

Municipalities, charter amendment re mayor's salary

Number: INFORMAL

Date: June 18, 1996

Mr. Thomas J. Kennon III
Fort White Town Attorney
Post Office Drawer 1707
Lake City, Florida 32056

Dear Mr. Kennon:

You ask whether the Town of Fort White may amend the city charter to increase the mayor's compensation without a special election. You also inquire whether the city may hire the mayor as an independent contractor "to perform physical labor" and compensate him for such duties.

With respect to your first question, I am enclosing copies of several Attorney General Opinions which I trust will assist you in resolving this matter. As noted in the opinions, the Florida Legislature in 1973 with the adoption of the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes, granted municipalities broad home rule powers. In order to implement such a grant, section 166.021(4) and (5), Florida Statutes, modified and repealed or converted into ordinances many of the provisions of municipal charters in existence at the time of the adoption of the Home Rule Powers Act which constituted limitations on, or pertained exclusively to, the power or jurisdiction of municipalities. However, section 166.021(4) provides that nothing in Chapter 166 is to be construed as permitting any changes in a special law or municipal charter which affect:

"the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031."

Thus, municipal charter provisions adopted prior to 1973 which do not affect the above enumerated areas were either repealed or were converted into ordinances and are subject to modification or repeal as are other ordinances. Charters adopted or readopted subsequent to the adoption of the Municipal Home Rule Powers Act in 1973, however, may only be amended as provided in section 163.031, Florida Statutes.

Although you indicate that the town's charter was originally adopted in 1957, you have not advised this office whether the charter has been subsequently readopted. If the town's charter has not been readopted, it appears that the charter provision relating to compensation may be amended without referendum since it does not fall within one of the categories set forth in

section 166.021(4), Florida Statutes.

Subsequent to the effective date of the Municipal Home Rule Powers Act regarding your second question, it is not clear what "physical labor" the mayor will perform or whether such functions are assigned by the town charter or ordinances to be performed by the mayor. If such duties are assigned to the office of the mayor, it does not appear that the town would be able to hire the mayor as an independent contractor and pay him outside of the constraints of the town charter. If such duties are not specifically assigned to the office of mayor, there may be problems with the mayor seeking to contract with his own agency under the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes. Any question relating to the interpretation of the code, however, should be referred to the Florida Commission on Ethics which is authorized to render advisory opinions. See s. 112.322(3), Fla. Stat. (1995).

Ms. Bonnie Williams is the Executive Director for the commission and can be contacted at the following address:

Ms. Bonnie Williams
Executive Director
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
Telephone: (904) 488-7864

I trust that the above informal advisory comments and enclosed materials may be of some assistance to you.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosures: Ops. Att'y Gen. Fla. 75-172 (1973), 82-98 (1982), 83-39 (1983), 86-64 (1986), 89-30 (1989), 90-38 (1990).