

TALLAHASSEE
1500 Mahan Drive
Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax



TAMPA
2502 Rocky Point Drive
Suite 1060
Tampa, Florida 33607
(813) 281-2222 Tel
(813) 281-0129 Fax

PLANTATION
8201 Peters Road
Suite 1000
Plantation, Florida 33324
(954) 315-0268 Tel

Reply to Tallahassee

September 6, 2022

Christine M. Schverak, Esquire
Interim County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, Suite 308
Viera, Florida 32940

Re: Review of Proposed Charter Amendment – Commissioners' Salaries

Dear Ms. Schverak:

In accordance with the Independent Contractor Professional Services Contract entered into between Brevard County and the law firm of Nabors, Giblin & Nickerson, P.A. on August 3, 2022, I previously reviewed six Charter Amendments proposed by the Brevard County Charter Review Commission. On September 1, 2022, I was provided an additional Charter proposal relating to the establishment of the salaries of County Commissioners.

Pursuant to Section 7.4.1 of the Brevard County Charter, a panel of three persons is assembled to review proposed amendments of the Brevard County Charter Review Commission prior to submission to the electors of the County. The substance of that review requires a consideration of "whether the proposed Amendment and ballot language embraces one subject only, and is consistent with the Florida Constitution, general law and this Charter."

My review has been based on the following criteria:

I. Ballot Language

The question of consistency of ballot language with general law is chiefly controlled by section 101.161(1), Fla. Stat. (2022):

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word “yes” and also by the word “no,” and shall be styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. .

..

* * *

The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

...

II. Single Subject

The “single subject” restriction on amendments to the Constitution and charters has a twofold purpose. The first is to prevent “logrolling”, a practice where an amendment containing unrelated provisions, some of which electors might support, is proposed to get an otherwise disfavored provision passed. *Advisory Opinion to Att’y Gen. re: Limited Casinos*, 644 So. 2d 71, 73 (Fla. 1994). The second is whether the amendment affects separate functions of the government and other provisions of the charter. *In re Advisory Opinion to Att’y Gen. - Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). In determining whether a provision complies with the single subject requirement, the courts generally determine whether there is a natural or logical connection between the provisions.

III. Consistency with Constitution

County charter provisions, as with any legislative act, must be consistent with the express provisions of the Florida Constitution.

IV. Consistency with General Laws

Charter provisions will also be considered invalid if they are “inconsistent with general law” as provided in Article VIII, Section 1(g) of the Florida Constitution. As established by case law, the term “inconsistent” in this context means “contradictory in the sense of legislative provisions which cannot coexist.” *State v. Sarasota County*, 549 So. 2d 659 (Fla. 1989); *Pinellas County v. City of Largo*, 964 So. 2d 847, 854 (Fla. 2d DCA 2007).

V. Consistency with the Charter

Finally, as set forth in Section 7.4.1, a review of the proposed amendments shall also be conducted to determine whether they are inconsistent with other provisions of the Charter. Similar to the analysis for determining whether a provision is inconsistent with general law, a separate analysis is performed to determine whether the proposed amendment is inconsistent with the other provisions of the Charter. This requires a determination as to whether the proposed amendment and the existing Charter provisions are “contradictory in the sense of legislative provisions that cannot coexist.” *State v. Sarasota County*, *id.*

Based on the foregoing criteria, I advise the Charter Review Commission and the Board of County Commissioners as to my opinion on the proposed Amendment as set forth below:

A. RESOLUTION 2022-____ A RESOLUTION TO PROVIDE FOR A CHARTER AMENDMENT WHICH AMENDS SECTION 2.6 AS TO COMMISSIONER SALARY TO FOLLOW CHAPTER 145, FLORIDA STATUTES.

Background:

The Resolution seeks to amend Section 2.6 of the Brevard County Charter relating to the salary and other compensation of the County Commissioners. The proposed Amendment would eliminate the current procedures for the establishment of Commission salaries and replace it with a provision that requires that “[t]he salary of the County Commissioners shall be the same as 90 percent of that set forth in Chapter 145, Florida Statutes for members of a board of county commissioners, as the statute may be amended from time to time.”

First, the proposed Charter Amendment satisfies the word limitations for the ballot title and summary as contained in section 101.161, Florida Statutes. Though I would note that the inclusion of some of the language within the ballot summary may be misleading. The last clause of the ballot summary states that the approval of the Charter Amendment, “which provides a

uniform method of compensation for county commissioners with similar duties across the state,” implies that the proposed Charter Amendment, if approved, would be uniform with other counties across the state. I do not believe that is correct. I believe that the language used in the ballot summary as to uniformity with other counties was referring to the provisions of Chapter 145, Florida Statutes, and not the Charter Amendment. The proposed Amendment uses the salary amount from the statute but only approves ninety percent of that amount. Therefore, I do not believe that the Amendment would be uniform with other counties across the state. It is recommended that this language be clarified.

As to the consistency with the Florida Constitution and general law, there appears to be issues with the proposed Amendment. There are no appellate court opinions on the issue of whether a county charter may lawfully regulate salaries of county commissioners. Our analysis of the issue first examines the Constitution to determine if the power is assigned to another body. We next consider whether charter regulation of salaries is inconsistent with general law.

On the issue of compensation, the Constitution directs: “The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.” Art. II, §5(c), Fla. Const. The requirement that compensation “shall be fixed by law,” as construed long ago by the Supreme Court, means that the power to set salaries for county officers is expressly required of the Legislature. *Board of Comm’rs v. Savage*, 58 So. 835 (Fla. 1912). Moreover, the Legislature’s compensation setting power cannot be delegated to another entity. *State ex rel. Buford v. Spencer*, 87 So. 634 (Fla. 1921).

Had the Constitution used the phrase “compensation shall be as provided for by law,” instead of as “fixed by law,” our opinion would have been that the Charter may establish salaries of the County Commissioners pursuant to the Florida Statutes authorizing them. See, *Savage* at 340, upholding local salary setting for certain officers where the Constitution stated “shall be provided for by law” but struck as unconstitutional local salary setting which the Constitution stated “shall be fixed by law.”

By its terms, Article II’s fixed-by-law requirement applies to “County Officers.” Subsection (1)(d) of the Local Government Article, Article VIII is entitled “County Officers” and addresses the following officials: sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court. In contrast, subsection (e) is entitled “Commissioners” and relates to the board of county commissioners as the governing body of the county. Common rules of construction would generally ascribe different meanings to two different terms used within the same document. However, the term “County Officers” is used in so many places in the Constitution that to give “County Officers” a meaning that excludes county commissioners would upset the common understanding and application of many provisions. For example, construing “County Officers” to exclude county commissioners would mean that the Governor does not have the constitutional power to remove a county commissioner for cause. The Supreme Court has

broadly interpreted the term “County Officers” under the Governor’s constitutional removal powers in consideration as to whether the power extends to district school board members. In *In re Advisory Opinion to the Governor- Sch. Bd. Member- Suspension Auth.*, 626 So. 2d 684 (Fla. 1993), the Supreme Court concluded that the term “County Officers” encompasses school board members; thus indicating that the extent of the phrase “County Officers” may reach further than simply the officials listed in the Local Government Article, Article VIII, section 1(d).

The charters of several counties, including Brevard County, provide for an adjustment to salaries instead of relying on the statutory formulae. There is a single reported district court of appeal opinion upholding a charter salary cap for county commissioners: *Citizens for Term Limits & Accountability, Inc. v. Lyons*, 995 So. 2d 1051 (Fla. 1st DCA 2008). But the *Lyons* opinion addresses only the issue of whether the referenda ballot language and title were sufficiently clear to inform the voters of the chief purpose of the charter amendment. The court did not address the issue of whether the constitutional requirement that the Legislature fix county officer salaries applied to county commissioners. Consequently, the *Lyons* case is not instructive on whether a charter may lawfully establish commissioner salaries.

The second test a salary charter provision must pass is whether establishing salaries by charter is “inconsistent with general law,” and therefore contrary to Article VIII, section 1(g). Section 125.83(4), Florida Statutes, provides general provisions for county charters and salaries:

The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office.

Chapter 145, Florida Statutes, provides for population-based formulae for all county officials including county commissioners. On the issue of charter officials, section 145.012 states: “This chapter [145] applies to all officials herein designated in all counties of the state, except those officials whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter. . .” More specifically, section 145.031(2) provides:

No member of a governing body of a chartered county or a county with a consolidated form of government shall be deemed to be equivalent of a county commissioner for the purpose of determining the compensation of such member under his or her respective charter.

The Attorney General has opined¹ on two occasions that section 125.83(4) may be unconstitutional in that it violates the constitutional requirement in Article II, section 5(c) that the

¹ Op. Atty. Gen 77-88 and Op. Atty. Gen. 81-7.

Legislature fix compensation by law. However, the early cases relied upon by the Attorney General in those opinions were decided under an 1885 constitutional provision that was carried forward in substantially the same form in the 1968 Constitution. In particular, the case of *State ex rel. Buford v. Spencer*, 87 So. 634 (Fla. 1921), which was relied upon by the Attorney General struck down a law allowing county commissioners to fix salaries of other county officers as destroying uniformity contemplated by the constitutional requirement that compensation shall be fixed by law. In evaluating the opinions, it is important to recognize that the concept of uniform county government has been superseded in the 1968 Florida Constitution by the specific recognition of county charters. Further all laws of the State of Florida are presumed to be valid until determined by a Court of competent jurisdiction. This presumption continues to exist even if questioned by an Opinion of the Attorney General.

Though the Florida Constitution does not provide carte blanche authority to charter counties, it is still necessary to determine that the provision under consideration is not consistent with General Law. Section 125.83(4), Florida Statutes, includes a specific statutory directive to establish county commission salaries by ordinance. In addition, section 145.031(2), Florida Statutes provides a specific exemption from the uniform population based formulae, that would otherwise apply. These provisions clearly indicate that an ordinance establishing county commission salaries is not inconsistent with general law. Based upon the foregoing, we believe that the Charter may be amended to modify the manner that county commission salaries are established.

Conclusion as to Resolution 2022-_____:

(1) The Ballot title and Summary satisfies the word limitations of section 101.161, Florida Statutes, however, the language should be clarified to clearly provide what the last clause of the Ballot Summary is referencing.

(2) The text of the proposed Amendment does not violate the “single subject” requirement.

(3) The text of the proposed Amendment is consistent with the Constitution of the State of Florida.

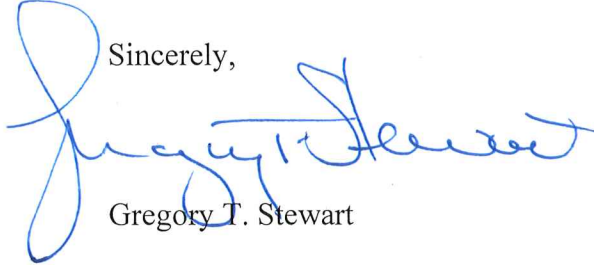
(4) The text of the proposed Amendment is consistent with the general laws of Florida.

(5) The text of the proposed Amendment is consistent with the other provisions of the Charter.

Christine M. Schverak, Esquire
September 6, 2022
Page 7

Thank you for allowing our Firm to be of assistance to the County and the Charter Review Committee. Should you require any additional information, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory T. Stewart". The signature is fluid and cursive, with a large initial "G" and "S".

Gregory T. Stewart

GTS:pad

cc: Paul Gougelman
Jim Liesenfelt