



OFFICE of the CITY ATTORNEY

TO: City Council President Bare and Members of City Council
FR: Lysia H. Bowling, City Attorney *LHB*
RE: Legal Opinion on Charter Authority of Governing Body
DATE: April 11, 2016

I have before me the City Council memorandum which asks for a written legal opinion worded as follows:

“Are resolutions adopted by the Governing Body of the City with all legislative powers of the City granted under Section 3.01 of the City Charter, binding on the Executive branch of the City, notwithstanding the Executive branch’s Charter established veto powers granted under Section 4.01(10) of the City Charter.”

As indicated above, this inquiry relates to the parameters of the allocation of municipal powers under the Charter. The Charter establishes a clear demarcation between the legislative power and duties vested exclusively in the governing body and the executive power and duties vested exclusively in the executive branch. Specifically, your inquiry concerns whether, pursuant to its Charter imposed legislative powers and duties, the governing body is permitted legislatively, by way of adoption of a resolution, to direct the exercise of Charter imposed executive powers and duties and matters the Charter entrusts to executive discretion or to impose additional executive powers and duties not delineated in the Charter, and to direct the exercise of those additional powers and duties.

Under Florida law, the allocation of governmental powers of a home-rule municipality originates in and is derived from the municipal charter. The Municipal Home Rule Powers Act provides that this allocation of powers among elected officers cannot be changed by resolution or by ordinance, and can only be changed by referendum of the electors. [F.S. Section 166.02(4)]

A fundamental principle of Charter governmental structure is that the unique sphere of authority of each branch is independent of the other and no branch should exercise the distinct powers and duties exclusively committed to the other branch. Therefore, the notion is not whether “resolutions adopted by the Governing Body” are “binding on the Executive branch of the City,” but whether it can legally do so at all, in the absence of a referendum of the electors.

Accordingly, based on the Municipal Home Rule Powers Act, it is my opinion that the governing body of the City cannot legislatively act in a manner that would change the allocation of powers that the Charter currently provides, or would result in the exercise of powers reserved to the executive branch.