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February 15, 2022

Jacob G. Horowitz
City Attorney for City of Cooper City
Goren Cherof Doody & Ezrol P A
3099 E Commercial Blvd Ste 200
Fort Lauderdale, FL 33308-4348

Dear Mr. Horowitz,

On behalf of the City of Cooper City ("City"), you have asked for a legal opinion regarding substantially the following questions, arising under section 166.241, Florida Statutes:

1. Whether the transfer of money from one account or line item to another *within* a city department, without a change in the total budgeted appropriation of the department, or of the fund which includes the department, constitutes a budget amendment within the meaning of section 166.241(7), Florida Statutes?
2. Whether the transfer of money from one account or line item *between* city departments, without changing the total appropriations of the fund which includes both departments, constitutes a budget amendment within the meaning of section 166.241(7), Florida Statutes?

In Sum

In addressing amending a budget through changes to appropriations for expenditures, section 166.241(7), Florida Statutes, in effect provides that any transfer of money within a municipal budget is a budget amendment. Where, as contemplated by the two questions¹

¹ You have also asked a third question: whether a city charter amendment providing that the City Manager may transfer money between departments (which might pertain to different funds, and thus potentially change total appropriations in such funds) is inconsistent with section 166.241(7)(b). While this office may decline to address "questions the official . . . has already acted on," such as "the adoption of an ordinance," see AG Opinions, MyFloridaLegal.com, Requesting an Attorney General Opinion,

posed, such transfers do not change the total appropriations of a subject fund,² the amendment may be accomplished as provided by sections 166.241(7)(a) and (b).

Background

The City is a municipality established under the laws of Florida. Each year, the City Commission adopts a budget for the next fiscal year. Based on the materials provided (which are excerpts of the adopted operating budget for FY 21), and a review of the most recently adopted budget, the City's budget reflects funds, departments, and accounts,³ as set forth in the Department of Financial Services' Uniform Accounting System Manual.⁴ In addition to these categories, the allocations of money approved to be expended pursuant to the City's Adopted Operating Budget are further described through appropriation categories and footnote details.⁵ In your letter, you indicate that the City is unsure whether certain transfers of money within a single department, or between departments located within the same fund, would constitute a budget amendment subject to section 166.241(7), Florida Statutes.⁶

Analysis

A municipal budget is shaped by the uniform accounting practices and procedures established by section 218.33, Florida Statutes. "Each local governmental entity shall follow uniform accounting practices and procedures as promulgated by rule of the [Department of Financial Services] to assure the use of proper accounting and fiscal management by such units. Such rules shall include a uniform classification of accounts."⁷ Pursuant to this requirement, the Department of Financial Services developed the Uniform

<http://myfloridalegal.com/pages.nsf/Main/DD177569F8FB0F1A85256CC6007B70AD>, this issue is briefly discussed *infra* at 4-5.

² For clarity, in this analysis, "fund" reflects its specialized financial accounting meaning, and expenditures and appropriations are sometimes referred to as "money," rather than "funds."

³ See City of Cooper City, FY 2021 Adopted Budget 1, 4, 11 (2021) (available upon request by visiting: <https://coopercityfl.org/index.asp?SEC=576852A5-BD98-472C-B9C6-A0C726D169C8&DE=73675418-0B0C-4162-A0BF-6EE9EE64F2B5>) (hereinafter "Adopted Budget").

⁴ Department of Financial Services, Uniform Accounting System Manual, 1, 4 (2021), <https://myfloridacfo.com/Division/AA/manuals/documents/UASManualEffectiveBeginning2020-2021.pdf> (hereinafter "UASM").

⁵ See, e.g., Adopted Budget, *supra* note 3, at 1, 45, 74-75.

⁶ See also City of Cooper City, Fla., Commission Meeting, 1:23:00-1:28:24 (May 25, 2021) (https://cooper.granicus.com/MediaPlayer.php?view_id=2&clip_id=444).

⁷ § 218.33(2), Fla. Stat. (2021); see also § 218.31(1), Fla. Stat. (2021); City of Cooper City, Fla. Charter, § 5.05 ("The city commission is hereby required to comply with state law in the preparation of and the adoption of the annual budget. Specifically, the commission is to follow all requirements set forth in . . . [chapter] 218, 'Financial matters pertaining to political subdivisions.'").

Accounting System Manual Chart of Accounts “to be used as the standard for recording and reporting financial information to the State of Florida.”⁸

Section 166.241 sets out the manner in which municipalities adopt and amend budgets. If a municipality seeks to *amend* its budget, it must follow the procedures set forth in section 166.241(7), which states:

The governing body of each municipality at any time within a fiscal year or within 60 days following the end of the fiscal year may amend a budget for that year as follows:

- (a) Appropriations for expenditures within a fund may be decreased or increased by motion recorded in the minutes if the *total appropriations of the fund is not changed*.
- (b) The governing body may establish procedures by which the designated budget officer may authorize budget amendments if the *total appropriations of the fund is not changed*.
- (c) If a budget amendment is required for a purpose not specifically authorized in paragraph (a) or paragraph (b), the budget amendment must be adopted in the same manner as the original budget unless otherwise specified in the municipality's charter.

(Emphasis added.) As discussed below, the term “budget amendment,” as used in section 166.241, is unambiguous and contemplates any change in allocation of money in the budget.

The Term “Budget Amendment” Is Unambiguous

“The starting point for any statutory construction issue is the language of the statute itself—and a determination of whether that language plainly and unambiguously answers the question presented.”⁹ “Ambiguity suggests that reasonable persons can find different meanings in the same language.”¹⁰ The term “budget amendment” is not defined in section 166.241 or elsewhere in chapter 166.¹¹ “Where, as here, the legislature has not defined the words used in a [statute], the language should be given its plain and ordinary meaning.”¹² In ascertaining that meaning, it is appropriate to refer to dictionary definitions.¹³

⁸ UASM, *supra* note 4, at 1, 2.

⁹ *State v. Peraza*, 259 So. 3d 728, 730 (Fla. 2018) (additional citations omitted).

¹⁰ *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992).

¹¹ Section 166.241 also does not distinguish between a “transfer” of money between accounts and a “budget amendment.” *Compare* § 195.087, Fla. Stat. (2021) (distinguishing between a “budget amendment” and a “transfer of funds between accounts”) *with* § 166.241, Fla. Stat. (2021) (making no such distinction).

¹² *Fla. Birth-Related Neurological Injury Compensation Ass'n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354 (Fla. 1997).

¹³ *Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1122 (Fla. 2008).

Under § 166.241, a Transfer of Money Effects a Budget Amendment

Black's Law Dictionary defines "budget" as "a statement of an organization's estimated revenues and expenses for a specified period"¹⁴ Black's defines "amendment" as a "minor revision or addition proposed or made to . . . [an] instrument; . . . a change made by addition, deletion, or correction"¹⁵ Thus, in the absence of a statutory definition, any revision to a budget would constitute a budget "amendment," under the plain meaning of the term.¹⁶

The budget amendments described in the City's first two questions do not contemplate a change in the total appropriations of any fund.¹⁷ It follows, based on section 166.241(7), that any transfer of money from one account, line item, or city department (e.g., City Clerk Department) to another which occurs within the same fund (e.g., General Fund) constitutes a budget amendment, but approving such an amendment would not require the budget adoption procedures referenced in section 166.241(7)(c). On the other hand, any transfer of money from one account, line item, or city department to an account, line item, or department in a different fund (e.g., transferring money from the General Fund to the Special Revenue Fund) would result in a change in the total appropriations of both funds, requiring approval by the governing body using formal budget adoption procedures referenced in section 166.241(7)(c).¹⁸ Thus, with respect to the amendment procedures required, whether the proposed budget amendment impacts the total appropriations of a fund is dispositive.¹⁹

A City Charter May Not Be Modified to Conflict With Existing General Law

The City has also asked this office to address whether there is a conflict between section 166.241(7)(b) and an existing municipal charter provision that purports to authorize the city manager to transfer money "between departments in an amount up to 2.5% of the then

¹⁴ *Budget*, Black's Law Dictionary (11th ed. 2019); *see also* § 216.0119(3)(a), Fla. Stat. (2021) (defining "approved budget" as "the plan of operations consisting of the original approved operating budget").

¹⁵ *Amendment*, Black's Law Dictionary (11th ed. 2019).

¹⁶ Notably, the Adopted Budget defines "Amended Budget" as "[t]he current budget, resulting from changes to the Adopted Budget. An example of a common change would be a line item transfer of funds." Adopted Budget, *supra* note 3, at 1, 300.

¹⁷ In the context of fiscal management, "fund" as referenced in section 166.241(7)(a)-(b) is defined as "an independent fiscal and accounting entity consisting of a self-balancing set of accounts for recording cash and/or other assets together with related liabilities . . . segregated for the purpose of carrying on specific activities . . . in accordance with certain defined . . . limitations." UASM, *supra* note 4, at 4. Thus, "fund," as used in section 166.241(7), refers to the General Fund, Special Revenue Fund, and others similar funds as reflected in the City's adopted budget.

¹⁸ *See* § 166.241(1)-(6), Fla. Stat. (2021).

¹⁹ This opinion does not comment on additional restrictions that may apply to transfers of money allocated to dedicated funds or funds related to appropriations for police services.

existing budget on a cumulative basis.”²⁰ This office assumes that a validly adopted ordinance is lawful unless and until it is judicially declared otherwise. *See* Op. Att’y Gen. Fla. 2012-32 (2012). For that reason, while we refrain from addressing the legal validity of the City’s existing charter provision, in an effort to provide assistance, some informal observations are offered.

Pursuant to section 166.021(1), Florida Statutes, the city “may exercise any power for municipal purposes, except when expressly prohibited by law.” In considering whether a charter provision meets that threshold requirement, two principles apply: 1) that, “[w]hen the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way,”²¹ and 2) that local provisions on a subject are deemed to conflict with state law on the same subject if complying with one provision necessarily violates another.²²

As relevant here, what is now section 166.241(7)(b) was not enacted until 2004.²³ At the time of the charter amendment referendum (November of 2002), the law governing city budgets both required that the governing body of a municipality adopt a budget annually and prohibited any “officer of a municipal government” from “[expending] or [contracting] for expenditures in any fiscal year except in pursuance of budgeted appropriations.”²⁴

Thus—unlike the current version of the statute—the 2002 version contained *no* provision contemplating a city’s adoption of procedures by which a designated budget officer could authorize budget amendments.²⁵ In assessing the validity of the subject charter amendment, the City must first look to whether the amendment was authorized at the time it was adopted to determine whether it is valid under section 166.241 as it currently exists.²⁶

Conclusion

Based on the foregoing, unless judicially or legislatively determined otherwise, I conclude that, with reference to section 166.241, Florida Statutes, any transfer of funds within a budget is a budget amendment. Further, if such transfer of funds results in a change in the total appropriations of a fund as defined in the Uniform Accounting System, then the

²⁰ City of Cooper City, Fla. Charter § 5.11.

²¹ *Alsop v. Pierce*, 19 So. 2d 799, 805-06 (Fla. 1944).

²² *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010) (“[A] conflict exists when two legislative enactments ‘cannot co-exist.’”) (quoting *Laborers’ Int’l Union of N. Am., Local 478 v. Burroughs*, 541 So. 2d 1160, 1161 (Fla. 1989) (additional citations omitted)).

²³ *See* ch. 2004-305, § 14, Laws of Fla.

²⁴ *See* ch. 96-324, § 6, Laws of Fla.

²⁵ *See id.*

²⁶ *See generally supra* notes 21-22.

governing body must approve such amendment in the same manner as the original budget, unless validly specified otherwise in the municipality's charter. I trust that these informal comments will be useful to you in advising your client.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Munro" followed by a flourish.

Rachel Kamoutsas
Deputy General Counsel