

Interlocal agreement; precedence over bylaws

Number: INFORMAL

Date: August 26, 1996

Mr. Frederick E. Landt III
General Counsel
Withlacoochee Regional Planning Council
Post Office Box 2045
Ocala, Florida 34478

Dear Mr. Landt:

You ask whether the provisions of an interlocal agreement between member counties of a regional planning council take precedence over provisions of by-laws subsequently adopted by the council but not ratified by each of the member counties.

Based upon the following analysis, the provisions of an interlocal agreement between member counties of a regional planning council would appear to take precedence over any conflicting provisions of the by-laws subsequently adopted by the council but not ratified by each of the member counties.

You state that the member counties have agreed that the Charter Agreement shall be construed to be an interlocal government agreement adopted pursuant to Chapter 163, Florida Statutes.[1] Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969 (act), provides a means by which local government units may make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.[2]

Section 163.01(5), Florida Statutes, states that a joint exercise of power pursuant to the act shall be made by contract in the form of an interlocal agreement which may provide for:

"* * *

(d) The manner in which the parties to an interlocal agreement will provide from their treasuries the financial support for the purpose set forth in the interlocal agreement; payments of public funds that may be made to defray the cost of such purpose; advances of public funds that may be made for the purposes set forth in the interlocal agreements and repayment thereof; and the personnel, equipment, or property of one or more of the parties to the agreement that may be used in lieu of other contributions or advances.

(e) The manner in which funds may be paid to and disbursed by any separate legal or administrative entity created pursuant to the interlocal agreement."

The interlocal agreement between member counties of a regional planning council in the instant

inquiry provides that "[n]o appropriation shall become effective until it has been adopted by a three-fifths (3/5) vote of the full council and approved by the official action of at least three (3) of the Boards of County Commissioners represented on the council." [3] The by-laws of the planning council are, according to your letter, reflected in the rules of the council. Rule 29E-1.13, Florida Administrative Code, provides:

"(1) The Council shall prepare a tentative annual budget and shall forward copies of same to the governing bodies of member governmental units at least three (3) weeks prior to the adoption of a final budget of the Council.

(2) The budget may be amended from time to time by action of the Council, provided, however, that the budget may not be amended to increase the annual per capita appropriation by the constituent members without the unanimous consent of the governing bodies of the member counties."

The Interlocal Agreement also addresses these issues, providing in Section XIII(5) and (6):

"(5) The council shall prepare a tentative annual budget and forward copies of same to the governmental bodies of governmental units represented on the council at least three (3) weeks prior to the adoption of a final budget in order that the constituent governmental bodies shall have an opportunity to take considered action in approving or disapproving the proposed budget and necessary appropriation, if any, to be made by the constituent governmental bodies.

(6) The budget may be amended from time to time by action of the council to include any funds accumulated from time to time from private, state, or federal sources, provided, however, that the budget may not be amended to increase the annual per capita appropriation by the constituent counties without the unanimous consent of the governing bodies of the constituent counties."

Thus, the interlocal agreement recognizes that the budget may be amended by council action to include funds accumulated from various sources but that the annual per capita appropriation by the constituent counties may not be increased without the unanimous consent of the constituent counties. The rules of the council would appear to implement the provisions of the interlocal agreement.

In the event of a conflict between the rules or by-laws of the council and the interlocal agreement, the provisions of the interlocal agreement would appear to control. It has generally been stated that the "[b]y-laws of a corporation must be consistent both with the terms and with the spirit and intent of the charter or governing statute, and where they are contrary to or inconsistent with the charter, articles of incorporation. . . are void" [4]

Moreover, while administrative agencies may make rules to carry out the powers conferred on them, they cannot assume the power to do more but are limited by the statute conferring the power. [5] As noted in Attorney General Opinion 95-47, section 163.01, Florida Statutes, contemplates that the interlocal agreement will direct the financial obligations of the parties to the agreement. While the by-laws or rules of the council may implement such provisions, they may not enlarge or supersede such provisions.

Thus, the provisions of an interlocal agreement between member counties of a regional planning

council would appear to take precedence over any conflicting provisions of the by-laws subsequently adopted by the council but not ratified by each of the member counties.

I trust that the above informal advisory comments, which should not be construed as a formal opinion of this office, may be of some assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] According to your letter, the Withlacoochee Regional Planning Council was formed in 1973 through adoption of a charter agreement by Citrus, Hernando, Levy, Marion, and Sumter counties, pursuant to Chapter 160, Florida Statutes. In 1974, the member counties entered into a supplemental agreement to specifically provide that the charter agreement be construed as an interlocal agreement adopted pursuant to Part I, Chapter 163, Florida Statutes, rather than pursuant to Chapter 160.

[2] Section 163.01(2), Fla. Stat.

[3] Section XIII(3) of the Interlocal Agreement. You state that the by-laws of the council contained a similar provision in Rule 29E-1.12(3), F.A.C. According to the rules accompanying your letter, however, Rule 29E-1.12 was repealed on August 10, 1978.

[4] 18 C.J.S. *Corporations* s. 115d. Cf. s. 607.0206(2), Fla. Stat. (1995), stating that the bylaws of a corporation may contain provisions for managing the business and regulating the affairs of the corporation that are not inconsistent with law or the articles of incorporation.

[5] See generally *Board of Trustees of Internal Improvement Trust Fund of State of Florida v. Board of Professional Land Surveyors*, 566 So. 2d 1358 (Fla. 1st DCA 1990); *State, Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. Salvation Limited, Inc.*, 452 So. 2d 65 (Fla. 1st DCA 1984).