list all the services currently being provided as identified in section 165.041(1)(b), Florida Statutes.[4] While the staff analysis for the bill concluded that the feasibility study met the requirement that it identify proposed services and the estimated costs of such services, and addressed the majority of tax bases and revenue sources available to a municipality and provide revenue estimates for them, it noted that

"the *Study* intends for Broward County government to provide major services including law

enforcement, fire, emergency medical services, water, and sewer. It may be appropriate to include a letter of agreement or memorandum of understanding from county government officials indicating that it will provide the specified services at the level and for the amount identified in the feasibility study." [5]

From the information provided to this office, it appears that the costs for providing law enforcement and fire services are significantly higher than those contemplated by the feasibility study. In addition, the study failed to take into consideration the widening of U.S. 441 which will have a significant impact on the city's tax base since many of the city businesses are located on property being acquired by the Department of Transportation for the widening of the roadway. It appears that the company preparing the study claims that the discrepancy is based on figures provided by the county and the fact that the county did not inform the company of the U.S. 441 project, while the county claims that the problems arose from the methodology used by the company. [6]

Based upon this office's review of this matter, it does not appear that this office has any jurisdiction in this matter. This office must assume that the city was properly incorporated until and unless a court declares otherwise. Nor can this office assess wrongdoing to any particular party. Such issues would have to be resolved in a judicial proceeding held by a court of competent jurisdiction. It is clear, however, the city faces a significant financial challenge. You indicate that the city intends to seek additional funding from the Legislature and county. As you are aware, the 2006 legislative session will begin shortly at which time the 2006-2007 state budget will be considered. This office would also note that section 163.055, Florida Statutes, establishes the Local Government Financial Technical Assistance Program which is intended to provide technical assistance to municipalities and special districts to enable them to implement workable solutions to financially related problems. Section 290.053, Florida Statutes, provides for a response to economic emergencies in small communities. In creating the program the Legislature recognized that conditions may exist where criteria for existing economic development programs prevent some businesses from participating and that existing criteria should be waived in order to allow businesses which are significant employers in these small communities to participate in these programs in order to improve the economic health of these communities. The Legislature further recognizes that the loss of an industry or the inability of a significant employer to open or reopen a business in a small community creates a state of economic emergency within that community. [7]

The statute provides for a local governmental entity to notify the Governor, the Office of Tourism, Trade, and Economic Development, and Enterprise Florida, Inc., when one or more of the conditions specified in the statute have occurred or will occur if action is not taken to assist the local governmental entity or the affected community.

Regarding the provision of law enforcement services, this office would note that section 166.0495, Florida Statutes, provides:

"A municipality may enter into an interlocal agreement pursuant to s. 163.01 with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the other adjoining municipality or municipalities. Any such agreement shall specify the duration of the agreement and shall comply with s. 112.0515, if

applicable. The authority granted a municipality under this section is in addition to and not in limitation of any other authority granted a municipality to enter into agreements for law enforcement services or to conduct law enforcement activities outside the territorial boundaries of the municipality."

Thus, the city could consider discussing the possibility of entering into such an agreement with an adjoining municipality for the provision of law enforcement services if it would be more economical to do so.

Should the city determine that it is economically unfeasible for it continue as an incorporated municipality, section 165.051, Florida Statutes, sets forth the procedures for dissolution:

"(1) The charter of any existing municipality may be revoked and the municipal corporation dissolved by either:

(a) A special act of the Legislature; or

(b) An ordinance of the governing body of the municipality, approved by a vote of the qualified voters.

(2) If a vote of the qualified voters is required, the governing body of the municipality or, if the municipal governing body does not act within 30 days, the governing body of the county or counties in which the municipality is located, shall set the date of the election, which shall be the next regularly scheduled election or a special election held prior to such election, if approved by a majority of the members of the governing body of each governmental unit affected, but no sooner than 30 days after passage of the ordinance. Notice of the election shall be published at least once each week for 2 consecutive weeks prior to the election in a newspaper of general circulation in the municipality."

Section 165.061(3), Florida Statutes, sets forth the standards for dissolution, stating that the dissolution of a municipality must meet the following conditions:

"(a) The municipality to be dissolved must not be substantially surrounded by other municipalities.

(b) The county or another municipality must be demonstrably able to provide necessary services to the municipal area proposed for dissolution.

(c) An equitable arrangement must be made in relation to bonded indebtedness and vested rights of employees of the municipality to be dissolved."

If the city is unable to meet the criteria above, it appears that any action to dissolve the municipality would have to be taken by the Legislature.

Since your city was indeed created by legislative act, and the matter falls within the terms of local rule, we have forwarded a copy of our response to your inquiry to the Chair of the Broward Legislative Delegation, Florida Representative Eleanor Sobel. We urge you to work with the

delegation and continue to call upon your County Commissioner Diana Wasserman Rubin to be your advocate and assist you in addressing your concerns.

I trust that you will understand that the duties of this office are prescribed by law; I hope, however, that the above information may be of assistance.

Sincerely,

L. Clayton Roberts
Deputy Attorney General

LCR/tjw

[1] Chapter 04-454, Laws of Fla. (House Bill 1491, 2004 Legislative Session).

[2] Section 8, Ch. 04-454, Laws of Fla.

[3] Section 165.041(1)(b)(6) and (8), Fla. Stat.

[4] Florida House of Representatives Local Bill Staff Analysis on HB 1491, pp. 9 and 10, dated April 7, 2004 ("Based on the information contained in the *Study*, (pages 34-35, 50, 52, 62-67), it appears to identify current providers of major public services, but not all the services identified in s. 165.041(1)(b)5., F.S, and appears to provide cost estimates for each of those major services.").

[5] *Id.*

[6] See Presentation to the City of West Park City Commission Meeting by Community Redevelopment Associates of Florida, Inc., Subject: South County Feasibility Study/Budget Line Items; Police and Fire/EMS Services, dated September 21, 2005, and The Broward Times "Can New City of 'West Park' Support Itself," November 18-24, 2005, pp. 9-10.

[7] Section 290.053(1), Fla. Stat. *And see* subsection (2) of the statute providing:

"(2) A community is in a state of economic emergency when any of the following conditions occur:

(a) Closure of a business which is a significant employer of workers in the community.

(b) Closure of a business which significantly affects the operations of other businesses which are significant employers of workers in the community.

(c) A business which would be a significant employer of workers in the community is unable to open or reopen due to a lack of economic incentives or a business environment which is not favorable to the opening or reopening of that business.

(d) The community experiences substantial unemployment due to the closure of a major industry."