

August 4, 2006
OPINION NUMBER 06-0139

Mr. Murphy J. Foster, III
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71-1-A Municipalities – City Parish Charter
71-1-B Municipalities – Home Rule Charter
90-A Political Subdivisions – Officers, Agents & Employees
92-A-A Recreation – Parks, Playgrounds, Playground &
Recreational Boards, Youth Programs

La. R.S. 33:4570.1

Amendment of the home rule charter to provide for four (4) year term would conflict with state statute which provides for three (3) year terms.

Dear Mr. Foster:

As the attorney for the Recreation Park Commission for the Parish of East Baton Rouge (“BREC”), you have requested the opinion of this office on the constitutionality of a proposed amendment to the Metro-Council of the Parish of East Baton Rouge-City of Baton Rouge’s Plan of Government. Specifically, you asked if the Metro-Council’s recent adoption of Ordinance 13496, amending Section 11.02 to extend the term of BREC Commissioners from three (3) to four (4) years, is unconstitutional due to La. R.S. 33:4570.1, which states that BREC members shall be appointed by the Metro-Council “for terms of three years.” You further note that the Metro-Council intends to place the proposed amendment on its fall ballot.

Generally speaking, municipalities lack the authority to enact ordinances inconsistent with state law. *Restivo v. City of Shreveport*, 566 So.2d 669 (La. App. 2d Cir. 1990). However, the issue becomes more complex when home rule charters or plans of government are involved, as is the case in this instance.

BREC, one of the political subdivisions under the Metro-Council’s Plan of Government, is responsible for the park and recreation facilities in East Baton Rouge Parish. *Recreation and Park Com’n. For Parish of East Baton Rouge v. C & S Development*, 714 So.2d 706 (La. 7/8/98). Article 14 § 3(b) of the 1921 Constitution gave the Legislature the “full power and authority” to enact laws creating BREC and to provide the number and method of selecting persons comprising the political subdivision. In that regard, the Legislature enacted La. Act 246 in 1946, defining the powers, duties, and composition of BREC. Additionally, La. Act 387 was adopted on November 5, 1946 as

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an amendment to Article 14 § 3(b), and La. Act 626 amended the article once again on November 6, 1956.

Article 14 § 3(b) of the 1921 Constitution was subsequently repealed by La. Act 69 in 1975, but it was carried forward by virtue of 1974 La. Const. Art. 14 § 16(A) (10), which stated that Article 14 § 3(b) be “continued as statutes.” Pursuant to this Constitutional provision, BREC’s enabling legislation under La. R.S. 33:4570 and 33:4570.1 provided that BREC’s six (6) appointed Commissioners serve three (3) year terms. Thus, the term length of the Commission members was set forth in this statute as authorized by the 1974 Constitution and as originated in the 1921 Constitution.

Ordinance 13496, adopted by the Metro-Council on January 25, 2006, differs from the Constitutional provisions and La. R.S. 33:4570.1 in that it calls for the term length of BREC Commissioners to be extended from three (3) to four (4) year terms “unless provided otherwise by Plan of Government or state statute.” The City of Baton Rouge derives the authority to enact ordinances from the Louisiana Constitution. *City of Baton Rouge v. Williams*, 661 So.2d 445 (La. 10/16/95). However, in viewing the proposed ordinance, it is in conflict with the Louisiana Constitution of 1921 under Article 14 § 3(b) and more recently under the Louisiana Constitution of 1974 under Article 14 § 16(A) (10).

Although La. Const. Art. 6 § 4 of the 1974 Constitution recognizes and protects the unique nature of “home rule charters,” such as the Plan of Government for East Baton Rouge Parish and the City of Baton Rouge, it states:

Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect as may be amended, modified, or repealed as provided therein. Except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted. If its charter permits, each of them also shall have the right to powers and functions granted to other local governmental subdivisions.

The phrase “except as inconsistent with this constitution” requires that La. Const. Art. 14 §16(A) (10) take precedence over the Metro-Council’s proposed ordinance. Since the proposed ordinance will cause such an inconsistency between a statute and a local ordinance, the constitutional and statutory provisions control. (See La. Op. Atty. Gen., No. 92-764.)

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Therefore, it is our opinion that the Metro-Council may not revise its Home Rule Charter to extend the term lengths of the appointed BREC Commissioners from three (3) to four (4) years.

We hope that this sufficiently answers your questions, but if we can be of further assistance, please do not hesitate to contact us.

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
CHARLES H. BRAUD, JR.
Assistant Attorney General

CCF,Jr/CHB,Jr./trl/ard

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SYLLABUS

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DATE REQUESTED: 05/10/2006

DATE RELEASED: August 4, 2006

REQUESTED BY: Mr. Murphy Foster, III
Breazeale, Sachse & Wilson, L.L.P.

AUTHOR: CHARLES H. BRAUD
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