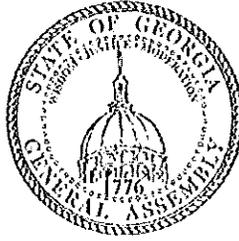


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October 7, 2015

Honorable John Albers
Senator, District 56
110-D State Capitol
Atlanta, Georgia 30334

Dear Senator Albers:

This letter is in response to your request for an opinion on the legality of a "city lite." The term "city lite" is used to denote a municipality which is created with the intention that the municipality provide only a limited number of services to reduce the cost of operating the municipality to the taxpayers of the municipality. There have been numerous proposals suggested to accomplish this end in recent years. There has been the idea of creating a lesser form of government, often denominated in the proposals as a "township," which has less than the full slate of powers given to full-fledged municipalities. At present, there is no authorization to create such townships, so I will not discuss that aspect of "city lite." There has also been the idea of reducing the powers given to a municipality in its creating charter and there has been the idea of giving a municipality all of the powers of a full-fledged municipality, but conditioning the use of certain powers upon certain procedural actions, such as seeking the approval of the voters of the municipality. It should also be noted that a "city lite" is not a municipality that has all the powers of a full-fledged municipality under Georgia law but chooses to exercise only a limited number of such powers. A municipality may voluntarily limit the services that it provides to its citizens without any action of the General Assembly.

The starting place for reviewing the powers of municipalities in Georgia is Article IX, Section II, Paragraph III(a) of the State Constitution which provides that:

Paragraph III. Supplementary powers.

(a) In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services:

- (1) Police and fire protection.
- (2) Garbage and solid waste collection and disposal.
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- (5) Parks, recreational areas, programs, and facilities.
- (6) Storm water and sewage collection and disposal systems.
- (7) Development, storage, treatment, purification, and distribution of water.
- (8) Public housing.
- (9) Public transportation.
- (10) Libraries, archives, and arts and sciences programs and facilities.
- (11) Terminal and dock facilities and parking facilities.
- (12) Codes, including building, housing, plumbing, and electrical codes.
- (13) Air quality control.
- (14) The power to maintain and modify heretofore existing retirement or pension systems, including such systems heretofore created by general laws of local application by population classification, and to continue in effect or modify other benefits heretofore provided as a part of or in addition to such retirement or pension systems and the power to create and maintain retirement or pension systems for any elected or appointed public officers and employees whose compensation is paid in whole or in part from county or municipal funds and for the beneficiaries of such officers and employees.

It should first be noted that this is not an exhaustive list of municipal powers, but is in "addition to and supplementary of all powers possessed by or conferred upon any ... municipality, ...". Therefore, when a municipality is created in Georgia, it is possessed with a vast range of powers by which to govern and operate by its very creation and without any

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further action of the General Assembly or by the General Assembly enumerating such powers in its charter.

There is a caveat regarding such powers which is contained in Article IX, Section II, Paragraph III(c) of the State Constitution which states that:

(c) Nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in subparagraph (a) of this Paragraph or to prohibit the General Assembly by general law from regulating, restricting, or limiting the exercise of the powers listed therein; but it may not withdraw any such powers.

Therefore, the General Assembly may pass general laws regarding the enumerated municipal powers or regulating, restricting, or limiting the exercise of such powers, but it may not withdraw such powers. A general law is a law of universal application within the state. Art. III, Sec. VI, Par. IV(a) of the State Constitution. That is, a general law is one that operates generally upon the entire class of subjects with which it deals uniformly throughout the state. City of Calhoun v. North Georgia Electric Membership Corporation, 233 Ga. 759 (1975). On the other hand, a local law operates only within a limited area of the state, such as a municipal charter or a law affecting a particular county.

With this in mind, it is easy to dispose of the idea of creating a city with a charter that contains less than all of the powers of a full-fledged municipality. Under the state constitution, such a city would have all of the powers of a full-fledged municipality regardless of the omission of such powers from the charter. Such powers come from the state constitution and, as noted above, cannot be withdrawn, but may only be regulated, restricted, or limited by general law. A municipal charter is clearly a local law which cannot be used to regulate, restrict, or limit municipal powers. Therefore, it is not possible to create a municipality in Georgia which has less than all of the powers of a full-fledged municipality.

The other notion of giving a municipality all of the powers of a full-fledged municipality, but conditioning the use of certain powers upon certain procedural actions, such as seeking the approval of the voters of the municipality, is interesting. The theory behind that idea is that the municipal powers are fully provided to the municipality and are not withheld or limited by the law. In other words, the municipality is created with and possesses all the powers of any other municipality. The difference is that, if the municipality wants to exercise certain powers, the municipality must follow certain procedures, such as gaining the approval of the voters of the municipality in a referendum. Proponents of this theory argue that the

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requirement to get referendum approval of the exercise of a power is not a regulation, restriction, or limit on the power, but a procedural mechanism for the use of the power. The municipality has the power to perform the act if it chooses and the actual power itself is not regulated, restricted, or limited. The power is fully present and capable of being exercised by the municipality without limitation, provided that the procedural processes are followed. This would be similar to a requirement that a city council of seven members cannot act without the affirmative vote of five members. The power to act is fully available, but unless the council musters five affirmative votes, no action can be taken. In the case of this "city lite" theory, the council has the power to act but cannot act without the consent of the voters in a referendum. It is not a charter change which would invoke home rule powers, but is a procedural mechanism which must be satisfied before acting.

While there is no case directly on point on this issue, the stronger argument would appear to be that the device of requiring referendum approval before exercising a power by a municipality is a limitation on the powers of the municipality by a local law which would run afoul of Article IX, Section II, Paragraph III(a) of the State Constitution. It is difficult to say that the limitation does not, in actuality, regulate, restrict, or limit the exercise of the powers by a municipality and thereby contravenes the constitutional provision.

In the event that a limitation on municipal powers is contained in a charter and a court of competent jurisdiction finds that such limitation is violative of Article IX, Section II, Paragraph III(a) of the State Constitution, the court would likely eliminate such provision from the charter and allow the charter to remain in existence without such limitation. Under O.C.G.A. § 1-1-3, unless otherwise specified, when a provision of an Act of the General Assembly is found to be unconstitutional or invalid, such provision is eliminated and the remaining parts of the Act continue in effect.

I trust that this has been responsive to your inquiry.

Sincerely,



H. Jeff Lanier
Deputy Legislative Counsel

Approved for release: 