
**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA**

**CASE NO.: 4D12-4325
LOWER TRIBUNAL CASE NO.: 50 2011 CA 017953 AO**

**SHERYL STECKLER, in her official capacity as
Inspector General of Palm Beach County, Florida**
Appellant,

v.

TOWN OF GULF STREAM., ET AL.
Appellees.

ON APPEAL FROM THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

**APPENDIX TO
ANSWER BRIEF OF APPELLEE SHARON R. BOCK, in her official
capacity as the Clerk & Comptroller of Palm Beach County, Florida.**

Nathan A. Adams, IV
Fla. Bar 090492
nathan.adams@hklaw.com
Holland & Knight LLP
P.O. Drawer 810
Tallahassee, FL 32302
Tel.: (850) 425-5640
Fax: (850) 224-8832

Larry A. Klein
Fla. Bar 43381
larry.klein@hklaw.com
Martin J. Alexander
Fla. Bar 346845
martin.alexander@hklaw.com
Holland & Knight LLP
222 Lakeview Ave., Suite 1000
West Palm Bch., FL 33401
Tel: (561) 833-2000
Fax: (561) 650-7399

*Counsel for Appellee Sharon R. Bock in her official capacity as the Clerk &
Comptroller of Palm Beach County, Florida*

INDEX TO APPENDIX

App. No. Document Description

A6 Inspector General's Response to Motion to Dismiss Petition for Writ of Mandamus for Lack of Jurisdiction (without exhibits)

TAB A6

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D12-4421

SHERYL STECKLER, in her Official
capacity as Inspector General of
Palm Beach County, Florida,

Petitioner,

vs.

TOWN OF GULF STREAM, VILLAGE OF
TEQUESTA, CITY OF RIVIERA BEACH, TOWN
OF JUPITER, CITY OF DELRAY BEACH,
TOWN OF PALM BEACH SHORES, TOWN OF
MANALAPAN, TOWN OF MAGNONIA PARK,
CITY OF PALM BEACH GARDENS, TOWN OF
HIGHLAND BEACH, TOWN OF LAKE PARK,
CITY OF WEST PALM BEACH, TOWN OF OCEAN
RIDGE, CITY OF BOCA RATON, municipal
Corporations of the State of Florida,

Respondent Municipalities,

PALM BEACH COUNTY, a political subdivision,

Respondent County, and

SHARON R. BOCK, in her Official capacity
as the Clerk & Comptroller of Palm Beach
County, Florida,

Respondent Clerk and Comptroller.

**INSPECTOR GENERAL'S RESPONSE TO MOTION TO DISMISS PETITION FOR
WRIT OF MANDAMUS FOR LACK OF JURISDICTION**

SHERYL STECKLER, in her official capacity as Inspector
General of Palm Beach County ("the IG"), by and through her

undersigned counsel, pursuant to Rule 9.300, Florida Rules of Appellate Procedure, files this Response to the Motion to Dismiss Petition for Writ of Mandamus for Lack of Jurisdiction, and states:

1. The respondents' collaborative Motion to Dismiss is without merit. It is merely their latest attempt to erect illusory procedural impediments to the courts considering the substance and merits of the IG's serious legal claims. Their Motion is based on a number of flawed premises:

a. The Motion to Dismiss incorrectly claims that this Court lacks jurisdiction to consider the Petition;

b. The case law cited by respondents to support the Motion to Dismiss for Lack of Jurisdiction actually supports the IG;

c. The respondents erroneously represent that the IG is asking this Court to rule on issues presently before the circuit court; and

d. Respondents' arguments in support of the motion are directly contrary to the position taken in the court below. They should be judicially estopped from advancing such arguments.

The factual basis for the Petition is set forth in detail in the Petition itself, and will not be reiterated herein.

This Court Has Jurisdiction to Consider the IG's Petition

2. The respondents allege, without actual legal support, that this court lacks jurisdiction to entertain the IG's petition. But this court's jurisdiction to entertain the petition and grant the relief requested is plainly set out in Article V, section 4(b)(3) of the Constitution of the State of Florida, and Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure, which provides that this Court has jurisdiction to:

"...issue writs of mandamus, prohibition, quo warranto, and common law certiorari, and all writs necessary to the complete exercise of the courts' jurisdiction..."

Respondents' Cases Do Not Support Their Argument

3. None of the cases cited by the respondents actually support the proposition that this Court lacks jurisdiction to consider the merits of the IG's claims. Although there is a preference that an attempt first be made to present the claim to the circuit court, which the IG has done, this is not an issue involving jurisdiction.

a. *Vance v. Wellman*, 222 So. 2d 449 (Fla. 2nd DCA, 1969), sets out the actual principle, including language omitted by the respondents: "Orderly procedure dictates that we respect that philosophy and that petitions for extraordinary writs be first heard in the circuit court **unless there is some compelling**

reason for invoking the original jurisdiction of an appellate court." (Bold added)

In the instant case, there are compelling reasons for invoking the original jurisdiction of the appellate court including but not limited to the refusal of the trial court to consider the matter, and the ongoing harm to the public welfare.

b. In *Lyden v. Wainwright*, 307 So. 2d 258 (Fla. 2d DCA, 1974), the circuit court was bypassed entirely. But after acknowledging that it would have been preferable for the matter to have first been presented to the circuit court, the DCA retained jurisdiction and issued a preemptory writ of mandamus.

c. In *Florida Optometric Assoc. v. Firestone* the DCA reversed the trial court's denial of a petition for a writ of mandamus, observing that:

In order to show entitlement to the extraordinary writ of mandamus, the petitioner must demonstrate a clear legal right on his part, an indisputable legal duty on the part of respondents, and that no other adequate remedy exists." *State, Department of Health and Rehabilitative Services v. Hartsfield*, 399 So.2d 1019, 1020 (Fla. 1st DCA 1981). We consider that the Secretary of State has an indisputable legal duty to publish validly enacted laws; a duty imposed upon him by Article IV, Section 4(b) of the Florida Constitution, requiring him to "keep the records of the official acts of the legislative and executive departments." We find additional support for this conclusion in the supreme court's recognition that mandamus is the appropriate remedy for resolution of *legal* issues -- not requiring extensive fact-finding -- as to the constitutional validity of several gubernatorial vetoes affecting certain provisions of the General Appropriations Act of 1979. *Brown v. Firestone*, 382 So.2d 654 (Fla. 1980).

The remaining question is whether another adequate remedy exists. Appellees argue that a declaratory judgment would be an adequate remedy. See Section 86.011, Florida Statutes. In *Brown* a declaratory judgment would have been inadequate since "the functions of government would have been adversely affected without an immediate determination." 382 So.2d at 662.

Florida Optometric Assoc. v. Firestone, 465 So. 2d 1319, 1321 (Fla. 1st DCA, 1985)

In the present case, the functions of government are and will continue to be adversely affected without an immediate determination by this Court. The other elements required for Mandamus are also present. The respondents have failed to comply with their ministerial duties during the pendency of the case below, and the IG has a clear right to the performance of these duties until and unless a court relieves them of those duties.

The IG is Not Asking this Court to Rule on
Issues Presently Before the Trial Court

4. In their Motion to Dismiss, the respondents assert:

"...the OIG's Petition asks this Court to resolve the merits of the still pending lower court proceedings-i.e whether the Municipalities are legally obligated to pay, and whether the Clerk & Comptroller is legally required to send bills to the Municipalities. This Court does not have jurisdiction over the merits of the lower court proceedings until those proceedings have concluded. The OIG's Petition for writ of Mandamus is nothing more than an attempt to circumvent the Trial Court, which is improper."

This is factually and legally incorrect. The IG is not asking this Court to rule on the merits of the case presently

before the circuit court. The IG is only asking this Court to enforce the longstanding principle of Florida law that the mere filing of a lawsuit challenging a law does not, in and of itself, nullify that law or absolve public officials of their responsibility to comply with that law.

"A regularly enacted ordinance will be presumed to be valid until the contrary is shown..."

State v. Ehinger, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).

"State officers and agencies must presume legislation affecting their duties to be valid..." (citations omitted)

Department of Education v. Lewis, 416 So. 2d 455, at 458 (Fla. 1982).

The contention that the oath of a public official requiring him to obey the constitution, places upon him the duty or obligation to determine whether an Act is constitutional before he will obey it, is, I think, without merit. The fallacy in it is that every Act of the legislature is presumably constitutional until judicially declared otherwise, and the oath of office "to obey the constitution," means to obey the constitution -- not as the officer decides -- but as judicially determined.

The doctrine that the oath of office of a public official requires him to decide for himself whether or not an Act is constitutional before obeying it, will lend to strange results, and set at naught other binding provisions of the constitution.

State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers, 94 So. 681, 682-683 (Fla. 1922).

"Turning to the paramount issue before this Court, we find that this Court's decision in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of*

Equalizers, 84 Fla. 592, 94 So. 681 (Fla. 1922), which held that a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute, is binding authority in the instant case."

Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri, 991 So. 2d 793, 797 (Fla. 2008).

In Florida, the general rule is that a public official may not seek a declaratory judgment as to the nature of his duties unless he "is willing to perform his duties, but is prevented from doing so by others." *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972); see *Department of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981). The validity of the law is to be assumed by the public official who is to carry it out. By the same token, that official does not have standing to sue for the purpose of determining that the law is not valid. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982); *Miller v. Higgs*, 468 So.2d 371, 374 (Fla. 1st DCA 1985). The foregoing principles are equally applicable when a public official questions the validity of a regulation or rule because a valid rule or regulation of an administrative agency has the force and effect of law. See *Florida Livestock Board v. Gladden*, 76 So. 2d 291, 293 (Fla. 1954); *Bystrom v. Equitable Life Assurance Society*, 416 So.2d 1133, 1142 n.9 (Fla. 3d DCA 1982), rev. denied, 429 So.2d 5 (Fla. 1983); see also *Markham*, 396 So.2d 1120 (court held property appraisers lacked standing to contest Department of Revenue regulations). Because Commissioner Swift has not been prevented from performing his duties under the Florida Administrative Code and because those rules are to be presumed valid, declaratory judgment is inappropriate.

Graham v. Swift, 480 So. 2d 124,125 (3rd DCA 1985)

Although the issue of whether the BOCC will be entitled to an award of monetary damages at the conclusion of the lawsuit due to the underfunding of the IG is before the lower court, the IG is not asking this Court to address that

either. The IG is merely asking this court to end her ongoing underfunding, which is harming the public welfare, by requiring the respondents henceforth to perform their duties under laws that have not been judicially determined to be invalid.

The Principle of Judicial Estoppel
Applies to the Motion to Dismiss

5. The principle of judicial estoppel applies to the respondents' Motion to Dismiss.

The rule applicable to judicial estoppel is stated in 21 C.J. 1228 et seq., as follows:

"A claim made or position taken in a former action or judicial proceeding will, in general, estop the party to make an inconsistent claim or to take a conflicting position in a subsequent action or judicial proceeding to the prejudice of the adverse party."

Ramsey v. Jonassen, 737 So. 2d 1114, 115-116 (Fla. 2d DCA 1999)

a. In the lower court, the IG attached to her Motion to Intervene four pleadings that she intended to file upon intervention. As the respondents have admitted, they included mandamus pleadings similar to the one presently before this Court.

b. All three parties, respondents herein, filed pleadings challenging the I.G.'s attempt to intervene. In her first such pleading, titled Response to Inspector General's Motion to Intervene, the Clerk even argued that the IG's proposed pleadings would raise entirely new issues in the case, thereby

justifying the court's denial of intervention. (Exhibit 1, pages 4-5) The flaws in this argument will be addressed in the IG's brief in related case 4D12-4325. But because the trial court did not explain the basis for its denial of the IG's Motion to Intervene, this argument may have been a factor in that erroneous decision.

c. In her second pleading opposing the IG's Intervention, filed shortly before hearing and titled Opposition to Inspector General's Motion to Intervene and Amended Memorandum of Law on Motion to Intervene, the Clerk alleged that because an intervenor is required to "take the case as [s]he finds it," even if the IG were permitted to intervene, she should be prohibited from filing her proposed pleadings to address the ongoing failure to fund. (Exhibit 2, pages 3-4)

d. In their pleading opposing the IG's intervention, titled Plaintiffs' Response in Opposition to the Inspector General's Motion to Intervene and filed on June 27, 2012, the Municipalities argued that the IG's intervention, particularly the proposed pleadings after intervention, would "prejudice" them, by interfering with the scheduling of a hearing on their Motion for Partial Summary Judgment, which was not even filed until two months later. (Exhibit 3, page 4)

Despite arguing to the circuit court that it should not consider or address the IG's serious legal concerns, respondents

now represent to this Court that only the circuit court should consider those claims.

Despite arguing to the circuit court that the IG was seeking to introduce issues that were entirely unrelated to those before it, respondents now represent to this Court that the IG is requesting that it rule on the same issues that remain before the circuit court.

In view of the foregoing, the petitioner respectfully submits that, in addition to all other deficiencies in the respondents' Motion to Dismiss, the Motion should also be denied based on principles of judicial estoppel.

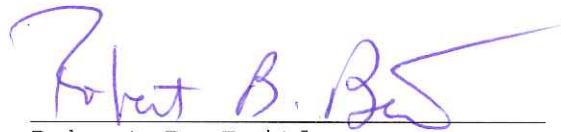
Should this Court do nothing more than reverse the denial of intervention in the related case, the ongoing harm to the public welfare would be permitted to continue and respondents will once again reverse course in the circuit court, forcing the IG to again contest their arguments as to why the circuit court should not address the IG's continued underfunding.

In conclusion, while this Court may use its own discretion to decide whether to entertain the petition and grant the relief requested, it does not lack jurisdiction to do so. It is respectfully submitted that it would be appropriate for this Court to issue an Order to Show Cause inviting the respondents to each explain why the filing of a lawsuit, in and of itself, entitles them to ignore their legal responsibilities. It is

further submitted that this Court should grant the ultimate relief requested and Order the respondents to perform their responsibilities under the law during the pendency of the suit below, ensuring the full funding of the IG while the suit is ongoing and ending this ongoing injury to the public welfare.

CERTIFICATE OF SERVICE

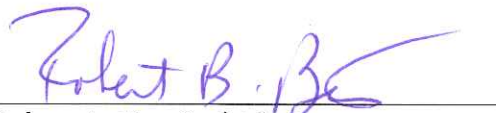
I HEREBY CERTIFY that a copy of the foregoing Inspector General's Response to Motion to Dismiss Petition for Writ of Mandamus for Lack of Jurisdiction has been provided by email this 28 day of December, 2012, to those on the attached service list.



Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Inspector General
Of Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Reply Brief is Courier New 12-point font, in compliance with Fla. R. App. P. 9.210(a)(2).



Robert B. Beitler

SERVICE LIST

Claudia M. McKenna, City Attorney
Douglas N. Yeargin, Assistant City Attorney
Kimberly L. Rothenburg, Assistant City Attorney

City of West Palm Beach
P.O. Box 3366
West Palm Beach, Florida 33402
Phone: (561) 822-1350
Fax: (561) 822-1373
Emails: cmckenna@wpb.org
dyeargin@wpb.org
krothenburg@wpb.org

COUNSEL FOR CITY OF WEST PALM BEACH

John C. Randolph, Esquire

Jones, Foster, Johnson & Stubb, P.A.
P.O. Box 3475
West Palm Beach, Florida 33402-3475
Phone: (561) 659-3000
Fax: (561) 832-1454
Email: jrandolph@jones-foster.com

COUNSEL FOR TOWN OF GULF STREAM

Keith W. Davis, Esquire

Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: keith@corbettandwhite.com

**COUNSEL FOR VILLAGE OF TEQUESTA,
TOWN OF PALM BEACH SHORES and
TOWN OF MANGONIA PARK**

Pamela Hanna Ryan, City Attorney

City of Riviera Beach Attorney's Office
600 W. Blue Herron Boulevard
Riviera Beach, Florida 33404-4311
Phone: (561) 845-4069
Fax: (561) 845-4017
Email: pryan@rivierabch.com

COUNSEL FOR CITY OF RIVIERA BEACH

Thomas Jay Baird, Esquire

Jones, Foster, Johnson & Stubbs, P.A.
801 Maplewood Drive, Suite 22A
Jupiter, Florida 33458-8821
Phone: (561) 650-8233
Fax: (561) 746-6933
Email: tbaird@jones-foster.com

**COUNSEL FOR TOWN OF JUPITER and
TOWN OF LAKE PARK**

R. Brian Shutt, City Attorney
Terrill Pyburn, Assistant City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, Florida 33444-2768
Phone: (561) 243-7090
Fax: (561) 278-4755
Email: shutt@MyDelrayBeach.com
pyburn@MyDelrayBeach.com
COUNSEL FOR CITY OF DELRAY BEACH

Trela J. White, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: trela@corbettandwhite.com
COUNSEL FOR TOWN OF MANALAPAN

R. Max Lohman, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: max@corbettandwhite.com
COUNSEL FOR CITY OF PALM BEACH GARDENS

Glenn J. Torcivia, Esquire
Torcivia & Associates, P.A.
Northpoint Corporate Center
701 Northpoint Pkwy, Suite 209
West Palm Beach, Florida 33407
Phone (561) 686-8700
Fax (561) 686-8764
Email: glenn@torcivialaw.com

COUNSEL FOR TOWN OF HIGHLAND BEACH

Kenneth G. Spillias, Esquire
Lewis, Longman & Walker
515 N. Flagler Drive, Suite 1500
West Palm Beach, Florida 33401-4327
Phone: (561) 640-0820
Fax: (561) 640-8202
Email: kspillias@llw-law.com
COUNSEL FOR TOWN OF OCEAN RIDGE

Diana Grub Frieser, City Attorney

City of Boca Raton

201 W. Palmetto Park Road

Boca Raton, Florida 33432-3730

Phone: (561) 393-7700

Fax: (561) 393-7780

Email: dgrioli@myboca.us

COUNSEL FOR CITY OF BOCA RATON

Martin Alexander, Esquire

Holland & Knight, LLP

222 Lakeview Avenue, Suite 1000

West Palm Beach, Florida 33401

Phone: (561) 833-2000

Fax: (561) 650-8399

Email: martin.alexander@hkllaw.com

Larry A. Klein

Holland & Knight, LLP

222 Lakeview Avenue, Suite 1000

West Palm Beach, Florida 33401

Phone: (561) 833-2000

Fax: (561) 650-8399

Email: larry.klein@hkllaw.com

Nathan A. Adams, IV, Esquire

Post Office Drawer 810

Tallahassee, Florida 32302

Phone: (850) 224-7000

Fax: (850) 224-8832

Email: Nathan.adams@hkllaw.com

Denise Coffman, Esquire

General Counsel for Clerk and Comptroller, Sharon Bock

301 North Olive Avenue, 9th Floor

West Palm Beach, Florida 33401

Phone: (561) 355-1640

Fax: (561) 355-7040

Email: DCOFFMAN@mypalmbeachclerk.com

COUNSEL FOR PALM BEACH COUNTY CLERK & COMPTROLLER

Andrew J. McMahon, Esquire

Palm Beach County Attorney's Office

P.O. Box 1989

West Palm Beach, FL 33402

Phone: (561) 355-6021

Fax: (561) 355-4234

Email: amcmahon@pbcgov.org

Philip Mugavero, Esquire

Palm Beach County Attorney's Office

P.O. Box 1989

West Palm Beach, FL 33402

Phone: (561) 355-6021

Fax: (561) 355-4234

Email: pmugaver@pbcgov.org

Helene C. Hvizd, Esquire

Palm Beach County Attorney's Office

P.O. Box 1989

West Palm Beach, FL 33402

Phone: (561) 355-6021

Fax: (561) 355-4234

Email: hhvizd@pbcgov.org

Leonard W. Berger, Esquire

Palm Beach County Attorney's Office

P.O. Box 1989

West Palm Beach, FL 33402

Phone: (561) 355-6021

Fax: (561) 355-4234

Email: lberger@pbcgov.org

COUNSEL FOR PALM BEACH COUNTY (BOCC)