FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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July - September 2007

Editor's Note: The following case law summaries were reported from July 1, 2007, through September 31, 2007.

Section 1. Recent Decisions of the Florida Supreme Court

Bond Validation – Counties – Tax-Increment-Financed Bonds – County Is Without Authority to Issue Tax-Increment-Financed Bonds without First Obtaining Approval by Referendum As Required by Article VII, Section 12, of Florida Constitution

This was an appeal from circuit court's final judgment validating tax-increment-financed bonds proposed for issuance by Escambia County. The Supreme Court reversed the circuit court's final judgment and held that the county is without authority to issue those bonds without first obtaining approval by referendum as required by Article VII, Section 12, of the Florida Constitution. The Court receded from previous decisions by holding the phrase "payable from ad valorem taxation," as used in Article VII, Section 12, refers not only to the pledge of a local body's taxing authority but also to the pledge of ad valorem tax revenues. Bonds payable through tax-increment financing are subject to the referendum requirement. *Dr. Gregory L. Strand v. Escambia County, Florida*, 32 Fla. L. Weekly S550 (Fla. September 6, 2007).

Counties – Ordinances – Ordinance Limiting Use of Homes as Vacation Rentals – Modifications of a Proposed Ordinance during the Enactment Process Are Substantial or Material, So as to Require that the Enactment Process Be Restarted, Only If They Change the Ordinance's General Purpose

The appellants sought to invalidate a Monroe County ordinance limiting the use of homes as vacation rentals. The U.S. Court of Appeals certified the question asking what kind of changes to a proposed ordinance during the enactment process are "substantial or material" so that the process must start from scratch. The court held that a change in the general purpose of a proposed ordinance is the definition of "substantial or material change" most compatible with the text of Florida Statutes 125.66(4)(b). The general purpose test strikes an effective balance between providing the public with the adequate notice and permitting the efficient modification of proposed ordinances in response to public input. *Elizabeth J. Neumont vs. State of Florida, Monroe County, Florida*, 32 Fla. L.Weekly S581 (Fla. September 27, 2007).

Section 2. Recent Decisions of the Florida District Courts of Appeal

Jurisdiction – Prohibition – Circuit Court Erred in Granting Writ of Prohibition Where Parties Properly Agreed that County Court Has Subject Matter Jurisdiction to Hear Challenges of Code Enforcement Board Decisions, But Disagreed as to Whether County Court's Review Authority Is in Nature of Plenary Appeal, by Petition for Writ of Certiorari, or De Novo.

The appellee filed a "Request for Hearing/Notice of Appeal/Petition for Writ of Certiorari Regarding Final Order Dangerous Dog Classification" in the county court after the Marion County Code Enforcement Board held a hearing and determined the appellee's dogs were "dangerous" as defined by Section 767.12, Florida Statutes (2006). The statute specifies that the appeal be filed in county court, but is ambiguous as to whether the county court is to hear the controversy de novo, or by more narrow review in the nature of an appellate proceeding. The county court determined to proceed under the more narrow scope of review and the appellee petitioned for a writ of prohibition in the circuit court. The circuit court granted the writ of prohibition and directed the trial court to proceed de novo. The appellant challenged the circuit court order and the Fifth District Court of Appeal reversed the order of the circuit court and quashed the writ of prohibition. The court described a writ of prohibition as an extraordinary writ that should be invoked only in emergency cases to forestall an impending injury where no other appropriate and adequate legal remedy exists and only when damage is likely to follow. Prohibition is to be used to prevent a lower tribunal from acting without jurisdiction or in excess in jurisdiction, not to prevent erroneous exercise of jurisdiction. *Marion County, Florida, Appellants, v. Deborah Kay Grunnah, Appellee*, 32 Fla. L. Weekly D1657 (Fla. 5th DCA July 6, 2007).

Civil Procedure – Discovery – Deposition Duces Tecum of Non-Party Witness – Trial Court Erred in Granting a Protective Order Prohibiting Plaintiff from Taking Deposition of Party Who Was a Member of Historic Preservation Board and Municipality's Land Planning Agency, and Was a Vocal Opponent of Projects such as Those Proposed by Plaintiff – Trial Court's Broad Labeling of Entire Document Production as Fishing Expedition without Addressing Individual Categories of Documents Sought Is Insufficient

Michael Towers and two other corporate plaintiffs asserted five claims for relief in response to a dispute between the plaintiffs and the City of Longwood regarding proposed development within the Downtown Historic District. For his part, the petitioner, Michael Towers, sought a writ of certiorari from the Fifth District Court of Appeal in response to the lower court's order granting a motion for protective order regarding the deposition duces tecum of a non-party witness at which the deponent, Judith Putz, was to produce specified documents described in the notice. After a hearing on the protective order, the trial court granted the motion. The written order confirmed the judges ruling and set forth the reasons: "(1) Judy Putz is not a party to this action, (2) The plaintiff, Michael Towers, has admitted his cause of action in part is an attempt to investigate whether Ms. Putz has unauthorized ex-parte communications regarding lot split ordinance while on the Land Planning Agency, (3) The request to depose the deponent does not relate to issues involved in the litigation, (4) The deponent is not the clerk or custodian of records for the City of Longwood and the records requested by the plaintiff should be obtained from the custodian of records, and (5) The balance of the documents requested by the plaintiff is no more than a mere fishing expedition on his part based on a mere suspicion." The Fifth District Court of Appeal granted certiorari relief to Mr. Towers and quashed the trial court's order on amended motion for protective order based on the finding that Mr. Towers was completely barred from obtaining discovery from Ms. Putz which could not be remedied on appeal "because there is no practical way to determine after judgment how the denial of the right to depose an alleged material witness would have affected the outcome" of the proceedings. The discovery process is liberal and the allegations set forth in the amended complaint by Mr. Towers were sufficient for the taking of Ms. Putz's deposition. In addition, the trial court's labeling of the entire document production as a fishing expedition without addressing the individual categories of documents was insufficient. Many of the documents requested by the plaintiff to be produced in deposition are clearly relevant to the allegations listed in the complaint. Therefore, the issue must be reconsidered by the trial court. *Michael Towers v. City of Longwood and Judith Putz*, 32 Fla. L. Weekly D1658 (Fla. 5th DCA July 6, 2007).

Sovereign Immunity – Municipal Corporations – Error to Grant Summary Judgment in Favor of City on Sovereign Immunity Grounds with Respect to Claim by Plaintiff that He Sustained Injuries When Police Severely Beat Him After He Was Arrested and Handcuffed because There Was Disputed Issue of Fact as to Whether Officers Acted in Bad Faith, with a Malicious Purpose, or in Wanton and Willful Disregard of Human Rights such that City Was Not Liable for Officers' Conduct

The plaintiff, Dallas Ray Baldwin, brought suit against the City of Fort Lauderdale alleging he sustained injuries (1) when police severely beat him after he was arrested and handcuffed and (2) when police failed to use an available seat belt to secure him and through rapid stopping and accelerating he was thrown around the transport van. The trial court entered a summary judgment in favor of the city on sovereign immunity grounds. The Fourth District Court of Appeal reversed the trial court because the city was entitled to judgment in its favor if the only conclusion that could be reached by a reasonable jury was that the police acted in bad faith, with a malicious purpose, or in wanton and willful disregard of human rights, safety and property. Florida Statutes provide that the state and its subdivisions shall not be liable for "the acts or omissions of an officer, employee or agent…committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property." The district court found it appropriate for resolution by a jury and remanded it back to the trial court. *Dallas Ray Baldwin v. City of Fort Lauderdale*, 32 Fla. L. Weekly D1669 (Fla. 4th DCA July 11, 2007).

Counties – Employees – Employment of County Corrections Officer Was Improperly Terminated on Grounds that She Lived with Her Boyfriend Who Was a Convicted Felon on Parole – Employee Was Not on Adequate Notice that Merely Living with Convicted Felon Subjected Her to Automatic Termination.

Pamela Williams was employed as a county corrections officer for 16 years. Prior to her termination, she lived with her boyfriend of three years, who was a convicted felon on parole. The Department of Corrections terminated Ms. Williams' employment based on violations of the department standard operating procedures. A hearing was conducted and the hearing examiner recommended that the department's decision to terminate be sustained. The county manager upheld the hearing examiner's recommendation and the circuit court affirmed the county manager's decision. The circuit court did not file a written opinion and then this second-level certiorari proceeding ensued. The District Court of Appeal found that Williams' petition fell into the rare category of cases in which the lower tribunal demonstrated a violation of a clearly established legal principle that resulted in a miscarriage of justice. It is well established that the factual charges brought against an officer must be contemplated by the regulations under which she is charged and there must be some record foundation supporting the action taken. It also is clear that when an officer is discharged for conduct not precisely written into a departmental rule, the rule

must not be of a character which is "so amorphous that men of common intelligence must guess at its meaning." The circuit court order was quashed and the case was remanded with directions to reinstate employment. *Pamela Williams v. Miami-Dade County, Florida*, 32 Fla. L. Weekly D1764 (Fla. 3rd DCA July 25, 2007).

Municipal Corporations – Code Enforcement Lien – Foreclosure – Appeal of Final Judgment Granting Municipality's Motion to Set Foreclosure of Sale of Property Subject to Code Enforcement Lien – Municipality's Claims for Monetary Judgment Due It from Code Enforcement Liens Do Not Defeat Homestead Protection – Issue of Homestead Status Is Not Res Judicata to Motion to Set Foreclosure Sale Date because It Is Unclear Whether Issue Was Litigated and Determined as Part of Original Final Judgment

Winer Mathieu appealed a final judgment granting the appellee City of Lauderdale Lakes' motion to set a foreclosure sale. In this case, Lauderdale Lakes sought a monetary judgment due it from code enforcement liens – claims that do not defeat homestead protection. The district court held that it was unclear whether the issue of homestead status was litigated and determined as part of the final judgment. As a result, that issue is not res judicata to Lauderdale Lakes' motion to set a foreclosure sale date. The case was remanded to the trial court for further proceedings to determine whether Lauderdale Lakes is entitled to a monetary judgment, foreclosure having been made unavailable by Mathieu's filing of homestead status. *Winer Mathieu v. City of Lauderdale Lakes, Florida, Amelia Mathieu, and Jacques Lherisson*, 32 Fla. L. Weekly D1782 (Fla. 4th DCA July 25, 2007).

Certification of Class – Municipal Corporations – No Abuse of Discretion in Determining that City of Tampa Was Adequate Representative for Defendant Class

The City of Tampa imposed an occupational tax on attorneys at law who maintained a permanent location or branch office within its borders for the privilege of engaging in business. Appellees were attorneys with offices in the City of Tampa. On June 10, 2003, they filed a class-action complaint against the city. The circuit court held an evidentiary hearing and certified the plaintiff and defendant class. The City of Tampa appealed a non-final order certifying a bilateral class action. The Second District Court of Appeal affirmed the order of the class certification and ruled that the city did not demonstrate that the circuit court abused its discretion in certifying either the plaintiff class or the defendant class. *City of Tampa v. Michael Addison and Richard T. Petitt, Florida*, 32 Fla. L. Weekly D1867 (Fla. 2nd DCA August 8, 2007).

Municipal Corporations – Class-Action Settlement – Breach of Fiduciary Duty – Trial Court Properly Determined that Original Plaintiffs and Counsel Owed Fiduciary Duty to Class Even Though Class Had Not Been Certified at Time of Settlement Where Plaintiffs and Counsel Had Proceeded on Behalf of Class from Outset of Case and Trial Court Properly Granted City's Motion to Vacate Settlement and to Recover Monies Paid

A small group of citizens joined together to challenge a fire-rescue assessment. They formed a Florida nonprofit corporation and solicited donations from the public to fund their impending litigation. They hired a law firm and the retainer agreement stated that the case would proceed as a class action. The law firm subsequently filed a class-action complaint and amended the complaint. The firm pursued class certification and the court deferred class certification pending trial or cross-motions for summary judgment. The trial court set the trial of the refund issue and at the time the class had not been certified. It was undisputed, and the trial court so found in an order that everyone treated the case as though the class had been certified. The parties attempted to mediate two days before the trial. The firm initially offered to settle for $75 million, but eventually offered to settle for $35 million. Both figures were clearly intended for the entire class. The case was not settled at mediation, but negotiation continued. Eventually, the case was settled for $7 million. Each plaintiff signed a limited release. A new group of property owners came forward alleging that the original plaintiffs could dismiss the action and the class claims because the class had not yet been certified. The evidence adduced at trial showed that the original plaintiffs misled the city's taxpayers into donating money for a class action that merely enriched seven people, who received a grossly disproportionate settlement amount. The court found that the original plaintiffs and law firm breached their fiduciary duty to the class when they agreed to settle and thereby compromised the class claims. The trial court correctly set aside the settlement. *Herbert Payne, Ann Stetser; The Durham Park Neighborhood Association, A Florida Not-for-Profit Corporation; and the Miami River Marine Group, Inc., A Florida Not-for-Profit Corporation vs. City of Miami and Balbino Investments, LLC, Florida*, 32 Fla. L. Weekly D1885 (Fla. 3rd DCA August 8, 2007).

Municipal Corporations – Zoning – Ordinance Which Prohibits the Parking of a Truck in a Residential Area Is Unconstitutional as Applied to a Resident Who Was Found Guilty of Violating the Ordinance After He Parked His Pickup Truck, Which Was Used for Personal Purposes, Overnight on the Public Street in Front of His Residence

The City of Coral Gables' zoning code prohibits the parking of a "truck" anywhere at any time in a residential area (including a private driveway) or on a public street between 7:00 p.m. and 7:00 a.m. The plaintiff appealed a final declaratory judgment in favor of the City of Coral Gables which upheld the validity of ordinances he violated by parking his personal pickup truck on a street in a residential area of the municipality. The District Court of Appeal held that in this case the city unconstitutionally

crossed the line into an impermissible interference with the personal rights of its residents and therefore reversed the judgment in favor of the city. There is no lawful basis for this restriction of the freedom of the residents of the city. *Lowell Joseph Kuvin vs. City of Coral Gables, Florida*, 32 Fla. L. Weekly D2009 (Fla. 3rd DCA August22, 2007).

Section 3. Recent Decisions of the United States Supreme Court

None reported.

Section 4. Recent Decisions of the United States Court of Appeals, Eleventh Circuit

Qualified Immunity – Action by Plaintiff Who Was Employed by County as Clerk in Tax Commissioner's Office and Who Was Terminated Following Tax Commissioner's Re-election, Alleging She Was Dismissed because She Had Allowed Commissioner's Opponent to Display Political Campaign Signage on Her Property and She Was Denied Due Process in Attempting to Appeal Her Dismissal

Donna Epps was employed as a clerk in the Tax Commissioner's Office. Tax Commissioner Louise Watson was running for re-election. During the campaign, Epps allowed Watson's competitor to display election signs on her property. The day after Watson was re-elected, she terminated Epps' employment. The U.S. Court of Appeals upheld the district court's decision to deny the defense of qualified immunity for Commissioner Watson. They found there was a clearly established law that "public employment may not be conditioned upon political affiliation to any party or individual" and Watson had fair notice of such law. Epps sufficiently alleged that she was covered by a policy under which she could only be terminated for cause. Epps was entitled to a hearing. *Donna O. Epps vs. Louise Watson, as Tax Commissioner and individually, and Madison County*, 20 Fla. L. Weekly Fed C886 (11th Circuit).

Elections – Voting Rights Act – Vote Dilution – Action by African-American Voters Challenging Florida County's At-Large Method of Electing Members of County Commission and School Board on Grounds that It Depreciates Their Right to Vote on Account of Their Race

In this vote dilution case, African-American voters in Glades County, Fla., challenged the at-large method of electing members of the county commission and school board, and claimed that it depreciates their right to vote on account of their race in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973, and the Fourteenth and Fifteenth Amendments. Following a bench trial, the U.S. District Court denied relief. The U.S. Court of Appeals reversed and remanded back to the district court finding that the district court clearly erred in finding that District One of the plaintiffs' illustrative plan constitutes an influence district. Thus, the court committed error in concluding that the plaintiffs failed to establish a Section 2 remedy. The appeals court also found that the district court failed to explain with sufficient particularity that the totality of the circumstances weakens the plaintiffs' vote dilution claim. The court did not properly apply the relevant legal principles and grounded its findings in inaccurate perceptions of the law. The district court must reconsider the case under the totality of the circumstances test. *Billie Thompson, Patricia Brown v. Glades County Board of County Commissioners, Glades County School Board*, 20 Fla. L. Weekly Fed C900 (11th Circuit).

Speech – Retaliation – Public Employees – High School Principal Who Met with Teachers, Consulted with Other Principals and Held Two Faculty Votes Regarding Conversion of His School to Charter Status Filed Complaint in Federal District Court Alleging that School Board Violated His First Amendment Rights When Board Terminated Him in Retaliation for His Efforts to Convert His School to Charter School – District Court Correctly Entered Judgment as Matter of Law Against Principal's Claims

The issue in this appeal is whether the district court erred when it entered judgment as a matter of law against a high school principal Michael D'Angelo, who argues that the school board violated the First Amendment when the board terminated him in retaliation for his efforts to convert his school to a charter school. While he served as principal he met with teachers, consulted with principals of other local high schools and held two faculty votes regarding the conversion of his school to charter status. D'Angelo complained that the Polk County School Board discharged him in retaliation for the exercise of his rights to freedom of speech, to petition the government for redress of grievances and to freedom of association. The district court reasoned that D'Angelo's efforts to convert Kathleen High to charter status were "part and parcel of his official duties" and were not undertaken as a citizen. The district court concluded that the principal was not protected by the First Amendment and the U.S. Court of Appeals affirmed that decision. *Michael D'Angelo v. School Board of Polk County, Florida*, 20 Fla. L. Weekly Fed C923 (11th Circuit).

Civil Rights – Equal Protection – Disparate Treatment – "Class of One" Claim – Qualified Immunity – State Environmental Regulators and Local Political Actors in this Case Could Not Be Held Liable for Violations of Equal Protection Clause for Taking Regulatory Action Against an Industrial Facility in a Manner Different from That in Which the Facility's Competitor's Were Treated or Regulated – Plaintiff's "Class of One" Claim

Failed to Properly Allege that the Individual Defendants Intentionally Treated a "Similarly Situated" Entity in a Disparate Manner

Griffin Industries, Inc., owns a chicken rendering plant. Beginning in the late 1990s the plant saw a substantial increase in the number of odor complaints coming from local residents. According to Griffin's complaint, local officials began trying to limit or end rendering operations at the plant. In 2003, local officials pushed for stronger odor regulations than had previously been agreed upon. According to Griffin, the new odor-control provisions were more stringent than imposed on any other chicken rendering facility in the state. Griffin brought a Section 1983 suit against a group of state and local officials. The district court denied the defendants' motions to dismiss. The U.S. Court of Appeals reversed holding that the defendants were entitled to qualified immunity. Griffin's "class of one" claim failed to properly allege that the individual defendants intentionally treated a "similarly" situated entity in a different manner. *Griffin Industries, Inc., v. Tomy Irvin, Lee Myers, Florida*, 20 Fla. L. Weekly Fed C998 (11th Circuit).

Section 5. Recent Decisions of the United States District Courts for Florida

Qualified Immunity – Arrestee Filed Lawsuit Against City Police Officer Alleging that Officer Used Unreasonable Force in Violation of 42 U.S.C. Section 1983 When Officer Used His K-9 to Apprehend and Arrest Him, and that Officer Committed Assault and Battery on Him in Course of His Arrest – Officer Is Entitled to Qualified Immunity on Excessive Force Claim because He Was Acting within Scope of His Discretionary Authority When He Apprehended and Arrested Plaintiff; His Actions, in Light of Totality of Circumstances, Did Not Constitute Excessive Force in Violation of Plaintiff's Fourth Amendment Rights; and, Even if Officer's Actions Constituted Unconstitutional Excessive Force, Plaintiff Cannot Demonstrate that His Constitutional Right Was Clearly Established at Time of Incident

Eric Pace initiated a lawsuit against Kristopher Ahler, a City of Palmetto police officer. Pace alleged that Ahler used excessive and unreasonable force in violation of 42 U.S.C. Section 1983 when Ahler and his K-9 unit, Brix, apprehended and arrested him. Pace then initiated a lawsuit against Kristopher Ahler alleging unreasonable force by using the K-9 in violation of 42 U.S.C. Section 1983. Pace also alleged that in the course of the arrest, Ahler committed an assault and battery on him. Ahler contended that summary judgment was appropriate on both counts because he was entitled to qualified immunity as to the use of unreasonable force claim and statutory immunity as to the battery and assault claim. Qualified immunity protects government officials performing discretionary functions from suit in their individual capacities unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." Qualified immunity is evaluated under an "objective legal reasonableness" standard. The Supreme Court has determined a two-pronged test to evaluate a qualified immunity claim. First, it must be determined whether the plaintiff has alleged the deprivation of a constitutional right. If there is an alleged constitutional right, then the second step is to determine if the plaintiff's constitutional right was "clearly established" at the time of the alleged violation. It was undisputed that Ahler was acting within the scope of his discretionary authority during the incident. Pace contended that the constitutional right violated was the Fourth Amendment's freedom from unreasonable searches and seizure including the right to be free from the use of excessive force in the course of an arrest. The three-part test to determine reasonableness was applied by the court and it found Ahler's actions were not unreasonable and did not constitute a violation of Pace's Fourth Amendment right to be free from excessive force. The district court also concluded that even if Ahler's actions constituted excessive force in violation of Pace's Fourth Amendment rights, Pace could not demonstrate that his constitutional right was "clearly established" at the time of the incident. Ahler, is therefore entitled to qualified immunity. With respect to Pace's assault and battery claims, the district court held that Ahler was not acting in bad faith and therefore was statutorily immune. *Eric Pace vs. City of Palmetto, Officer Kristopher S. Ahler*, 20 Fla. L. Weekly Fed D885 (U.S. District Court, Middle District of Florida).

Civil Rights – Search and Seizure – Qualified Immunity – Section 1983 False Arrest Claim Fails because of Existence of either Actual or Arguable Probable Cause for Arrest

The plaintiff, Mark Whittington, brought suit for alleged violations of 42 U.S.C. Section 1983 for false arrest and for Fourth Amendment violations of excessive force. The defendants, the Town of Surfside and Officers Patrick John Giambalvo and Luis Perez, filed motions for summary judgment. The district court found that the Town of Surfside is entitled to summary judgment because of the existence of either actual or arguable probable cause. The existence of probable cause at the time of arrest constitutes an absolute bar to a 42 U.S.C. Section 1983 claim. The district court concluded that the plaintiff's excessive-use-of-force claim also fails because the amount of force used was de minimus and Giambalvo is entitled to qualified immunity. *Mark Whittingham v. Town of Sunrise, Patrick John Giambalvo and Luiz Perez*, 20 Fla. L. Weekly Fed D903 (U.S. District Court, Southern District of Florida).

Civil Rights – Americans with Disabilities Act – Counties – County Was Under No Legal Obligation to Offer Plaintiff any Accommodation, Reasonable or Otherwise, because Plaintiff Failed to Show that He Is Disabled within the Meaning of ADA – County Was Not Required to Alter Its Policy of

Six Months Restricted Duty Followed by Compulsory Leave in Order to Reasonably Accommodate Plaintiff

The plaintiff, Vincent Van, was employed as a Miami-Dade County correctional officer beginning in 1988. As a correctional officer, his duties included the care, custody and transport of inmates in county correctional facilities. In 1992, Van was diagnosed with diabetes. In 2005, Van's physician concluded that his diabetes was not under control and Van would not be allowed to perform the safety sensitive duties of a correctional officer and would be placed on restricted duty. The department had an employee fitness policy limiting the period an employee can be placed on restricted duty. The policy permitted the employee to be placed on restricted duty for six months. If, after six months, the employee could not return to normal duty, then the employee would be placed on compulsory duty. Van's physician would not clear him after the six-month period and the department placed him on compulsory leave. After Van used all of his sick and annual leave, the department did not reinstate him. Van filed charges alleging he was considered disabled. The court held that Van is not a person with a disability as defined by the ADA and his claims fail as a matter of law. The defendant's motion for summary judgment was granted. *Vincent Van v. Miami-Dade County*, 20 Fla. L. Weekly Fed D1053 (U.S. District Court, Southern District of Florida).

Attorney General Opinions of Note

2007-29. July 10, 2007
Lee County School Board asked for an opinion on the following question:

Does Section 506.5131, Florida Statutes, preempt local legislation requiring a business owner to submit a prevention and retrieval plan to the city for shopping carts and imposing a monetary penalty for failing to submit such a plan?

The attorney general opined Section 506.5131, Florida Statutes, controls the assessment of fees, fines and costs against the owners of stolen or abandoned shopping carts. However, while a local government may not adopt conflicting legislation, legislation treating other aspects of this subject may be enacted.

2007-31. July 10, 2007
The Fernandina Beach City Commission asked the following question:

May the request by the attorney for an entity to meet in private pursuant to Section 286.011(8), Florida Statutes, be made during a special meeting?

The attorney general opined the request by the city attorney to meet in private with the city commission to discuss settlement negotiations or strategy sessions related to litigation expenditures pursuant to Section 286.011(8), Florida Statutes, may be made during a special meeting provided that the special meeting at which the request is made is open to the public, reasonable notice has been given and minutes are taken.

2007-34. July 24, 2007
The Naples City Council asked the following questions:

1. May the Naples City Council, by ordinance, amend the Naples City Charter to change the date of the regular municipal election date from the first Tuesday in February of each even numbered year to a date that corresponds with the State of Florida presidential primary every four years?

2. May the Naples City Council, by ordinance, amend the Naples City Charter to provide for a special candidate qualification date in years in which there is a State of Florida presidential preference primary?

The attorney general opined that rather than require the city to continually amend its charter to permit the election of municipal officers at the same time as a presidential preference primary every four years, the attorney general feels that Sections 100.3605(2) and 166.021(4), Florida Statutes, provide sufficient authority to permit the city council by ordinance, to amend the charter to change the date for the regular municipal election date from the first Tuesday in February of each even numbered year to a date that corresponds with the State of Florida presidential primary every four years. Similarly, these statutes provide sufficient authority for the city council to amend by ordinance the city charter to provide for a special candidate qualification date in years in which there is a State of Florida presidential preference primary.

2007-35. August 28, 2007
The St. Petersburg City Commission asked the following question:

May city commissioners, outside a public meeting, exchange documents that they wish other members of the commission to consider on matters coming before the commission for official action, and if so, what limitations exist?

The attorney general opined that a city commissioner may, outside a public meeting, send documents that the commissioner wishes other members of the commission to consider on matters coming before the commission for official action, provided that there is no response from or interaction related to such documents among the commissioners prior to the public meeting.

Section 6. Announcements

FMAA Web Site
Please visit the FMAA Web site at *www.fmaa.us* for municipal attorney news, an online version of this newsletter and discussion boards.

FMAA Seminar Notebooks Available
Notebooks from the 2006 and 2007 FMAA Seminars are available for $40 each. Please contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com* for information.

Mark Your Calendar
The 2008 FMAA Seminar will be held July 17-19, 2008, at the Ocean Reef Club in Key Largo.