

Chapter 1

Florida Municipal Government in Nation and State

Section 1-1

Municipalities in the Federal System

Florida municipalities exist within the American federal system. This fact has many implications for the functioning of a municipal government and even for the personal performance of duties by an elected official or administrator.

A. THE FEDERAL SYSTEM

When the U.S. Constitution was written in 1787, the two familiar forms of government were termed “unitary” and “confederal.” A unitary government was one in which all powers were held and exercised by a central government; regional units might exist, but they exercised only such powers as were granted (delegated) by the central government. A confederal government was one such as the 13 states had previously adopted under the Articles of Confederation. In it, each participating state was an independent unit which could not be controlled by the central government; rather, the central government was created by the states and exercised only such powers as the states saw fit to grant it. In confederal arrangements, the central government is hardly a “government” at all. Similar arrangements may be found today in the United Nations, the North Atlantic Treaty Organization, the European Common Market, and the Organization of American States.

The Founding Fathers labored mightily and produced a new, “hybrid” form of government – something between the two other forms. In it, the national government, as represented in the Congress, was granted certain enumerated powers (“enumerated” because they are listed, or enumerated) in Article 1, Section 8, U.S. Constitution; in addition, Congress was authorized to enact any other laws “necessary and proper” for carrying out these powers. Early decisions of the U.S. Supreme Court (*McCulloch v. Maryland*, 1819, and *Gibbons v. Ogden*, 1824) established a broad, permissive interpretation of these powers, that is, one which interpreted the lawmaking power of Congress very generously. Meanwhile the 10th Amendment, which states that all powers not given to the Congress shall be reserved to the states or to the people thereof, was interpreted as having little meaning at all. So, while the original intent of the Founding Fathers was to create a system which was balanced between centralization and decentralization, early judicial interpretations of the powers granted to Congress in the U.S. Constitution established a basis for a strong, wide-ranging, central government.

This constitutional basis of the central government’s role was enlarged significantly in the 19th century by the addition of the 14th and 15th Amendments. Each of these post-Civil War amendments did two things: first, restrictions were placed on state governments (and their local-government components); second, the central government was empowered to enforce the restrictions.

The 14th Amendment read as follows:

Section 1....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5....The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The 15th Amendment read as follows:

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

These amendments expanded tremendously the potential power of the national government in its relationship to the states. First, and most obviously, they gave a broad new grant of lawmaking power to the Congress, specifically, power to regulate actions of the states and the local governments. Second, and by implication rather than by explicit statement, they empowered the federal judiciary to enforce these new restrictions on the states, thereby greatly expanding the federal courts' potential authority over state and local government actions. In short, both the Congress and the federal judiciary were given potentially significant new powers in relation to state and local governments.

Thus, through the original languages of the Constitution, early interpretations of the Constitution, and the addition of the 14th and 15th Amendments, the basis was laid for a powerful, expansive national government. Despite this, little centralization occurred in the 19th century, for the forces of decentralization – and even of division – were dominant throughout the first two-thirds of the century.

After the Civil War, the Congress began to assert the authority which the earlier Supreme Court had said it had. By this time, however, the Supreme Court had become a conservative institution which sought to prevent such Congressional activism. For several decades, the “progressive” Congress and the conservative judiciary battled over the national government's role, and little change occurred in federal relations.

This period ended in 1937 when a new Supreme Court majority began to consistently uphold New Deal legislation, which involved great expansions of the national government's role. Since the 1930s, the national government's role in American society has grown even larger; meanwhile, state and local governments have found their powers limited, yet their responsibilities enlarged, by decisions of the Congress, federal agencies and the federal judiciary.

B. FEDERAL STATUS OF MUNICIPALITIES TODAY

The U.S. Constitution makes no mention of local governments. It is concerned solely with the relationship between the central (or national) government and the states. Municipalities, therefore, are simply parts of the state governments, so far as the Constitution is concerned. The standing of the municipalities under the U.S. Constitution, therefore, is the same as that of the states.

Today, this shared constitutional standing is not very strong. Since the 1930s, Congress has greatly enlarged the body of federal legislation, extending national power over policy matters and greatly intensifying federal control of public policy in many policy areas. Federal regulation has taken over areas once governed solely by state or local regulation, and state and local governments themselves have become the object of thick webs of federal regulation. Other federal policies, meanwhile, have mandated various and sundry functions and expenses on municipalities. Municipalities are restricted and entangled, on the one hand, while being required to perform various mandated activities, on the other hand.

The prospects for radical change in this situation are not very bright. For more than 75 years, Congress has been aggressive both in usurping traditional state and local powers and in mandating new state and local responsibilities. For more than 75 years,

the federal judiciary has mostly approved such Congressional actions while extending its own authority over state and local governments. There has been little retreat from these positions by either Congress or the judiciary.

The U.S. Congress adopted an unfunded mandates voting provision, signed by Pres. Bill Clinton in 1996, but it is not enforced. Local governance issues have been of federal concern only in light of regulatory issues during the 1990s and into the early 21st century. States' rights continue to be balanced against national concerns.

REFERENCES

U.S. Constitution: Article I and 14th and 15th Amendments.

Section 1-2

Municipal Government and the State

A. THE ENGLISH BACKGROUND

The origins of American municipal government lie in English history. As England emerged from the non-urbanized medieval period and began to develop urban centers, citizens with vested interests in the development of their communities as trade centers sought authority from the Crown to exercise some control over local affairs. The king (or queen) would respond to these requests by granting “charters” to these groups, whereby they were empowered to promote local improvements and to regulate certain aspects of community life. The charter was viewed as a grant only of those powers which were specifically and explicitly granted therein; in other words, the grant of authority was narrowly defined and strictly limited. Eventually, these chartered groups came to be recognized as “municipal corporations,” similar to private, commercial corporations, which also were authorized by the Crown. At first, such grants of authority were given only to narrowly defined groups, usually the leading businessmen of the community. Over time, as democratic institutions developed, control of charters shifted from such narrow groups to the general population of the community, complete with the democratic election of leaders to exercise the granted powers.

This pattern for the formation of English municipal governments was extended to the American colonies. In America, municipal charters were granted by the Crown to a handful of urban centers. When the Revolution transformed the colonies into states, the state governments assumed the role of the Crown as the source of municipal-government authority; that is the state governments assumed the role of granting municipal charters. From this practice evolved the traditional American legal principle that a municipality is a creature of the state, may exist only with the consent of the state, derives its powers from the state, and enjoys only those powers which are granted it by the state, through the state constitution and actions of the state legislature.

B. EARLY FLORIDA HISTORY

In the Spanish era of Florida history, the two principal communities were Pensacola and St. Augustine. Each enjoyed a municipal government under Spanish rule, it appears; in any event, Provisional Gov. Andrew Jackson specifically recognized the cities of Pensacola and St. Augustine as existing governmental entities only four days after formally receiving possession of Florida for the United States in 1821. In Florida’s territorial period, 1821-1838, the territorial legislative council granted municipal charters for other population centers – Apalachicola, Key West, Ochesee (which no longer exists), and perhaps others.

After Florida became a state in 1845, municipal government was treated in a manner common to other states. The Legislature was the source of authority, granting municipal charters and specifying the powers of each municipal government through its charter. In addition, the Legislature often affected local governments through the enactment of “general acts” and “local or special acts.” With reference to municipalities, a “general” act is a legislative act which applies uniformly to all municipalities and prescribes their jurisdictions and powers. The Legislature’s control over municipal governments was

absolute. Municipalities were regarded as creatures of the state, without inherent powers. Constitutional language specifically permitted the Legislature to utilize local acts in regulating municipal courts as well as the jurisdiction and duties of municipal officers. Special and local acts dealing with municipalities were permitted, with no requirement that notice of such legislation be published in the affected community. In short, the Legislature was free to control municipal affairs by means of local acts. A 1934 constitutional amendment prohibited local acts, but it was ignored by the Legislature in following years.

One feature of the 1885 Florida Constitution, as it came to be amended, was that a special or local act required either that notice be published in the affected community or that the change caused by the act be approved by referendum in the affected community. Due to this requirement of local acts, the Legislature began using “general acts of local application” rather than local acts. General acts of local application have been described by the Florida Supreme Court as “relating to subdivisions of the State or to subjects or to persons or things as a class based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class.” As applied to legislation affecting municipalities, the practice has been to use population as the basis for determining the “class” to which any legislation applied and to define the population range so narrowly that the legislation actually applied to only a single municipality. By utilizing such legislation (sometimes called “population acts”), the Legislature avoided the notification-or-referendum requirement which applied to local acts.

To summarize, under the 1885 Florida Constitution, municipal governments were completely controlled by the state Legislature, which enjoyed not only the power of enacting legislation which applied to municipalities, but also the power to affect selected municipalities through the enactment of local acts and general acts of local application.

During this period, in the absence of any grant of municipal “home rule,” municipal governments’ authority was limited to that expressly granted by the Legislature or that which could be necessarily implied from an express grant, and any reasonable doubt regarding a municipality’s right to exercise a power was to be resolved (by a court) against the municipality. This statement of municipal authority was widely known as “Dillon’s Rule” and prevailed generally throughout the United States, in the absence of grants of municipal home-rule powers.

C. THE CURRENT ERA: MUNICIPAL HOME RULE

In 1968, the people of Florida approved a new state constitution, which became the 1969 Florida Constitution. In it, a dramatic break was made with past treatment of municipal government. The new approach to municipal government is commonly referred to as “municipal home rule,” and it is the prevailing state policy in many American states today.

1. Constitutional Provision for Home Rule

The home-rule provisions are found in Article VIII, Section 2(b), of the 1969 Florida Constitution:

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 crucial part of the passage is “and may exercise any power for municipal purposes except as otherwise provided by law.” Previously, a municipal government

could exercise **only** (a) those powers granted to all municipalities through general law and (b) any additional powers which may have been granted to that particular municipal government by the Legislature.

Under the new constitutional language, a municipal government may exercise any power which is not prohibited by law, so long as its exercise is for a valid “municipal purpose.” Before 1969, a municipality could do only those things which it was **clearly authorized** to do (and, in keeping with Dillon’s Rule, any doubts were to be resolved against the municipality); after 1969, a municipality may do **anything** which it is **not prohibited** from doing. Such is the essence of the constitutional doctrine under which Florida’s municipalities have operated since 1969.

2. Statutory Home-Rule Provisions

The 1969 Legislature promptly enacted Chapter 69-33, Laws of Florida, which repeated the constitutional home-rule provision, with the most significant change of wording being that the clause “except as otherwise provided by law” was replaced by “except when prohibited by general or special law.” Ch. 69-33 also contained an expression of legislative intent which appeared to strengthen the home-rule cause.

For a few years, the extent of municipal home-rule authority was left unclear. Then, in 1972, the state supreme court rendered an opinion which stripped the constitutional home-rule provision of all effect. In response, the 1973 Legislature enacted Chapter 73-129, Laws of Florida, the Municipal Home Rule Powers Act, which was codified as ch. 166, F.S. This act clearly was intended to **strengthen** the constitutional grant of home-rule power. It restates the language of Article VIII, Section 2(b), Florida Constitution, using identical language except for the last clause, where “except as otherwise provided by law” is replaced with “except when expressly prohibited by law.” With this change, the 1973 Legislature made it clear that the authority of municipal governments to “exercise any power for municipal purposes” is to be abridged **only** when “expressly prohibited” by state law. The 1973 Legislature also defined “municipal purposes” as identical with those purposes for which the state itself might act – “‘municipal purpose’ means any activity or power which may be exercised by the state or its political subdivisions.”

The Municipal Home Rule Powers Act of 1973 was explicitly upheld by the Florida Supreme Court in 1975. In decisions since 1973, the Supreme Court has consistently respected the home-rule principle. Consequently, Florida’s municipal governments today enjoy “home rule.” The Legislature is ultimately supreme, still, in that it may restrict the powers of municipal self-government by erecting specific prohibitions. Absent such prohibitions, however, municipal officials may exercise any power, so long as it be for a municipal purpose.

The Florida League of Cities played a critically important and pivotal role in the development and adoption of the constitutional home-rule provision, the 1969 home-rule act, and the Municipal Home Rule Powers Act of 1973. Municipal Home Rule stands as the League’s crowning achievement, one which serves as the foundation of effective municipal self-government in Florida today.

3. Restrictions on Legislative Acts

In addition to providing for municipal Home Rule, the authors of the 1969 Florida Constitution also sought to restrict legislative use of local acts and general acts of local application. This effort is reflected in Article III, Sections 10 and 11, Const. Section 10 requires that all special laws (including local acts) be accompanied either by local notification or by provision for local referendum. Section 11 prohibits special laws and

general laws of local application on certain subjects, some of which are significant to municipal governments; however, specifically exempted from such prohibitions are “election, jurisdiction or duties” of municipal officers. Section 11 also permits the state Legislature to add to the list of prohibited subjects and specifies that the basis of classification in general laws must be related to the subject matter of the law. The provisions of Sections 10 and 11, in the words of one legal commentator, “represent a significant narrowing of the scope of permissible general laws of local application and their most abused sub-type, population acts. Taken in conjunction with the new home-rule provisions, they fit into an over-all design to take local decisions out of the Legislature...”

The 1971 Legislature took additional action regarding population acts by enacting Chapter 71-29, Laws, which repealed almost all existing population acts – some 2,139 acts in all. Repealed acts relating to municipalities were declared to be ordinances of the affected municipalities. Today, the Legislature is still constitutionally authorized to enact general laws of local application, as well as special legislation (which includes local acts). The Legislature does not use these methods with the frequency with which they once were used; however, they are still used, as is illustrated by Chapter 87-258, Laws, which authorized the levying of a convention-development tax. The act reads, in part, as follows:

Each county which was chartered under Art. VIII of the State Constitution and which on January 1, 1984, levied a tourist advertising ad valorem tax...may impose...a levy outside the boundaries of such special taxing district **and to the southeast of State Road 415 on...** transient rent accommodations...(emphasis added).

4. No Home-Rule Power re: Taxation

One very large exception to municipal Home Rule must be noted. Municipal Home Rule does **not** apply to general taxing authority. All taxing authority is retained by the state, with municipalities having only those taxing authorities specifically and explicitly granted by general law. (Refer to Chapter 7, “Municipal Finance,” for further information.)

In 1998, Florida voters made several changes and additions to the 1969 Constitution. The Cabinet was reduced in size, strengthening the executive branch, but none of the amendments had a direct impact upon municipal governments.

REFERENCES

Florida Constitution: Article III, Sections 10-11, and Article VIII, Section 2. Florida Statutes: Chapter 166. Laws of Florida: Chapters 69-33, 71-29, 73-129 (the Municipal Home Rule Powers Act), and 87-258. Steven L. Sparkman, “The History and Status of Local Government Powers in Florida,” *University of Florida Law Review*, 25, 271-307; Louis C. Deal, “Post Mortem – Home Rule,” *Florida Municipal Record*, 54, 6, 2ff; Ralph Marsicano, “Development of Home Rule,” *Florida Municipal Record*, 57, 10, 7ff. Also see W. Clark, J. Benton, and R. Kertein, “An Analysis of State-Local Relations in Florida” (Florida Institute of Government, September 1987). Quotations not otherwise attributed are from the article by Steven L. Sparkman.

Section 1-3

State Constitutional Provisions Affecting Municipalities

The 1969 Florida Constitution, as amended, contains a dozen or so passages which affect municipal government in relatively direct ways. These include the following:

A. ART. II, SEC. 8: ETHICS IN GOVERNMENT

This section applies certain ethics requirements to municipal officers, especially, disclosure of campaign finances, and empowers the Legislature to require municipal officers, candidates, and employees to make public disclosure of their financial interests. This section also establishes the Florida Commission on Ethics, which may investigate allegations against municipal officers.

B. ART. III, SEC. 11: SPECIAL LAWS

This section prohibits legislative enactment of special laws and general laws application pertaining to certain topics, but permits the enactment of general laws applicable only to municipalities of specified population ranges, e.g., 150,000-200,000 population. The intent of the prohibition was to prevent the Legislature from enacting, on certain topics, legislation which applied to only one local unit; however, the permissive element has been used by the Legislature to achieve the same end.

C. ART. III, SEC. 14: CIVIL SERVICE SYSTEM

This section permits the creation of civil service systems and boards for municipal (and other local) governments.

D. ART. IV, SEC. 1, AND ART. IV, SEC. 7: GOVERNOR'S POWERS

Certain powers are granted to the governor in these sections. Among these are powers affecting municipal government. The governor may require information in writing from any executive or administrative municipal officer on any subject relating to his or her duties. The governor may initiate judicial proceedings in the name of the state against any such officer to enforce compliance with any duty or to restrain any unauthorized act. The governor may call out the militia to preserve the public peace and execute the laws of the state. The governor may suspend from office any municipal officer indicted for crime, until acquitted, and may appoint another person to the office for the period of the suspension, unless these powers are vested elsewhere by law or the municipal charter.

E. ART. V, SEC. 1: COURTS

This section, adopted in 1972, abolished municipal courts and prohibits municipalities from establishing courts.

F. ART. VI, SECS. 1-6: SUFFRAGE AND ELECTIONS

These sections preempt local discretion on several points. Elections must be by direct and secret vote. Residency requirements for suffrage shall be one year in the state and six months in the county. Voter registration shall be regulated by state law (not by municipal ordinance).

Article IV, Sec. 4(b) was amended by an Initiative Petition adopted in 1992 establishing term limits for certain elected officials by providing that no person may appear on the ballot for re-election for the offices of: 1) Florida representative; 2) Florida senator; 3) Florida lieutenant governor; 4) any office of the Florida Cabinet; 5) U.S. representative from Florida; and 6) U.S. senator from Florida if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years. However, the federal courts ruled that the state constitution could only regulate the terms of state offices and therefore would not apply to the U.S. Congressional and Senate offices. This applies to federal and state but not local. A city's charter can have run offs.

G. ART. VII, SECS. 1-3, 9: TAXATION

These sections have to do with taxing powers. The ad valorem tax on real property and tangible personal property is reserved to local governments. All other forms of taxation are preempted to the state, except as provided by general law. Ad valorem taxation of motor vehicles, boats, airplanes, trailers, trailer coaches, and mobile homes is prohibited. All ad valorem taxation shall be at a uniform rate within each taxing unit. All property owned by a municipality and used exclusively by it for public purposes is exempt from taxation. A municipality may grant ad valorem tax exemptions to certain businesses, under certain conditions. Local governments shall be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes. Municipal ad valorem taxes are limited to 10 mills or less, exclusive of taxes levied for bond payment and taxes levied for two years or less when authorized by referendum.

H. ART. VII, SECS. 10 AND 12: BONDS

A municipality may not become a joint owner with or a stockholder in a corporation, association, partnership, etc.; however, a municipality may issue revenue bonds in support of airport or port facilities and industrial or manufacturing plants. Municipalities may also issue bonds, certificates of indebtedness, and tax-anticipation certificates.

I. ART. VIII, SEC. 2: CREATION, POWERS AND CONSOLIDATION

Municipalities may be established or abolished and their charters amended by general or special law. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, and they may exercise any power for municipal purposes except as otherwise provided in law. Each municipal legislative body shall be elective. Annexation shall be as provided by law. Consolidation of a county government and one or more municipal governments is authorized, but only if approved by vote of the affected electors.

REFERENCES

1969 Florida Constitution: Articles II, III, IV, V, VI, VII, VIII.

