



Opinion
Op req

City Commission

Norman S. Edelcup
Mayor

Lewis J. Thaler
Vice Mayor

Roslyn Brezin
Commissioner

Gerry Goodman
Commissioner

George "Bud" Scholl
Commissioner

A. John Szerlag
City Manager

Hans Ottinot
City Attorney

Jane A. Hines
City Clerk

SENT VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

January 14, 2009

Bill McCollum, Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

THIS CORRESPONDENCE HAS BEEN
ASSIGNED TO YOUR SECTION PER
NOTICE BY E-MAIL. PLEASE ADVISE
YOUR COORDINATOR OF DISPOSITION.
For "Citizen Help" if any questions

Re: Request for Legal Opinion

Dear Mr. McCollum:

In accordance with Chapter 16, Florida Statutes, the Office of the City Attorney of the City of Sunny Isles Beach requests a legal opinion regarding the following question of great public importance:

Whether an electoral petition to amend the City Charter to require voter approval for any capital improvement project over \$500,000.00 conflicts with the City's "home rule" power under the Florida Constitution?

Article VIII, Section II of the Florida Constitution provides in relevant part that "[m]unicipalities 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..." See Art. VIII, § 2(b), Fla. Const.

Moreover, the "Municipal Home Rules Powers Act", codified in Chapter 166 of the Florida Statutes, implements the above referenced constitutional authority granted to municipalities. In particular, Section 166.021(1), Florida Statutes, states as follows:

[M]unicipalities shall have 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.

The Municipal Home Rules Power Act "permits a municipality to act if (1) it is exercising its authority for a valid municipal purpose, and (2) there is no constitutional or statutory limit on the exercise of that authority." See Pleasures II Adult Video, Inc. v. City of Sarasota, 833 So. 2d 185, 188 (Fla. 2d DCA 2002) (citing to Basic Energy Corp. v. Hamilton County, 652 So. 2d 1237, 1239 (Fla. 1st DC A1995).