

Town marshal, abolition of position

Number: INFORMAL

Date: May 04, 2006

Mr. William P. Doney
Cloud Lake Town Attorney
Suite 610 The Forum
1665 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401

Dear Mr. Doney:

On behalf of the Town of Cloud Lake, you ask whether the provisions of Chapter 73-129, Laws of Florida, Chapter 74-192, Laws of Florida, or Article V, section 20(d)(4), Florida Constitution, abolished the position of town marshal. If not, you ask whether the town may abolish the position by ordinance without a referendum.

According to your letter, the town was incorporated in 1951 pursuant to the authority granted by Chapter 165, Florida Statutes (1951).[1] You state that no charter was adopted at the time of incorporation and no charter has subsequently been adopted. Instead the town has been operating under the powers granted to municipalities by general law. At the time of incorporation, a mayor, five aldermen, a town clerk and a town marshal were elected. Until approximately 1990, the position of town marshal was occupied; at that time the individual serving as town marshal resigned and the position has remained vacant since that time.

At the time of the town's incorporation, various statutes in Chapters 165, 167 and 168, Florida Statutes, made reference to marshals.[2] You state, however, that the town adopted no ordinances either establishing the position of town marshal or defining its duties. My research has not revealed nor have you brought to my attention any special law which affects the form of government of the Town of Cloud Lake or the governmental powers vested in the town marshal.

Chapter 73-129, Laws of Florida, adopted the "Municipal Home Rule Powers Act." [3] Section 5 of the act repealed, with certain exceptions, Chapters 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184, Florida Statutes. [4] In repealing the above chapters, section 5(2) of the act [now section 166.042, Florida Statutes] provides:

"It is the legislative intent that the repeal by chapter 73-129, Laws of Florida, of chapters 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184 of Florida Statutes shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above, but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe."

In addition, section 166.021(4) and (5), Florida Statutes, provides:

"(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit 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. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances."[5]

While Chapter 73-129, Laws of Florida, sought to grant municipalities broad home powers, I find nothing in the act that would have the effect of abolishing the position of town marshal.

Article V, section 20(d)(4), Florida Constitution, provides:

"Municipal courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal courts not previously abolished shall cease to exist. Judges of municipal courts shall remain in office and be subject to reappointment or reelection in the manner prescribed by law until said courts are terminated pursuant to the provisions of this subsection. Upon municipal courts being terminated or abolished in accordance with the provisions of this subsection, the judges thereof who are not members of the bar of Florida, shall be eligible to seek election as judges of county courts of their respective counties."[6]

I find nothing in the above provision setting forth the above abolishment of municipal courts that would necessarily abolish the position of a town marshal.

Chapter 74-192, Laws of Florida, substantially rewrote the provisions of Chapter 165. The purpose of the legislation, as set forth in section 165.021, Florida Statutes, is to "provide standards, direction, and procedures for the formation of municipalities in this state and the provision of municipal services[.]" Section 165.022, Florida Statutes, provides:

"It is the purpose of this act to provide viable and usable general law standards and procedures

for forming and dissolving municipalities in lieu of any procedure or standards now provided by general or special law. The provisions of this act shall be the *exclusive procedure pursuant to general law for forming or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by s. 6(e), Art. VIII of the State Constitution*. Any provisions of a general or special law existing on July 1, 1974, in conflict with the provisions of this act shall not be effective to the extent of such conflict." (e.s.)

You refer to the rule of statutory construction that the Legislature's complete revision of a subject is an implied repeal of earlier acts dealing with the same subject unless a contrary intent is clearly shown.[7] The chapter, however, relates to the formation and dissolution of municipalities and thus repeals those provisions of the former Chapter 165 relating to the formation or dissolution of a municipality; it would not appear to affect the status of existing municipalities or their officials.

I would note that according to your letter, the position of town marshal was filled until the early 1990s, long after the adoption of the Chapter 73-129, Laws of Florida, Chapter 74-192, Laws of Florida, or Article V, section 20(d)(4), Florida Constitution. In light of the above, I cannot state that the provisions of the Chapter 73-129, Laws of Florida, Chapter 74-192, Laws of Florida, or Article V, section 20(d)(4), Florida Constitution, abolished the position of town marshal.

You therefore ask whether the town may abolish the position of town marshal by ordinance or whether a referendum is required.

It is clear that with the adoption of Chapter 73-129, Laws of Florida, the Legislature sought to grant municipalities broad home rule powers. Section 166.021(4) and (5), Florida Statutes, contains a limitation on such power by providing that nothing in the act shall be construed to permit any changes in a special law or a pre-home rule municipal charter which affect, among other things, the terms of elected officers and the manner of their election, without approval by referendum of the electors as provided in section 166.031, Florida Statutes. Charters adopted after the effective date of the Municipal Home Rule Powers may only be amended in accordance with the provisions of section 166.031, Florida Statutes, which require such amendments to be approved by the electorate. However, as you note, the town never adopted a municipal charter, nor does it appear that there is any special act addressing the Town of Cloud Lake. Accordingly, the limitations contained in section 166.021 and 166.031 would not be applicable. Thus, this office is unaware of any limitation on municipal power that would prevent the town from abolishing the office of town marshal by ordinance.

I trust that the above informal comments are of assistance to the town in resolving these issues. Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

[1] See, e.g., s. 165.03, Fla. Stat. (1951), providing for the notice of the meeting to organize as a municipal corporation under the provisions of Chapter 165, and s. 165.04, Fla. Stat. (1951), setting forth the procedures for such a meeting.

[2] See, e.g., s. 165.04, Fla. Stat. (1951) (at incorporation meeting, majority of freeholders who are registered voters shall elect, among other positions, a marshal); s. 167.40, Fla. Stat. (1951) (authorizing town to confer on single person offices of marshal and collector of taxes); s. 168.04, Fla. Stat. (1951) (marshal in absence of mayor and clerk from the police station may administer oaths to affidavits of complaints and issue warrants for the arrest of persons complained against).

[3] See s. 1 of Ch. 73-129, Laws of Florida, which repealed the existing provisions of Chapter 166, Florida Statutes, and replaced the chapter with the Municipal Home Rule Powers Act.

[4] Sections 2 and 3 of Ch. 73-129, Laws of Fla., moved and amended several provisions of Chs. 166, 167, 168, 171 and 180, Fla. Stat. *And see* s. 4 of Ch. 73-129, *supra*, which amended and renumbered s. 165.25 as s.121.20.

[5] Section 166.021, Fla. Stat., was enacted by s. 1, Ch. 73-129, *supra*; subsection (4) of the statute was amended by s. 1, Ch. 95-178, Laws of Fla., to authorize the amendment of a special law or municipal charter for the purpose of changing election dates and qualifying periods for candidates, including any changes in terms of office necessitated thereby, without referendum.

[6] See S.J.R. 52-D, 1971, adopted 1972.

[7] See, e.g., *State v. Dunmann*, 427 So. 2d 166 (Fla. 1983).