

City of Coral Gables City Commission Meeting
Agenda Item J-1
June 13, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item J-1 [5:19:58 p.m.]

Presentation of City Attorney Opinion related to municipal authority over local matters
(Requested by Commissioner Lago)

City Attorney Leen: I'm pleased to inform you that I just came back from New York where I was at a conference with a lot of City Attorneys and professors who have worked in the area of Home Rule and also the National League of Cities, because the cities included New York City, Philadelphia, Fayetteville, Little Rock, Austin, Houston, Coral Gables, Miami Beach; and Coral Gables was really the focus in many ways of the whole presentation. I gave a case study of what we've been doing with polystyrene and plastic bags and also some of the strategies we've used to fight super preemptions, which we talked about earlier today and preemptions generally. One thing I wanted to tell you was that a lot of cities throughout the United States are dealing with the exact same issue, and a lot of them like the ideas that Coral Gables is bringing to the fore to try to address these sort of situations. Cities are frankly under attack by states, by the federal government, maybe even by counties in certain circumstances. So it's important to preserve Municipal Home Rule because ultimately the locality is closest to the people and allows you to be able to serve your constituents. So my goal as City Attorney has always been to maximize the

authority of the City Commission, the elected officials to be able to meet the needs of the residents. So to that end, I went to this seminar and I just want you to know our presentation was very well received and they respected a lot of what we were doing with polystyrene, plastic bags and with some of these other theories that we advanced. So, the opinion I'm giving right now is a presentation of City Attorney Opinion related to municipal authority over local matters. The first thing you should know is that Florida more than any other state, I don't want to engage in hyperbole, but as much as any other state that I have seen, has a very expansive view of the Municipal role, and I say that for a few reasons; first, we have a very broad Home Rule grant of authority, there is something called Dylan's Rule, which was from the 1800's, Professor Dylan who basically wrote a municipal law and found that cities have no inherent power, that all the power comes from the state who express delegations, and this was similar to a case that I teach in my state and local government law course, Hunter v. City of Pittsburg and that case established that cities are really just creatures of the state and the state can do anything they want with the cities, that was a Supreme Court decision from the early 1900's. What's happened though in Florida is, Florida rejected that in the 60's and 70's, and what they did is there was a Municipal Home Rule Amendment to the Florida Constitution and the Municipal Home Rule Powers Act, which essentially granted all the power of the state legislature to the City, except where the City would be acting contrary to a County Charter, the State Constitution, or general law; and even with the County Charter the general rule is, if there is no Charter Municipal Law takes precedence over County Law. If there is a Charter you look to the County Charter to determine which takes precedence. Our Charter has Section 6.02, my our, the Miami-Dade County Home Rule Charter, which is our Charter as well, because it establishes our right to be a municipality, it indicates that the state cannot eliminate us as a municipality, by the way, a lot of the cities at this conference they didn't have that protection, they could be eliminated, in fact they were very worried about retaliation by the state if they took strong stance on things. Coral Gables cannot be eliminated by the state, we can only be affected with....we are protected by the Miami-Dade Home Rule Amendment and the Miami-Dade Home Rule Charter, but 6.02 of the Charter says two things; one, that local governments, cities, municipalities should have control over local matters, it says that in the County Charter; and secondly, that on Countywide matters, basically where the County is legislating, because there is initial County concern, that the City can have a higher standard of zoning regulation and service, that's unequivocal that applies to every ordinance that the County Commission passes, the City can have a higher standard of regulation, service, and zoning, hence you have Coral Gables, which has probably the highest standard of zoning in the United States and the County can't affect that. So the issue of local roads, which is what prompted this question, there is a statute adopted by the Florida Legislature which says that Charter Municipalities have control over local roads. Its unequivocal, there is case law that supports that, there is an Attorney General opinion that says that Cities have control over roads within the municipality even if it's a County road, actually I'll circulate to you the Attorney General opinion. Now what's happened in Dade County because Dade County is a little

different, it's evolved differently than other parts of the state. What happened was in the 50's there was a case, Miami-Dade County v. Collar or Collar v. Miami-Dade County, which established that the County could adopt a uniform traffic code for Miami-Dade County, because they can establish a traffic plan per their Charter, and there is no doubt that they can have a traffic plan per their Charter. What happened though is in the 60 years since Collar there's been an evolving of the law, there has been a statute that...Charter Municipalities control the local roads and there has also been evolution of case law. There is no question that the City has authority over local roads. Now the other line of cases I just want to briefly mention is, another thing about the City of Coral Gables, pardon me, Florida, the State of Florida that's different from other states is that most states have what's called the Superior Sovereign where you basically have the state, which takes precedence over the counties and school boards, which takes precedence over the cities and towns; and so if the state passes a law the county has to follow, if the county passes a law the cities within the county are bound to it. Florida rejected that in the Temple Terrace decision in the 70's, and there has been a series of decisions since then that have reaffirmed that principle. In Florida its topsy-turvy – basically in Florida the city takes precedence over the county and also over the school board and the state agencies on zoning, and I also believe on police power type matters; and the reason why is because what the State Legislature said is that localities ultimately are closest to the people and understand the problems that are occurring in their city, particularly on land use matters, and so that a county or a state shouldn't be able to impose their will within that municipality, because it will lose its uniqueness and become more uniform with the state, while for a City like Coral Gables that's not a good thing, because we are very unique, we have very high standards in zoning. So because a case like Temple Terrace, we can be who we are, we can exist as a City. Yes sir.

Mayor Valdes-Fauli: We also have the news rack ordinance in the 90's where we prevailed on having uniform colored news racks and the court upheld our criteria.

City Attorney Leen: The City prevailed on a news rack ordinance case; the City prevailed famously on the truck case, in the pick-up truck case. So the point I'm making though is that ultimately the state follows a balancing of interest test and that's basically what I'm going to conclude with. In Florida what we should be trying to do is that the counties and the state agencies should be balancing, they should be coming to the City, advising us when they want to take action in our City and then they need to balance the interest with the City interest, and the party that balances the interest is the City, that's what the Florida Supreme Court has said. This Commission decide, basically weighs the county interest and the City interest or staff, sometimes it's the Building Official, sometimes it's the Public Works Official, balance the interest and determine what is appropriate, considering the county interest as well. So if the county needs to have a higher speed limit on certain roads and they have a good reason for it, for example their traffic plan, that's something we would work with them on. Likewise if the City wants to have a

lower speed limit than the county would work with us because of safety concerns. The best way to resolve those issues is through interlocal agreements, if you can. The other way to resolve if we can't reach an agreement is through Chapter 164 of the Florida Statutes where basically this Commission would pass a resolution asking our staff to meet with county staff and work the matter out, and if we couldn't work it out, the two Commissions meet and try to resolve the matter, and then and only then do we go to litigation, except for where there is an emergency we go right to litigation, but otherwise we try to resolve it. So the main point I want to make and I think that we need to stand strongly for this because of who we are as a City, Coral Gables and the high standards that we have, I think we need to always assert ourselves, even if we end up working it out and I think we should always try to work it out as well, if we can, but I think we need to assert our authority. Let me just give one example and its one that we just recently talked about, the windows at Coral Gables Elementary. The City needs to protect Coral Gables Elementary, it could be windows, it could be roofs, it could be the school itself, portions of the school itself that the City needs to protect, because school boards can change over time, but if the City took the same position as the county, which is that schools are exempt, the county does that as a matter of policy, not as a matter of law. The County basically exempts the School Board from their zoning regulations and land use regulations. In Coral Gables that can have a major effect on our residential areas, so we just can't do that. Now ultimately it's up to the Commission how much you want to balance that interest, but I think you need to reserve that authority, same with the county. Miami-Dade County comes in here and they want to build a building or they want to build an overpass or whatever it may be, and frankly the overpass was something that we both agreed on, but we still insisted that they go through our Board of Architects and the County did. Now they took the position, we basically did an interlocal agreement, a settlement that said, well they don't recognize that they have to go through our process, but they will, and that's what we should be doing with all of these entities; and ultimately, the reason we need to do that is because one day there will be something that happens, the county does, or state agency, or the school board that you will object to, and if we waive that over a course of years will be very hard to assert. So we need to assert it every time and then try to work the matter out, that's my opinion.

Mayor Valdes-Fauli: Thank you very much. Is there anything else to come before the Commission? Meeting adjourned.

[End: 5:30:27 p.m.]