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July 17, 2015

## VIA EMAIL AND HAND DELIVERY

Ralph J. Amos, Chairman  
Forsyth County Board of Commissioners  
110 East Main Street, Suite 210  
Cumming GA 30040

RE: Legal Propriety of a Limited Service City ("City-Lite")

Dear Mr. Chairman:

The Forsyth County Board of Commissioners has requested that this office offer an opinion regarding the legal propriety of a limited service city, also known as a "city-lite." A limited service city, or "city-lite," refers to a city the charter of which expressly restricts the number of services the city may provide to only three identified municipal services (far fewer than those otherwise authorized in the Constitution of the State of Georgia) without a voter referendum. It is my opinion that a "city-lite" is not authorized under Georgia law.

### **I. Statement of Facts.**

Recently, a number of cities have been formed in the Atlanta-metro area. In some cases, the charter for a given city attempts to limit the services provided to a fewer number of services than are otherwise authorized by the Constitution of the State of Georgia. This type of city is often referred to as a "city-lite." For example, it has been proposed that a City of Sharon Springs (proposed in Forsyth County) would provide only services related to planning and zoning, code enforcement, and solid waste management.

### **II. Legal Analysis and Relevant Authorities.**

The "Supplementary Powers" clause of the Constitution of the State of Georgia provides,

- (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.

(b) Unless otherwise provided by law,

- (1) No county may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein inside the boundaries of any municipality or any other county except by contract with the municipality or county affected; and
- (2) No municipality may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein outside its own boundaries except by contract with the county or municipality affected.

(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.

- (d) Except as otherwise provided in subparagraph (b) of this Paragraph, the General Assembly shall act upon the subject matters listed in subparagraph (a) of this Paragraph only by general law.

GA. Const. Art. 9, § 2, ¶ III (emphasis added).

“A general law is one having general application or at least applying to all municipalities and/or all counties. A local act is one that deals only with a particular city or county. Municipal charters are an example of local legislation.” Georgia Municipal Association, *Handbook for Georgia Mayors and Councilmembers*, Fifth Edition (2012); see O.C.G.A. § 36-35-2(a)<sup>1</sup>; see also *City of Atlanta v. City of Coll. Park*, 311 Ga. App. 62, 66, 715 S.E.2d 158, 162 (2011) aff’d, 292 Ga. 741, 741 S.E.2d 147 (2013) (noting in a footnote that “a city charter is a local law, not a general law”); see also *Cowan v. City of Atlanta*, 177 Ga. 470, 470, 170 S.E. 356, 356 (1933), (holding that “[a]n amendment to a municipal charter is a local bill . . .”). As the Constitution provides that the General Assembly may only regulate, restrict, or limit a municipality’s authority to provide the services enumerated in the Supplementary Powers clause by general law, it is therefore the case that a city charter (a local act) may not be used to limit the services that a municipality provides.

Regarding the purpose of this constitutional provision (providing for an established number of municipal and county powers), the Attorney General of Georgia has opined,

The purpose of this constitutional provision is to provide uniformity of municipal powers which the General Assembly may not remove . . . in a random fashion.”

Ga. Op. Atty. Gen. No. U94-8 (1994) (citing *City of Mountain View v. Clayton County*, 242, GA. 163 (1978) (“This provision provides uniformity of certain powers of municipalities, not autonomy. The General Assembly may not remove these powers in a random fashion.”). There, the Attorney General was considering the constitutionality of a local act passed by the General Assembly to amend the City of Gainesville’s charter to require the City to apply fair and nondiscriminatory charges and fees for waterworks and sewage services to customers outside its official limits. The Attorney General noted that the local legislation attempted to act “on the subject matter of the enumerated services of water distribution and sewer systems identified in the constitutional provision discussed above” but that such services, as identified in Constitution, are “subject only to general law.” Consequently, the Attorney General opined that the local act in that instance appeared unconstitutional. The same would be true regarding a city’s charter that attempts to limit the number of services that a city may provide to *fewer* than the services otherwise authorized by the State’s Constitution.

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<sup>1</sup> “No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation, or have its municipal boundaries changed except by local Act of the General Assembly or by such methods as may be provided by general law.” O.C.G.A. 36-35-2(a).

Anecdotally speaking, this issue may have been discussed prior to the creation of one "city-lite." At least one article regarding the creation of Peachtree Corners noted, "The city idea emerged several years ago but it failed in an informal vote. Leaders discussed a 'city light' form of government but eventually learned that the state only acknowledges one form of municipal government." Camie Young, *Peachtree Corners Cityhood Issue Divides Community*, GWINNETT DAILY POST, Nov. 11, 2011 (emphasis added). Although certainly not a legal authority, one commentator discussing the City of Peachtree Corners charter explained the effect of the charter as follows:

Section 1.12 (a) defines the comprehensive powers of the city government. These powers define what the city of Peachtree Corners is authorized to do in the provision of services. The listing of powers includes animal control, appropriations and expenditures, fire regulations, health and sanitation among many others. These are standard and expected powers for any city. In 1999, Berkeley Lake's charter was revised. You can see that the powers are very similar to those authorized for Peachtree Corners.

The key difference between us and any other city is in Section 1.12 (b) of our charter. This section spells out the specific services the city will provide: Planning and Zoning, Code Enforcement and Solid Waste Services. The charter specifically states that the comprehensive list of powers can only be exercised in the provision of these three services. If a power is not required for the provision of these services, the power is authorized but cannot be exercised.

UPCCA, *Peachtree Corners – City Charter – Powers and Services*, PEACHTREE CORNERS PATCH, July 27, 2011, <http://patch.com/georgia/peachtreecorners/bp--peachtree-corners-city-charter-powers-and-services-2> (emphasis added). This explanation highlights that that city's charter (a local act) appears to regulate, restrict, or limit the City's ability to exercise its constitutional powers. Again, according to the constitutional provision quoted above, the General Assembly may only use general law to regulate, restrict or limit a city's ability to exercise its constitutional powers.

Georgia's Constitution provides that "[t]he legislative power of the state shall be vested in the General Assembly which shall consist of a Senate and a House of Representatives." Ga. Const. Art. 3, §1, ¶ I. Further, "[t]he General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly." Ga. Const. Art. 9, §2, ¶ II. However, we have been unable to find any authority for the idea that the General Assembly may have, has, or could delegate its authority to create general law, which by definition applies not only to a single municipality but state-wide.

With that said, the General Assembly has authorized municipalities to make revisions to their charters without the involvement of the General Assembly or voters. O.C.G.A. § 36-35-3 (Home Rule for Municipalities) provides in part:

- (a) . . . Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. . . .
- (b) Except as provided in Code Section 36-35-6, a municipal corporation may, as an incident of its home rule power, amend its charter by following either of the following procedures:
- (1) Municipal charters may be amended by ordinances duly adopted at two regular consecutive meetings of the municipal governing authority, not less than seven nor more than 60 days apart . . . . No amendment under this paragraph shall be valid to change or repeal an amendment adopted pursuant to a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum by the electors of the municipal corporation unless at least 12 months have elapsed after such referendums. No amendment under this paragraph shall be valid if provision has been made therefore by general law; or
- (2) (A) Amendments to charters or amendments to or repeals of ordinances, resolutions, or regulations adopted pursuant to subsection (a) of this Code section may be initiated by a petition, filed with the governing authority of the municipal corporation [and meeting certain other requirements]. The petition shall specifically set forth the exact language of the proposed amendment or repeal . . . . In the event that the governing authority determines that such petition is valid, it shall be the duty of such authority to issue the call for an election for the purpose of submitting such amendment or repeal to the registered electors of the municipal corporation for their approval or rejection. . . . No amendment under this subparagraph shall be valid if provision has been made therefore by general law. . . .

(emphasis added). This general law is important because a charter for a "city-lite" generally provides:

In the event that the city desires to provide services in addition to those [limited] services enumerated . . . [and authorized in that charter,], the city council shall pass a resolution specifically stating the services sought to be offered by the city and shall submit the approval of such resolution for ratification by the electors of the city in a referendum. If the electors of the city vote in favor of ratifying such resolution, then the city shall be authorized to exercise the powers enumerated in subsection (a) of this section for the purpose of providing such services state in such resolution and those items directly related to the provision of such services and for the general administration of the city in providing such services. If the

electors of the city disapprove such resolution, it shall immediately be null and void and of no force and effect.

(emphasis added). This charter provision appears to limit the city's authority to provide such services until a *referendum* is passed by the city's voters. However, according to the general law quoted above, a referendum is unnecessary to amend the charter to include such services, as (1) the city already has those powers (per the Constitution) irrespective of the charter's effort to suggest otherwise, and (2) even if not, the charter may otherwise be amended by the process articulated in O.C.G.A. 36-35-3(b)(1).<sup>2</sup> In short, the proposed Sharon Springs charter attempts to render O.C.G.A. 36-35-3(b)(1) a nullity. Since that is the case, it would appear that the "city-lite" concept has two structural infirmities. First, the proposed charter purports to limit the city to only three functional powers – in spite of the Georgia Constitution clearly authorizing more; second, the charter seeks to impose a home rule amendment "referendum" requirement that is in derogation of general law.

The logical and unambiguous language in the Supplementary Powers clause provides that a municipality "may exercise the . . . powers and provide the . . . services" listed absent the General Assembly enacting a "general law" "regulating, restricting, or limiting" the municipality's authority to "exercise the powers listed." Indeed, the Supplementary Powers clause specifically provides that the General Assembly "may not withdraw any such powers." Georgia law provides:

In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

O.C.G.A. § 1-3-1(b). Here, it appears that a charter for a "city-lite" is, at best, attempting to regulate (limit) the authority of a "city-lite" to exercise the constitutional powers listed in the Supplementary Powers clause – without authority under general law – and, simultaneously offering up a single home rule amendment process that is in derogation of O.C.G.A. 36-35-3(b). Based upon both infirmities, it is my position that the city-lite concept is not authorized under the Georgia Constitution.

Some may point to one *general law* in which the General Assembly has defined what will be considered an "active municipality" to argue that a "city-lite" is a duly qualified municipality. I agree. O.C.G.A. § 36-30-7.1(b) provides:

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<sup>2</sup> Proponents of this form of government may suggest that modifying the charter to add services not initially authorized constitutes a change to the "form" of government prohibited by O.C.G.A. 36-35-6(a)(1). However, I reject this suggestion as the city would *already* have those powers under the constitutional provision referenced above; and, even assuming it were true that such an amendment constitutes an impermissible change in 'form,' such a conclusion would then necessarily void the provision in the proposed charter authorizing amendment by referendum. The prohibitions in O.C.G.A. 36-35-3 cannot be overcome by *either* charter revision method in O.C.G.A. 36-35-3(b).

An active municipality is any incorporated municipality in this state the governing body of which meets each of the following minimum standards:

(1) Provides at least three of the following services, either directly or by contract:

- (A) Law enforcement;
  - (B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;
  - (C) Road and street construction or maintenance;
  - (D) Solid waste management;
  - (E) Water supply or distribution or both;
  - (F) Waste-water treatment;
  - (G) Storm-water collection and disposal;
  - (H) Electric or gas utility services;
  - (I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;
  - (J) Planning and zoning; and
  - (K) Recreational facilities;
- (2) Holds at least six regular, monthly or bimonthly, officially recorded public meetings within the 12 months next preceding the execution of the certificate required by subsection (c) of this Code section; and
- (3) Qualifies for and holds a regular municipal election as provided by law, other than a municipality which has a governing authority comprised of commissioners or other members who are appointed by a judge of the superior court.

(emphasis added). Based upon this statutory provision, it is clear that cities providing a minimum of three of the services listed are active and legally authorized municipalities. Therefore, it is clear that if a city chooses to provide only three (or more) of the services that it is otherwise authorized to provide under the Constitution, that city is an active municipality recognized under Georgia law. However, this *general law* does not have the effect of authorizing the General Assembly to regulate and restrict (via a city's charter) when or how a municipality may provide the services that it is constitutionally authorized to provide. The "three services" rule in O.C.G.A. § 36-30-7.1(b) is a function of funding – not authority. It is a recognition that many municipalities will not have the funding to provide more than three such services. However, that is an altogether different concept than the underlying "authority" to provide more than this.

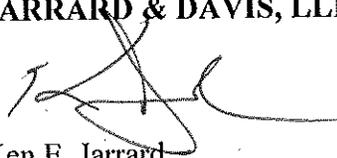
### III. Conclusion.

Based upon the facts presented and the analysis above, I am of the opinion, as of the date hereof, that a limited service city, or "city-lite," the charter of which attempts to restrict the city from providing more than a few listed services (fewer services than those otherwise authorized in the Constitution of the State of Georgia) without a voter referendum, is not legally authorized. First, the proposed charter purports to limit the constitutional powers available to all municipalities. Second, the charter seeks, by local act, to add requirements that must be met in order for the municipality to exercise its statutory home rule power. These attempts to limit, by local act, powers otherwise granted to all municipalities are not authorized under Georgia law.

If you have any questions, please feel free to contact me.

Kindest regards,

**JARRARD & DAVIS, LLP**

A handwritten signature in black ink, appearing to read 'Ken E. Jarrard', written over the firm name.

Ken E. Jarrard