

Charter Review Commission

Number: INFORMAL

Date: March 22, 2004

Mr. C. Allen Watts
Commission Counsel
Brevard County Charter Review Commission
211 East Rich Avenue
DeLand, Florida 32724

Dear Mr. Watts:

This is in response to your request on behalf of the Brevard County Charter Review Commission as to whether the commission may propose an amendment to the county's charter which would repeal the charter.

This office does not offer legal interpretations or opinions on the provisions of a local charter, code or ordinance.[1] While it appears that the question posed involves the resolution of the semantics between an amendment and a repeal, ultimately it involves an interpretation of the authority granted under the Brevard County Charter. In an attempt to provide assistance, however, the following informal comments are offered.

Section 1(c), Article VIII, Florida Constitution, states:

"Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose."

You state that the charter for Brevard County was proposed using the process established in sections 125.60-125.64, Florida Statutes, and adopted by referendum in November 1994. Section 125.64(2), Florida Statutes, states:

"If a majority of those voting on the question favor the adoption of the new charter, it shall become effective January 1 of the succeeding year or at such other time as the charter shall provide. Such charter, once adopted by the electors, may be amended only by electors of the county. The charter shall provide a method for submitting future charter revisions and amendments to the electors of the county."

The adopted charter contains three methods for its amendment, including extraordinary vote by the board of county commissioners, petition by a specified number of the electorate, and upon recommendations by a charter review commission.[2]

Section 7.4 of the Brevard County Charter provides:

"Not later than July 1 of the year 1997 and every sixth year thereafter, the Board of County

Commissioners shall appoint a Charter Review Commission to review the Charter of the County. Each Charter Review Commission shall consist of fifteen (15) persons, with not less than two (2) members residing in each Commission district. The Commission shall otherwise be appointed in the manner provided by law for the appointment of charter commissions in counties without charters. The Commission shall be funded by the Board of County Commissioners and shall be known as the 'Brevard County Charter Review Commission.' It shall, within one (1) year from the date of its first meeting, present to the Board of County Commissioners its recommendations for amendment of the Charter or its recommendation that no amendment is appropriate. If amendment is to be recommended, the Charter Commission shall conduct three (3) public hearings, at intervals of not less than ten (10) days, immediately prior to the transmittal of its recommendations to the Board of County Commissioners. The Board of County Commissioners shall schedule a referendum on the proposed charter amendments concurrent with the next general election. The Charter Review Commission may remain in existence until the general election for purposes of conducting and supervising education and information on the proposed amendments."

The charter further provides for an independent review of any proposed charter amendments, whereby the county commission empanels three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law, and the charter. The persons serving on the panel must have demonstrated experience in local government law and must be licensed to practice law in Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.[3] In the event two of the three members of the panel find that the amendment embraces a single subject and conforms to the Florida Constitution, general law and the charter, the county commission "shall place the proposed charter amendment on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose."

The sitting charter review commission was appointed in 2003 and proposes to deliver its final report to the Brevard County Board of County Commissioners in July 2004. The charter review commission has been requested to recommend repeal of the county's charter, but questions its authority to do so. You have advised the charter review commission that its authority is limited to recommending amendments to the charter and would not appear to extend to recommending its repeal.

This office was asked to consider a substantially similar issue in Attorney General Opinion 75-259. In that opinion this office was asked to determine whether the provisions in the Volusia County Home Rule Charter allowing amendments to be proposed by an initiative petition included the authority to propose a repeal. The charter also provided for the periodic review of the county's charter and ordinances by a charter review commission. The charter, however, did not provide a method for its repeal. Thus, the question there, as in the instant situation, was whether the authority to amend by initiative and referendum was intended to authorize the repeal of the charter in the same manner.

While recognizing that amendment of a statute or the Constitution may have the effect of impliedly repealing existing provisions that are "irreconcilably repugnant" to the later enactment, this office found that an "implied repeal" is not an "amendment" as contemplated by the

constitutional requirements for amending or revising laws. No court decision was found that had ruled that the words "repeal" and "amend" are interchangeable; rather they are entirely different concepts. As noted in the opinion, Black's Law Dictionary distinguishes "repeal" from "amendment" as follows:

"Repeal' of a law means its complete abrogation by the enactment of a subsequent statute, whereas the "amendment" of a statute means an alteration in the law already existing, leaving some part of the original still standing." [4]

The opinion further cited to a Florida Supreme Court decision, *Rivera-Cruz v. Gray*, [5] in which the Court ruled that the method provided in the Florida Constitution for proposing and adopting an amendment of its provisions could not be used in proposing and adopting a "revision" thereof. This office concluded, therefore, that absent a legislative provision for the repeal of the charter, it could not be repealed in the same manner by which it could be amended. In that instance, the charter for Volusia County was initiated by the Legislature, which further supported the conclusion that the manner in which the special act might be repealed would have to be expressly stated and not inferred.

Similarly, in the instant case, neither sections 125.60-125.64, Florida Statutes, nor the provisions of the Charter of Brevard County provide a manner for the repeal of the county charter. [6]

I trust that these comments will assist you in the resolution of this issue.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See Statement Concerning Attorney General Opinions, Annual Report of the Attorney General.

[2] See ss. 7.3.1., 7.3.2. and 7.4., Charter of Brevard County.

[3] Section 7.4.A., Charter of Brevard County.

[4] Black's Law Dictionary, Fifth Ed. (1981), p. 1167. It is noted that the opinion referred to the Fourth Edition of Black's Law Dictionary containing the same definition.

[5] 104 So. 2d 501 (Fla. 1958).

[6] Cf. Op. Att'y Gen. Fla. 90-09 (1990) (charter commission created pursuant to s. 125.61, Fla. Stat., must present proposed charter to county commission for approval or disapproval by referendum).