

Local Government, preference to local businesses

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The Honorable John Tobia
Representative, District 31
1901 South Harbor City Boulevard
Suite 508
Melbourne, Florida 32901

Dear Representative Tobia:

You have advised this office that you are considering introducing legislation during the 2011 legislative session on the issue of local governments adopting preference ordinances favoring local contractors. Attorney General McCollum has asked me to respond to your letter.

The Florida Statutes currently contain numerous examples of state statutes authorizing preferential treatment of contractors and providers of goods and services and the Florida Attorney General's Office has, on a number of occasions, issued formal opinions on this subject. I am enclosing copies of two relatively recent Attorney General Opinions on this matter and providing the following informal comments in an effort to assist you. My comments are general and directed to municipal legislation, but similar arguments could be made for other local governmental agencies.

Section 2(b), Article VIII of the Florida Constitution provides, in part that:

"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."

The Florida Supreme Court has stated that this constitutional provision "expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services." [1] The Court stated, in *State v. City of Sunrise*, that the only limitation on the power of municipalities under this constitutional section is that such power must be exercised for a valid municipal purpose. As determined by the Court, "[l]egislative statutes are relevant only to determine limitations of authority" and municipalities need no further authorization from the Legislature to conduct municipal government. [2]

Pursuant to section 166.021(1), Florida Statutes, municipalities are granted "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." Thus, municipalities may legislate to the same extent and on the same subjects as the Legislature so long as they do not address subjects preempted to the state or county or conflicting with existing statutes or the Constitution.

The Florida Legislature has enacted numerous statutes providing preferential treatment for various groups: veterans of military service, minority business enterprises, Florida licensed professionals, and members of Indian Tribes.[3] Commodities manufactured, grown, or produced in Florida are given special treatment in the statutes.[4] Foreign manufacturers with factories in Florida who employ over 200 resident employees are provided preference in section 287.092, Florida Statutes. These examples are provided to illustrate the extent to which the Florida Legislature has adopted preferential legislation and to suggest how broadly local governmental entities may legislate in this area under their home rule powers.

With regard to judicial decisions addressing local preference ordinances, the Fifth District Court of Appeals case, *City of Port Orange v. Leechase Corporation*,^[5] may provide some direction. In that case, the district court reviewed the legality of a municipality's bidding ordinance giving preference to bidders whose principal places of business were located within the municipality. The lower court had found the ordinance to be flawed as against public policy. The district court reversed, finding no contravening public policy established by the state or federal constitutions, or by state statute, that would preclude the municipality from enacting such an ordinance. Given the existence of a duly enacted ordinance that the municipality had followed, the court refused to evaluate the wisdom of the ordinance's enactment. The district court distinguished these circumstances from those in *Marriott Corporation v. Metropolitan Dade County*,^[6] where the court reversed the county commission's award of a contract to a local bidder who was not the lowest bidder when there existed a permanent resolution (tantamount to an ordinance) providing for the competitive bidding of such contracts with no provision for local preference.

I trust that these informal comments may be helpful to you in crafting legislation during the 2011 legislative session.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/srh

Enclosures: AGO's 2002-03 and 2001-65

[1] *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

[2] *Supra* at 1209. See also *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

[3] See, e.g., s. 110.2135, Fla. Stat., Florida's veterans preference statute; s. 255.102, Fla. Stat., providing preferences for minority business enterprises; s. 255.25(3)(h), Fla. Stat., providing a preference to Florida licensed brokers; s. 285.711, Fla. Stat. (2009), Part XVIII G, Gaming Compact Between Seminole Tribe and State of Florida.

[4] See s. 287.082, Fla. Stat.

[5] 430 So. 2d 534 (Fla. 5th DCA 1983).

[6] 383 So. 2d 662 (Fla. 3d DCA 1980).