

Municipalities; Single member districts

Number: INFORMAL

Date: June 18, 1996

Mr. Donald J. Banks, Attorney
City of Springfield City Commission
Post Office Box 430
Panama City, Florida 32402

RE: MUNICIPALITIES--CHARTERS--ELECTIONS--ORDINANCES--whether single member voting districts for city commission may be created by ordinance. s. 166.021(4), Fla. Stat.

Dear Mr. Banks:

You have asked for my opinion on the question of whether the City Commission for the City of Springfield is authorized to adopt an ordinance dividing the city into wards and creating single member voting districts to the effect that each member must reside in and be elected only from such district.

For the following reasons, it is my opinion that the Charter for the City of Springfield authorizes the city commission to adopt an ordinance requiring city commissioners to reside, qualify and be elected from one of four wards into which the city has been divided; the mayor-commissioner must be elected by the voters of the city at large.

According to your letter the Charter of the City of Springfield was adopted in 1951 and has not been significantly amended. The charter provides for a city commission which consists of a mayor-commissioner and four commissioners all of whom must be elected at large. The charter also provides that:

"The city commission may, by ordinance, divide the city into four (4) wards and provide that, at subsequent elections, city commissioners shall be qualified and elected, one (1) from each ward, and shall reside in the ward from which elected, provided that the mayor-commissioner shall always be elected by the voters of the city at large."

You have asked whether this language in the charter would allow the city commission to enact an ordinance changing the at large system to a single member voting district system within the city or whether language in section 166.021, Florida Statutes, would only authorize such a change in response to approval by a referendum of city electors.

Section 166.021(1), Florida Statutes, of the Municipal Home Rule Powers Act, provides that municipalities "may exercise any power for municipal purposes, except when expressly prohibited by law." To implement this broad grant of home rule power to municipalities, section 166.021(4) and (5), Florida Statutes, modified, repealed, or converted into ordinances, many provisions of municipal charters which constituted limitations on, or related exclusively to, the power or jurisdiction of municipalities. However, section 166.021(4), Florida Statutes, provides

that nothing in Chapter 166, is to be construed as permitting any changes in a special law or municipal charter which affect certain subject matters specifically mentioned therein, including "the terms of elected officers and the manner of their election" without referendum approval as provided in section 166.031, Florida Statutes.

This office has consistently concluded that any municipal charter provision adopted or readopted subsequent to the effective date of the Municipal Home Rule Powers Act, October 1, 1973, can only be amended in accordance with section 166.031, Florida Statutes.[1] What you propose, however, is not a change in a charter provision, rather your proposal represents the implementation of an existing charter provision. The provisions of a charter which automatically became ordinances with the adoption of the Municipal Home Rule Powers Act did not include the areas which are specifically excluded by section 166.021(4); those provisions enumerated in section 166.021(4) remain in effect, as part of the charter.[2] The manner of election of officers is one of the subject matters which would have been preserved as a part of the charter.[3]

Thus, the limitations on amending or readopting charter provisions following enactment of the Municipal Home Rule Powers Act would not operate in this case. Rather, the city currently has a charter provision which authorizes the city commission to adopt an ordinance dividing the city into wards and requiring individual commissioners to reside, qualify and be elected from a particular ward. This provision also specifically requires that the mayor-commissioner must always be elected by the city voters at large.[4]

Therefore, it is my opinion that the City Commission of the City of Springfield may by ordinance divide the city into wards and require that each commissioner must qualify and be elected in the ward in which he or she resides. Pursuant to the provisions of section 166.021(4), Florida Statutes, this charter amendment may be accomplished without the necessity of a referendum of the electors.

I trust that these informal comments will assist you in advising the City of Springfield.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See Ops. Att'y Gen. Fla. 93-23 (1993) (1970 charter amendment provision was nullified and repealed or converted to an ordinance by passage of Municipal Home Rule Powers Act and would have no effect upon amendments to city charter), 88-30 (1988) (charter amendment provisions in s. 166.031, Fla. Stat., prevail over conflicting provisions in a municipal charter); 79-80 (1979) (city commission may not unilaterally amend its charter as it is bound by the provisions in s. 166.031, Fla. Stat.).

[2] See Op. Att'y Gen. Fla. 73-301 (1973).

[3] *Cf.* Op. Att'y Gen Fla. 78-32 (1978), recognizing that such a change is a change in the manner of election of city commissioners under section 166.021(4).

[4] You have also asked whether the language of the charter provision is effective to create single member voting districts for commissioners. This office has no authority to construe the language of local legislation such as the charter of the City of Springfield; rather the Attorney General is charged with interpreting state law.