



MEMORANDUM

Office of the City Attorney

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LEGISLATIVE ITEM NO. 080365

TO: MAYOR AND CITY COMMISSION

DATE: February 18, 2010

FROM: CITY ATTORNEY

SUBJECT: **Gainesville Energy Advisory Committee (GEAC) Members Ability to Run for Public Office**

Recommendation: The City Commission: 1) hear a presentation; and 2) authorize the City Attorney to prepare, and the Clerk of the Commission to advertise, an ordinance amending § 2-357 of the Code of Ordinances.

SUMMARY

The City Commission, at its meeting of March 4, 2009, requested the City Attorney to consider the request of Mr. Rob Brinkman to amend the Code of Ordinances that restricts members of the Gainesville Energy Advisory Committee (GEAC) from becoming candidates for election to any public office while serving on the Committee. After review the legislative history of GEAC and researching general law, it is the recommendation of the City Attorney that this prohibition be repealed. The City Attorney has consulted with the General Manager for Utilities who concurs with this recommendation.

BACKGROUND INFORMATION

In 1978, as part of a negotiated settlement agreement between the Sierra Club and the City of Gainesville and the Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Board (RUB), the Regional Utilities Board Citizen's Advisory Committee on Energy Conservation was established. The settlement required RUB to approve the recommendations offered by the Interim Chief Executive Officer of the RUB, Mr. B. Harold Farmer. One of the recommendations included the establishment of a citizen's advisory committee that would make recommendations regarding energy conservation.

In 1980, citizen advisory committee was restructured as the Energy Conservation Advisory Committee (ECAC). In 1982, the original ad hoc committee status was changed and the City formally adopted an ordinance establishing a permanent standing citizen advisory committee on energy issues, renamed the Gainesville Energy Advisory Committee.

The City Attorney's Office has reviewed the terms of the settlement agreement that created what is now GEAC. The settlement agreement, which became the basis for the foundation of what is now GEAC, does not include in its terms any requirement for a prohibition on committee members that would prevent them from becoming candidates for public office.

The legislative history of City of Gainesville Code Sec. 2-357 provides no explanation for the prohibition that would prevent GEAC members from becoming candidates for public office. The minutes from the Gainesville City Commission meeting on December 13, 1982, in which the ordinance creating GEAC was first offered for approval, do not provide any explanation for such a provision. Nor was any rationale for such a provision expressed in the minutes at the final reading of the ordinance on January 24, 1983.

GEAC members serve an advisory role to the City Commission. Florida courts have recognized the principle that the right to hold office is a valuable right. See e.g., *Ervin v. Collins*, 85 So.2d 852 (Fla. 1956); *Hurt v. Naples*, 299 So.2d 17 (Fla. 1974). Similarly, Florida courts have recognized the principle that the right to be a candidate for public office is a valuable right. See e.g., *Vieira v. Slaughter*, 318 So.2d 490 (Fla. 1st DCA 1975); *Levey v. Dijols*, 990 So.2d 688 (Fla. Dist. Ct. App. 4th Dist. 2008). Other states have also recognized the right to become a candidate for public office as a valuable right. See e.g., *McGee v. Borom*, 341 So.2d 141 (Ala. 1976); *Populist Party of Arkansas v. Chesterfield*, 359 Ark. 58, 195 S.W.3d (2004); *Deeds v. Lindsey*, 179 W.Va. 674, 371 S.E.2d 602 (1988).

This office also consulted with Jim Notestein, Chairman of the Energy Advisory Ad Hoc Committee, who submitted the ordinance establishing GEAC for initial consideration before the City Commission on December 13, 1982. Per a February 3, 2010 telephone conversation with this Office, Mr. Notestein indicated that GEAC intended to provide opportunities for citizens to become members of the committee, but could not recall any reason for restricting GEAC members from becoming candidates for public office.

Therefore, the City Attorney recommends that the City Commission draft an ordinance that repeals this restriction, as codified in Section 2-357(e) of the Code of Ordinances.

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