Municipal ordinances, enactment procedures

Number: INFORMAL

Date: July 17, 1997

The Honorable Mike Fasano
Representative, District 45
8217 Massachusetts Avenue
New Port Richey, Florida 34653-3111

Dear Representative Fasano:

This is in response to your recent request on behalf of a constituent Ms. Virginia Krysher to have this office review whether two ordinances involving a change in land use and the disposition of surplus property by the City of New Port Richey were properly enacted. Regrettably, this office may not comment upon the propriety of the actions of the city council absent a request from that body and must presume that a duly enacted ordinance is valid. However, the following general comments regarding Florida Statutes pertinent to the passage of ordinances and the disposal of surplus property by a municipality are offered.

Section 166.041, Florida Statutes, sets forth a uniform method for the adoption and enactment of municipal ordinances and resolutions. It establishes minimum notice procedures that may not be lessened or reduced by the municipality.[1] Under Florida law, strict compliance with the notice requirements in section 166.041, Florida Statutes, is a jurisdictional and mandatory prerequisite to the valid enactment of a zoning measure.[2] Thus, failure to follow the statutory notice requirements will render a zoning ordinance void.

In relation to the passage of ordinances, section 166.041(2), Florida Statutes, states that ordinances "shall be introduced in writing and shall embrace but one subject and matters properly connected therewith." While I have found no recorded court cases that have interpreted the single subject restriction in section 166.041(2), Florida Statutes, cases discussing the single subject limitation contained in section 6, Article III of the State Constitution, may offer some guidance. In *State v. Flowers,*[3] the court concluded that a statute did not violate the single subject rule where each section had a natural or logical connection to the stated purpose of the act.

Ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land must be enacted pursuant to the statutorily prescribed procedure. When a proposed ordinance alters the zoning designation for a parcel or parcels of land involving less than ten contiguous acres, the city's governing body must direct its clerk to notify by mail each real property owner whose land is to be redesignated by the ordinance at least 30 days prior to a public hearing on the proposed ordinance. In cases where ten contiguous acres or more are to be redesignated, two advertised public hearings must be held, with prescribed minimum requirements on the size of the notice, the placement of the notice in particular sections of the newspaper, and the type of newspaper in which the notice appears.

Further, section 166.041(3)(c)2.b., Florida Statutes, prescribes the form that must be substantially followed. The section states, however, that "[i]n lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance."[4] As noted above, strict compliance with the notice requirements must be met in order to have a valid zoning ordinance.

This office has previously recognized that in the absence of a city charter provision, ordinance or rule to the contrary, the governing body may, in its discretion, utilize whatever method or procedure it decides will be in the best interest of the municipality in disposing of surplus municipal real property.[5] Such a conclusion was based on the broad home powers granted to municipalities by Article VIII, section 2(b), Florida Constitution, and implemented by Chapter 166, Florida Statutes, the Municipal Home Rule Powers Act.

In this instance, the city charter contains specific provisions that control the city's disposition of surplus property. It is outside the jurisdiction of this office, however, to interpret the city's charter or to make a determination of whether the governing body's actions comport with its provisions.

I trust these informal comments provide some guidance in the resolution of this matter.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] Section 166.041(6) and (8), Fla. Stat. (1995).

[2] *Ellison v. City of Fort Lauderdale*, 183 So. 2d 193 (Fla. 1966); *Daytona Leisure Corp. v. Daytona Beach*, 539 So. 2d 597 (Fla. 5th DCA 1989); *Fountain v. City of Jacksonville*, 447 So. 2d 353 (Fla. 1st DCA 1984).

[3] 643 So. 2d 644 (Fla. 1st DCA 1994), *cause dismissed*, 648 So. 2d 722 (Fla. 1994).

[4] Section 166.041(3)(c)2.c., Fla. Stat. (1995).

[5] *See* Op. Att'y Gen. Fla. 82-76 (1982) (absent city charter provision requiring governing body of municipality to use certain procedure for sale of surplus municipal real property, governing body may use discretion in choosing method of disposition in best interest of city).