

Municipalities, exercise of proprietary powers

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The Honorable Walter "Skip" Campbell
Senator, District 33
10094 McNab Road
Tamarac, Florida 33321

Dear Senator Campbell:

You ask about the authority of a municipality to operate a business that may be in direct competition with private businesses in the community. Attorney General Butterworth has asked me to respond to your letter.

Article VIII, section 2(b), Florida Constitution, provides:

"Municipalities shall have governmental, corporate, and *proprietary powers* to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective." (e.s.)

Thus, municipalities are authorized to exercise proprietary powers provided that such power is exercised for a valid public purpose. Section 166.021(1), Florida Statutes, of the Municipal Home Rule Powers Act, reiterates the broad grant of authority granted to municipalities.[1]

In *City of Boca Raton v. Gidman*,[2] the Supreme Court of Florida stated that whenever a municipality exercises its powers, a two-tiered question is presented: Was the action taken for a municipal purpose, and if so, is the action expressly prohibited by the Constitution, general or special law, or county charter? The courts have rejected the argument that a municipality may act only when there is a need of a collective effort by the municipality because private enterprise either could not or was not likely to take as effective action as the municipality.

Numerous Florida judicial decisions have recognized the power of municipalities to engage in private business, even though such city-operated business competes with a privately owned business. For example, in *Gidman, supra*, the Supreme Court held that provision for day-care educational facilities constitutes a valid public purpose.

While section 166.021(2), Florida Statutes, refers to "[m]unicipal purpose" as "any activity or power which may be exercised by the state or its political subdivision," the term has been broadly interpreted by the courts. For example, in *City of Winter Park v. Montesi*,[3] the Fifth District Court of Appeal concluded that a city had the authority to sell pictures of a sinkhole that had developed within its corporate limits. The mere fact that the city-operated service competed with a privately owned business did not invalidate the city's enterprise. Other instances where the courts have upheld the operation of a proprietary business by a municipality include the

construction and operation of a parking garage,[4] the ownership and operation of an auditorium, including booking attractions for the auditorium,[5] and maintenance and operation of a radio broadcasting system.[6]

Thus, if a municipal purpose is involved, a municipality may exercise its proprietary powers even its activities may compete with private businesses.

I trust that the above informal advisory comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General
Director, Opinions Division

JW/tzg

[1] Section 166.021(1), Fla. Stat., provides:

"As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law."

[2] 440 So. 2d 1277 (Fla. 1983).

[3] 448 So. 2d 1242 (Fla. 5th DCA 1984), *review denied*, 456 So. 2d 1182 (Fla. 1984).

[4] *Gate City Garage v. City of Jacksonville*, 66 So. 2d 653 (Fla. 1953).

[5] *Starlight Corporation v. City of Miami Beach*, 57 So. 2d 6 (Fla. 1952).

[6] *State v. City of Jacksonville*, 50 So. 2d 532, 535 (Fla. 1951) (though there was a time when a municipal purpose was restricted to police protection or such enterprises as were strictly governmental that concept has been very much expanded and a municipal purpose may now comprehend all activities essential to the health, morals, protection and welfare of the municipality).