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May 6, 2010

Mr. Kendall Moore, Chairman  
Brevard County Charter Review Commission  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Re: Brevard County Charter Review  
Commission Transfer of Power Proposal

Dear Mr. Moore:

We are writing to you at the request of the Space Coast League of Cities, Inc., (the "League") and in particular, Paul Gougelman, the League's General Counsel. In Mr. Gougelman's letter to us of April 23, 2010, he requested on behalf of his client, that we render an opinion that a proposed amendment to the Brevard County Charter lawfully and properly embraces one subject only and is otherwise consistent with the Florida Constitution, general law, and the Brevard county Charter.

The proposed amendment to the Brevard County Charter submitted to us for review is as follows:

Section. 1.8. Charter amendments affecting municipalities.

No provision of this Charter adopted after December 1, 2010, which conflicts with, transfers or limits any function, service, power, or authority of a municipality within Brevard County, shall apply to a municipality affected unless also approved by a majority of the voters in the municipality.

In formulating our opinion, we have considered as particularly pertinent to our review Florida Constitution Article VIII, section 1(c), (f) and (g); Article VIII, section 4; Article X, section 12(d) and Section 166.021, Florida Statutes (2009). We have also considered the decision of the Supreme Court of Florida in Broward County v. City of Fort Lauderdale, 480 So.2d 631 (Fla. 1985) and the decision of the First District Court of Appeal in Citizens for Term Limits and Accountability v. Lyons, 995 So.2d 1051 (Fla. 1st DCA 2008).

May 6, 2010  
Page 2

The purpose of the proposed amendment appears to us to be designed to facilitate the lawful exercise of all the various powers of government of the county and its municipalities in a cooperative manner consistent with the will of the electorates of each and to provide also for the resolution, by the will of the appropriate electorates, of any inconsistencies or conflicts that might arise. After considering the authorities heretofore cited, we are of the opinion that this is a lawful and permissible purpose.

The proposal is clearly, to us, appropriate in furtherance of, and to effectuate within Brevard County and its municipalities, the overlapping provisions of Florida Constitution Article VIII, sections 1(g) and 4. Article VIII, section 4 provides:

Transfer of powers. By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

That section expressly conditions transfers between the stated governmental units, of functions and powers relating to services, as defined and limited by our supreme court in Broward County, upon dual referendum of the affected governmental units.

It must be recognized that the Supreme Court, in Broward County, had before it a case where a municipality, the City of Fort Lauderdale, sought to prohibit Broward County from conducting a county-wide referendum to amend its charter to expand its preemptive regulatory functions under Florida Constitution Article VIII, section 1(g). That section provides:

Charter Government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

May 6, 2010  
Page 3

In Broward County, the City of Fort Lauderdale argued that such an amendment, as proposed by Broward County, impacted Article VIII, section 4, and therefore must also provide for a dual vote of the electorate of the City of Fort Lauderdale. The Supreme Court disagreed, distinguishing between the power and functions of Article VIII, section 1(g) and that of Article VIII, section 4 as follows:

“[1][2] A line must be drawn between these overlapping provisions. We hold that section 1(g) permits regulatory preemption by counties, while section 4 require dual referenda to transfer functions or powers relating to *services*. A charter county may preempt a municipal regulatory power in such areas as handgun sales when county-wide uniformity will best further the ends of government. § 125.86(7), Fla. Stat. (1983). Dual referenda are necessary when the preemption goes beyond regulation and intrudes upon a municipality’s provision of services.”

Thus, the Supreme Court in Broward County concluded that a county in seeking to amend its charter relative to its preemptive power under Article VIII, section 1(g) was not required to have the approval of the vote of the electorate of the affected municipality as would be required by Article VIII, section 4 if the transfer of functions or powers relating to services was sought.

The Broward County decision is inapposite to the proposal of the Brevard County Charter Review Commission (BCCRC) where the county itself seeks to enfranchise the electorate of any municipality that might be affected otherwise by the planned exercise of the county of its preemptive regulatory power. Article VIII, section 1(g) specifically provides in regard to the county’s preemptive power, “The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.” We conclude that the authority for the charter to provide for resolution of conflict between ordinances also carries with it the authority for the charter to provide **how** such conflict will be resolved. Clearly in doing so, a county charter could provide that in the event a county ordinance conflicts with a municipal ordinance, the municipal ordinance will prevail within the geographical and regulatory province of the municipality, **unless** a vote of the electorate of the municipality otherwise consents to the prevalence of the county ordinance. That appears to be the permissible purpose of the proposed amendment to the Brevard County Charter. We conclude that the proposal by the BCCRC is directed toward cooperative inter-governmental relations and to facilitate the balance between sections 1(g) and 4 spoken of by the Supreme Court in Broward County when it concluded:

May 6, 2010  
Page 4

“We believe the distinction between regulatory preemption, and transfer of functions and powers relating to services, achieves the balance between sections 1(g) and 4 intended by the framers of the 1968 constitution.”

In achieving this balance, the proposed amendment to the Brevard County Charter does not alter the requirement of Article VIII, section 1(c) that amendments to a county charter can be adopted “only upon vote of the electors of the county in a special election called for that purpose.” The BCCRC proposed amendment would be adopted only upon a vote of the electors of the county. An additional vote of a municipality would be required not to adopt the amendment but only to consent that the amendment prevail over inconsistent or contradictory municipal regulatory authority. Inasmuch as the proposal does not alter the voting requirements of Article VIII, section 1(c), the decision in Citizens for Term Limits and Accountability vs. Lyons is also inapposite to the question presented to us.

We conclude therefore that the proposed charter amendment and ballot language set forth hereafter is constitutionally and lawfully appropriate.

Section. 1.8. Charter amendments affecting municipalities.

No provision of this Charter adopted after December 1, 2010, which conflicts with, transfers or limits any function, service, power, or authority of a municipality within Brevard County, shall apply to a municipality affected unless also approved by a majority of the voters in the municipality.

Ballot Language:

Shall the Brevard County Charter be amended to require that charter amendments that are approved after December 1, 2010, by a majority of Brevard County voters apply to a municipality only if the amendment is also approved by a majority of voters in that municipality, when the proposed amendment conflicts with, transfers or limits a municipal service, function, power, or authority?

The Brevard County Charter Section 7.3.2.1 regarding Charter amendments requires that “Each amendment shall embrace but one subject and matter directly connected therewith.” That “one subject” provision is worded identically to the “one subject” provision of Article XI, section 3 of the Florida Constitution. In addition, section 101.161(1), Florida Statutes (2009) also requires that referenda ballots provide a clear and unambiguous explanation of the chief purpose of the

May 6, 2010  
Page 5

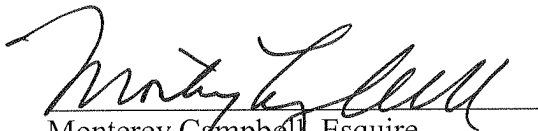
measure to be voted upon and that it contains a caption not to exceed 15 words and a summary not to exceed 75 words.

Our courts have consistently held that in order to comply with the “single subject” requirement, an amendment must be examined to determine that it may be logically viewed as having a natural relation and connection as component parts of a single dominant plan or scheme. So long as amendments encompass a single plan and merely contain various elements necessary to accomplish the single plan, they do not violate the “single subject” requirement. See Advisory Opinion to the Attorney General Re: Standards for Establishing Legislative District Boundaries, 2 So. 3d 175 (Fla. 2009); Advisory Opinion to the Attorney General Re: Protect People, Especially Youth, from Addictions, Disease, and Other Health Hazards of Using Tobacco, 926 So. 2d 1186 (Fla. 2006); Seminole County v. City of Winter Springs, Florida, 935 So. 2d 521 (Fla. 2006).

The proposed amendment to the Brevard County Charter is clearly drawn to address the single subject of providing a method by which Brevard County may avoid conflicts with, or transfer or limit functions, services, power of authority of Brevard County municipalities without the acquiesce of affected municipalities.

The ballot summary also clearly explains the chief purpose of the referendum measure and technically complies with section 101.161(1), Florida Statutes. See Harris v. Moore, 752 So. 2d 1241 (Fla. 4th DCA 2000).

Consequently, we find that the League proposed amendment to the Brevard County Charter adding a new Section 1.8 lawfully and properly embraces one subject only and is otherwise consistent with the Florida Constitution, general law, and the Brevard County Charter.



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