

## Rob Beitler

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**From:** Maryann.Volturara@hklaw.com  
**Sent:** Thursday, July 12, 2012 4:37 PM  
**To:** Rob Beitler  
**Cc:** martin.alexander@hklaw.com; nathan.adams@hklaw.com; Eric.Kent@hklaw.com; Maryann.Volturara@hklaw.com  
**Subject:** BOCK | IG Matter  
**Attachments:** BOCK \_ IG Matter - Sharon Bock\_s Response to IG\_s Motion to Intervene.PDF

Mr. Beitler,

Attached is Sharon R. Bock's Response to the Inspector General's Motion to Intervene. We apologize for having failed to serve this on you.

We have updated our service list to include you.

Thank you,  
Maryann

**Maryann Volturara | Holland & Knight**

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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO.: 50 2011 CA 017953 AN

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, VILLAGE OF WELLINGTON  
TOWN OF MANGONIA 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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

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

Intervenor.

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**RESPONSE TO INSPECTOR GENERAL'S MOTION TO INTERVENE**

Sharon R. Bock, in her official capacity as Clerk & Comptroller of Palm Beach County (the "Clerk and Comptroller"), by and through her undersigned counsel, and in accordance with Rule 1.230, Florida Rules of Civil Procedure, files this Response to the Inspector General's Motion to Intervene, incorporating the arguments of the County and Municipalities, and states:

**INTRODUCTION**

The Clerk & Comptroller is an intervenor in this action by Agreed Order with standing to participate as an elected constitutional officer under Article V, section 16 and Article VIII,

section 1(d) of the Florida Constitution, required by statute and common law to serve as the custodian, keeper, accountant, auditor, inspector and examiner of all County accounts including those funds deposited in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"). *See* §§ 28.12, 129.09, 136.08, Fla. Stat. The Clerk & Comptroller is required to attest to every check or warrant drawn on County accounts including the IG Account and may be liable for willfully and knowingly signing a warrant for a charge not authorized by law. §§ 129.09, 136.06, Fla. Stat.

The Clerk & Comptroller takes no position on the merits of this litigation. She solicits declaratory relief as to whether her compliance with the financial support and budgeting requirements set forth in Article XII, § 2-429, County Code, is consistent with her constitutional, statutory and other duties. The Clerk & Comptroller has accepted this lawsuit as she found it and raised only those issues incident to the underlying claims and counterclaim of the parties. The parties hoped to resolve this dispute, but now that they are forging ahead with the litigation the Clerk & Comptroller is working diligently with the County to determine how to handle funds with the approval of this Court received from municipalities not party to this lawsuit.<sup>1</sup>

### **ARGUMENT**

In November 2010, the electors of Palm Beach County established the Office of Inspector General by Charter amendment and later by County Ordinance. Charter § 8.3; Ord. No. 2009-049, as amended by 2011-009 ("Ordinance"). It is an office respected by the Clerk & Comptroller and the parties to this litigation; however, the Charter, Ordinance and common law are clear that the IG lacks standing to intervene in this case. Charter, § 4.3 ("The office of county

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<sup>1</sup> These funds constitute a fraction of the IG's budget and of the sums owed by the Plaintiffs if the Ordinance is constitutional. Meanwhile, the Inspector General has more than sufficient funds to operate her department in the ordinary course for several months to come.

attorney shall prosecute and defend all civil actions for and on behalf of Palm Beach County and the Board of County Commissioners...."); Art. XII, § 2-429(7), County Code ("In the event payment is not timely received [on an invoice for financial support of the IG], the county or any municipality in compliance with this section may pursue any available legal remedy.");<sup>2</sup> *North Miami Bch. Water Bd. v. Gollin*, 171 So. 2d 584, 585-86 (Fla. 3d DCA 1965) (where city was authorized to create, by ordinance, a separate department to manage, control and operate water department, and water board was to be appointed by city council, water board was a subservient department within municipality and had no standing to become a party defendant in proceedings brought against city; denying North Miami Beach Water Board's motion to intervene for lack of standing); *Florida City Police Dep't v. Corcoran*, 661 So. 2d 409 (Fla. 3d DCA 1995) (police department was not an entity subject to suit).

The electors of Palm Beach County and the County itself conferred upon the IG limited powers excluding the right to defend this action. Charter § 4.3. The Charter is the constitution of Palm Beach County. This Court's main purpose is to construe the constitution in such a manner as to ascertain the intent of the framers and to effectuate that object. *Metro-Dade Fire Rescue Serv. Dist v. Metro-Dade Cnty.*, 616 So. 2d 966, 968 (Fla. 1993). The implementing ordinance for the IG may not contradict the charter. *Id.* at 970. In this case, all speak in unison: the Charter confers on the County Attorney the authority to defend civil actions while granting the Inspector General ("IG") no such legal authority, Charter §§ 4.3, 8.3; and the Ordinance explicitly states the County shall pursue any legal remedy in the event the IG is not funded. Art. XII, § 2-429(7), County Code. Other than the Charter, there is no other constitutional or

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<sup>2</sup> The electors of Palm Beach County knew how to authorize the Inspector General to pursue legal remedies, but decided against it. *See* Art. XII, s. 2-423(3), County Code (authorizing the Inspector General to make application to any circuit court of the state which shall have jurisdiction to order a witness to appear before the Inspector General and to produce evidence in the case of a refusal to obey a subpoena).

statutory authority upon which this Court may rely to grant the IG's motion to intervene.<sup>3</sup> Consequently, the IG lacks substantive capacity or standing to exercise any procedural right to intervene. *Gollin*, 171 So. 2d at 585-86; Rule 1.230, Fla. R. Civ. P.

In addition, the IG is not entitled to the special treatment she seeks incompatible with traditional intervenor status. Intervenors ordinarily cannot do what the IG demands: to dismiss pleadings (contrary to the County's legal posture), to dismiss Plaintiffs, to dismiss the Clerk & Comptroller, and to raise new albeit erroneous legal issues tertiary to the underlying dispute. *See Fla. Gas. Co. v. Am. Emp'rs' Ins. Co.*, 218 So. 2d 197 (Fla. 3d DCA 1969) (affirming denial of intervenor's motion to dismiss for failure to state a claim on grounds intervenor was bound by record at time of intervention); *Krouse v. Palmer*, 131 Fla. 444, 179 So. 762, 763 (1938) (affirming interpretation of motion to dismiss by intervenors as the equivalent of a motion to dismiss intervenors as parties defendants). The IG erroneously raises as new issues tertiary questions including the Clerk & Comptroller's constitutional and statutory standing,<sup>4</sup> as well as the Clerk & Comptroller's exercise of her statutory responsibilities. "A trial court does not abuse its discretion when it denies intervention because the would-be intervenor seeks to inject new issues into the pending action." *Allstate Ins. Co. v. Johnson*, 483 So. 2d 524, 525 (Fla. 5<sup>th</sup> DCA

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<sup>3</sup> The authority to establish a municipality or quasi-municipal entity such as an independent special district is exclusively the Legislature's. *Bd. of Comm'rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 532 (Fla. 4<sup>th</sup> DCA 2007). The County may establish a dependent special district, Ch. 189, Fla. Stat., but the electors of Palm Beach County did not choose to establish the IG in this fashion.

<sup>4</sup> A comptroller may challenge a law that requires the expenditure of public funds as it is the comptroller's duty to collect, control and disburse them. *See, e.g., Green v. City of Pensacola*, 108 So. 2d 897, 900-01 (Fla. 1st DCA 1959) (comptroller entitled to question constitutionality of special act which purports to exempt the City of Pensacola from payment of gross receipts tax as required by general law); *accord Kaulakis v. Boyd*, 138 So. 2d 505 (Fla. 1962) (county commissioners had the right and duty to challenge the validity of a portion of their home rule charter, which purported to make the county liable in tort to the same extent as municipalities since a judgment for the plaintiff would have required the commissioners to expend public funds in satisfaction thereof). Public officials also have standing to challenge a law that will injure them. *Green*, 108 So. 2d at 900.

1986).<sup>5</sup> Consequently, and for the reasons discussed in the County's and City's responses, this Court should deny the IG's Motion to Intervene.


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this the 28th day of June 2012, a true and correct copy of the foregoing has been furnished by email and U. S. Mail to counsel as follows:

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<sup>5</sup> Assuming *arguendo* the IG had any standing to intervene, it would be lesser by virtue of the IG's dependence on Charter and Ordinance than the standing of a constitutional and statutory officer's; nevertheless, the IG aims for greater standing for the purpose, *inter alia*, of overturning the constitutional officer's. The incongruity of the IG's position is self-evident.

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