

Hon. James Uthmeier
Attorney General, State of Florida
Department of Legal Affairs
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Re: Request for Informal Opinion for the Town of Century

Dear Attorney General Uthmeier:

In my capacity as the attorney for the Town of Century, I write this letter at the request of Mayor Ben Boutwell and the Century Town Council seeking your informal advisory opinion as to the following:

May the Town Council of the Town of Century, pursuant to Florida Statute Sections 166.021 and 100.3605, amend its Town Charter by ordinance without voter referendum approval to correct scrivener's errors contained in recent voter-approved Charter amendments clarifying that the dates for election for its municipal officers are aligned with the dates for federal, state, and county elections?

Background:

The 1979 Charter Amendments. On November 27, 1979, the Century Town Council by Ordinance Number 5-79, proposed for voter approval by referendum a revised version of the Charter of the Town of Century, Florida (the "1979 Charter"). The 1979 Charter was approved by referendum held on January 8, 1980.

The 1979 Charter provided that the terms of office for Mayor and all five Council Seats would be two-years. Elections for the offices of Mayor and Council Seats One and Two were to be held in odd-numbered years and elections for the offices of Council Seats Three, Four, and Five were to be held in even-numbered years. The following were the pertinent provisions of the 1979 Charter:

Art. III, Sec. 3.03: *Councilmember seats numbers one and two and the office of mayor shall be up for election in **each odd-numbered year**, and councilmember seats numbers three, four, and five shall be up for election in **each even-numbered year**, said elections to be held in the manner provided in Article IV of this charter. The terms of the councilmembers shall be for **two (2) years**.* (Emphasis added.)

Art. IV, Sec. 4.02(a): *Qualifications. The mayor shall be an elector of the town and shall have resided in the town, or within any area annexed since the last general election, for at least six (6) months prior to the date on which he qualified to run for the office of mayor. If he shall cease to possess any such qualifications during his term of office, he shall forfeit the office and the council shall remove him. He shall be elected for a term of **two (2) years**, and serve until his successor is elected.* (Emphasis added.)

Art. V, Sec. 5.05(a): *Multiple Candidates. When more than two (2) persons qualify as candidates for the office of town council, for any of the designated seats of the town council to be filled or for the office of mayor, the persons so qualified shall be voted upon at a **first nonpartisan primary election to be held thirty (30) days prior to the general nonpartisan election**, and the two (2) persons receiving the highest number of votes cast for each designated seat on the town council or the office of mayor shall be declared candidates for each of such designated seats or office and shall be voted upon at the regular town election to be held concurrent with state and county elections, and the person receiving the highest number of votes cast at such regular town elections shall be declared elected; provided that if one (1) candidate in the first nonpartisan primary election receives a majority of the votes cast for a designated seat, such candidate shall be declared elected without the necessity of being voted upon in the regular town election and shall assume office at the same time and in the same manner as those elected in the regular town election. (Emphasis added.)*

The 2014 Charter Amendments. By Ordinance 5-14 adopted by the Century Town Council on June 13, 2014, a copy of which is enclosed along herewith, the dates for holding municipal elections set forth in the 1979 Charter were amended (the “2014 Charter Amendment”) so that they coincided with State of Florida and Escambia County elections. Section 1 of that Ordinance provided:

Amend Charter: The Town Council shall amend Charter Section 5.05(b) to read in part "regular Town election to be held concurrent with state and county elections".

As State and County elections are held in even-numbered years, the effect of the 2014 Charter Amendment was to correspondingly change the dates for municipal elections to even-numbered years.¹ The 2014 Charter Amendment then provided in Section 5.05(a)²:

*Multiple Candidates. When more than two (2) persons qualify as candidates for the office of town council, for any of the designated seats of the town council to be filled or for the office of mayor, the persons so qualified shall be voted upon at a first nonpartisan primary election to be held thirty (30) days prior to the general nonpartisan election, and the two (2) persons receiving the highest number of votes cast for each designated seat on the town council or the office of mayor shall be declared candidates for each of such designated seats or office and shall be voted upon at the **regular town election to be held concurrent with state and county***

¹ Century Town Council Ordinance 5-86 adopted by the Town Council on Sept. 30, 1986, purported to amend the Town Charter by changing the terms of office for Mayor and all five Council Seats to four years. I have been unable to discern if the proposed Charter amendment was submitted to or approved by the voters through referendum. Yet, as discussed below, that issue is not germane to this request as subsequent voter-approved Charter amendments changed the terms of the offices of Mayor and all Council Seats to four years.

² Notwithstanding that Ordinance 5-14 stated that Section 5.05(b) was to have been amended, in the online version of the Charter, Municipal Code Corporation editorially incorporated the 2014 Charter Amendment into Section 5.05(a) of the Charter.

elections, and the person receiving the highest number of votes cast at such regular town elections shall be declared elected; provided that if one (1) candidate in the first nonpartisan primary election receives a majority of the votes cast for a designated seat, such candidate shall be declared elected without the necessity of being voted upon in the regular town election and shall assume office at the same time and in the same manner as those elected in the regular town election. (Emphasis added.)

The Escambia County Supervisor of Elections (who, through interlocal agreement with the Town of Century, conducts municipal elections on behalf of the Town) has confirmed that since 2014 all regular elections for the Town of Century offices of Mayor and all Council Seats have been held in even-numbered years.

The 2024 Charter Amendments. On September 17, 2024, the Century Town Council adopted Ordinance 24-03 in which it proposed certain amendments (the “2024 Charter Amendments”) to the Town’s Charter to be submitted to the voters for referendum approval on Nov. 5, 2024.³ A copy of that ordinance is enclosed along herewith. The 2024 Charter Amendments were approved by the voters through referendum held on Nov. 5, 2024.

The 2024 Charter Amendments included revisions to Sections 3.03, 4.02(a), and 4.02(b) of the Town’s Charter. The gist of those 2024 Charter Amendments was to confirm that the terms of office for Mayor and each Town Council Seat are four years. However, those amendments inadvertently included language from the 1979 Charter that is inconsistent with the 2014 Charter Amendments. Specifically, notwithstanding that the 2014 Charter Amendment changed the date of Town of Century municipal elections such that would be held to coincide with State of Florida and Escambia County elections during even-numbered years, the 2024 Charter Amendments provide that elections for the offices of Mayor and Council Seats One and Two are to be held in odd-numbered years. The following were the text pertinent portions of the 2024 Charter Amendments that were submitted to the voters for referendum approval:

Sec. 3.03. - Election and Terms.

~~*Councilmember seats numbers one and two and the office of mayor shall be up for election in each odd-numbered year, and councilmember seats numbers three, four, and five shall be up for election in each even-numbered year, said elections to be held in the manner provided in Article IV of this charter. The terms of the councilmembers shall be for two (2) years, shall be revised to read,*~~
“eCouncilmember seats numbers one and two and the office of mayor shall be up for election in each-odd-numbered years, and councilmember seats numbers three, four, and five shall be up for election in each-even-numbered years, said elections to be held in the manner provided in Article IV of this charter. The terms of the councilmembers shall be for four (4) year terms.” (Emphasis added.

³ Also on Sept. 17, 2024, the Town Council approved Ordinance 24-01 and Ordinance 24-02 proposing certain other amendments to the Town Charter to be submitted to the voters for referendum approval on Nov. 5, 2024. The Charter amendments contemplated in Ordinance 24-01 were approved by the voters, but the amendments contemplated in Ordinance 24-02 were not approved by the voters. Those amendments do not pertain to the subject of this request.

Sec. 4.02. - Mayor; Qualifications; Term of Office.

- (a) *Qualifications.* ~~The mayor shall be an elector of the town and shall have resided in the town, or within any area annexed since the last general election, for at least six (6) months prior to the date on which he qualified to run for the office of mayor. If he shall cease to possess any such qualifications during his term of office, he shall forfeit the office and the council shall remove him. He shall be elected for a term of two (2) years, and serve until his successor is elected, shall be amended to read,~~ "Qualifications. The mayor shall be an elector of the town and shall have resided in the town or within any area annexed since the last general election for at least six (6) months prior to the date on which he qualified to run for the office of mayor. If he shall cease to possess any such qualifications during his term of office, he shall forfeit the office and the council shall remove him. He shall be elected for a term of **four (4) years**, and serve until his successor is elected." (Emphasis added.)
- (b) *Election and Term.* ~~The regular election of the mayor shall be held in each~~ **odd-numbered years** in the manner provided in article V of this charter. The mayor shall be elected for a **four (4) year term** and may be re-elected subsequently." (Emphasis added.)

Inconsistencies in Election Dates. The 2024 Charter Amendments did not expressly change the dates for Town of Century municipal elections established in the 2014 Charter Amendment (i.e., to coincide with State and County elections – held in even-numbered years). Yet, the reinsertion of “odd-numbered years” in the text of the 2024 Charter Amendments is inconsistent with the 2014 Charter Amendment which effectively required elections to be held in even-numbered years. It appears that those who drafted the proposed 2024 Charter Amendments made a scrivener’s error by failing to have appreciate the 2014 election date change; instead using original text from the 1979 Charter.

The Century Mayor and Town Council desire to correct the inconsistency to clarify that elections of its municipal officers shall be at the same time as state, federal, and county elections. The Town intends to adopt of an ordinance which clarifies that regular elections for the offices of Mayor and Council Seats One and Two shall be held during one even-numbered year and that regular elections for the offices of Council Seats Three, Four, and Five will be held in the ensuing even-numbered year.⁴ The Mayor and Town Council seek your informal opinion whether such an ordinance must be submitted for voter approval in order for it to be effective.

⁴ The ordinance would likely include a transition schedule confirming the dates for the next elections for each of the offices. The last regular elections for the offices of Century’s Mayor and Council Seats One and Two was held in 2024. The last regular elections for the offices of Century’s Council Seats Three, Four, and Five was held in 2022.

Legal Analysis:

Section 166.031, Florida Statutes, sets forth the procedures to be followed in amending municipal charters and requires that a proposed amendment shall be subject to referendum approval by the voters. For municipal charters adopted prior to July 1, 1973, and not subsequently readopted, Florida Statutes Section 166.021 repealed or changed into ordinances many of the limitations contained in such charters. Subsection (4) of the statute, however, provided that nothing in Florida Statutes Chapter 166 was to be construed as permitting any changes in a municipal charter that affected certain subject matters set forth therein, including “*the terms of elected officers*,” without referendum approval as provided in Florida Statutes Section 166.031. Thus, for charters adopted after July 1, 1973, and for charter provisions relating to the terms of elected officers adopted prior to that date and not subsequently readopted, any amendment of those provisions would be subject to the charter amendment procedures set forth in Section 166.031.

In 1995 the Florida Legislature amended Section 166.021(4) to allow changes to a municipal charter by ordinance without voter referendum approval pertaining to the selection of election dates and for changes in the terms of office necessitated by such changes in election dates. The statute now includes the following sentence:

*However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect . . . the terms of elected officers and the manner of their election **except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates**, . . . without approval by referendum of the electors as provided in [s. 166.031](#). . . (Emphasis added.)*

Florida Statutes Section 100.3605, pertaining to the conduct of municipal elections, was created in the same 1995 legislation. Subsection (2) of that statute provides:

*The governing body of a municipality may, by ordinance, **change the dates . . . for the election of members of the governing body of the municipality** and provide for the orderly transition of office resulting from such date changes. (Emphasis added.)*

In Attorney General Opinion 2000-61, you opined that the City of Mulberry could amend its charter by ordinance (without submitting the ordinance for voter referendum approval) to move the dates of city elections from April to November to coincide with federal, state, and county elections, and to extend the terms of the sitting commissioners to the ensuing election.

In Attorney General Opinion 2013-05, you also opined that a change in election dates proposed by the City of Arcadia to align its elections of municipal officers to coincide with federal, state, and county elections was permitted by Florida Statute Sections 166.021(4) and 100.3605 could be accomplished by ordinance without voter approval by referendum. You similarly opined in Attorney General opinion 2019-11 that the Destin City Council was authorized to align the election of the its municipal officers with the state general election by ordinance and without referendum.

It is apparent that the Century Town Council is allowed to adopt an ordinance amending the Town's Charter to coincide elections of its municipal officers with federal, state, and county elections. The complicating factor, however, is the inadvertent inclusion in the voter-approved 2024 Charter Amendments of archaic language that elections of certain municipal offices shall be held in odd-numbered years. Notwithstanding that inadvertent and inconsistent language, it nonetheless appears that pursuant to Florida Statutes 166.021(4) and 100.3605, the Century Town Council may indeed adopt an ordinance which amends the Town's Charter to clarify that all elections of its municipal officers shall coincide with federal, state, and county elections.

The Century Mayor and Town Council respectfully request your informal opinion confirming the above position. An informal opinion is sought for purposes of expediency. Should your opinion be that voter referendum approval is needed for the contemplated Charter clarifications, then expedited efforts will be needed in order for the proposed Charter amendments to be placed on the ballots in time for the November 2026 general election.

Thank you for your attention to and consideration of this matter. Please feel free to contact me should you have any questions or desire additional information.

Respectfully submitted,

Matt E. Dannheisser
For the Firm

Cc: Mayor Ben Boutwell
David Murzin, Town Manager
Carrie Moore, Town Clerk
Robert Bender, Escambia County Supervisor of Elections