

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

CASE NO. 502011CA017953XXXXMB

TOWN OF GULF STREAM, VILLAGE
OF TEQUESTA, CITY OF RIVIERA
BEACH, TOWN OF JUPITER, TOWN
OF PALM BEACH SHORES, TOWN OF
MANALAPAN, 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, and
CITY OF BOCA RATON, municipal
corporations of the State of Florida,

Plaintiffs/Appellants,

v.

PALM BEACH COUNTY, a political
subdivision,

Defendant/Appellee,

and

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

Intervenor/Appellee.

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN that the Town of Gulf Stream, Village of Tequesta, City

of Riviera Beach, Town of Jupiter, Town of Palm Beach Shores, Town of Manalapan, 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, and City of Boca Raton, plaintiffs/appellants, appeal to the Fourth District Court of Appeal: (1) the Final Judgment of this Court entered on March 12, 2015, and rendered on April 9, 2015; and (2) the Order Denying Plaintiffs' Motion for Rehearing, entered on April 9, 2015. The nature of the orders appealed are a final judgment of declaratory relief and an order denying rehearing. Copies of the Final Judgment and Order Denying Plaintiffs' Motion for Rehearing are attached.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been e-mailed this 5th day of May, 2015, to:

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

CIVIL DIVISION
CASE NO.: 2011 CA 17953 AO

TOWN OF GULF STREAM, et al.,
Plaintiffs,

vs.

PALM BEACH COUNTY, a political
subdivision of the State of Florida,
Defendant.

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

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FINAL JUDGMENT

THIS CAUSE was before the Court for non jury trial on the Plaintiffs' ("the Municipalities") Amended Complaint for Declaratory Relief ("Amended Complaint") filed on July 30, 2013 against the Defendant, Palm Beach County ("the County"). The County filed its Answer and Affirmative Defenses on August 28, 2013. Sharon Bock, Clerk and Comptroller of Palm Beach County ("the Intervenor") filed a Motion to Intervene which was granted on November 11, 2012. The Intervenor filed an Amended Complaint in Intervention, Cross-Claim and Counter-Claim for Declaratory and other Relief on December 15, 2011. Having reviewed the pleadings, exhibits presented at trial, heard testimony, reviewed applicable law, heard arguments of counsel, and being otherwise duly advised the Court makes the following findings and conclusions:

FINDINGS OF FACT

1. Pursuant to Palm Beach County's home rule charter, municipal ordinances prevail over county ordinances when there is a conflict, except when both unincorporated county residents and municipal residents vote in a referendum to amend the Charter to create a Countywide program. Once a referendum is approved by the voters, the countywide program is created and applies to Palm Beach County and the respective municipalities. The Board of County Commissioners (the "BCC") then adopts an ordinance to implement the referendum.

2. In 2009, the State Attorney for Palm Beach County convened a Grand Jury to investigate county governance and public corruption in the county. The Grand Jury

recommended that the BCC create an Office of Inspector General ("the OIG") with investigatory powers to address the findings in the report.

3. Thereafter, the BCC adopted an ordinance establishing an OIG with powers applicable only to county governmental operations.

4. The Grand Jury's Final Presentment in 2010 recommended that the initial OIG ordinance be submitted as a charter amendment for adoption by the voters in each municipality to have the ethics ordinance, including the OIG, extended countywide. The November 2, 2010 referendum was approved by a majority of the voters in each municipality. The referendum approved by the voters specifically included a provision that required each municipality to contribute to funding for the OIG.

5. On May 17, 2011, the BCC adopted Ordinance No. 2011-009 which implemented the OIG and included a funding mechanism that required the municipalities to pay a portion of the OIG costs. The ordinance authorized quarterly billings to be submitted by the Clerk and Comptroller to the municipalities.

6. The OIG is required to submit a budget request each year to the Palm Beach County League of Cities, Inc. ("the League"). The OIG must then be available to discuss the budget request with the members of the League. Thereafter, the BCC must meet with a delegation of the League regarding the budget. However, the BCC has final approval of said budget. The initial invoices to the Municipalities were forwarded on October 11, 2011.

7. On November 14, 2011, the municipalities filed the instant four count complaint seeking a declaration in Count I that the charges and collection of said charges for the OIG are barred by sovereign immunity; in County II that the charges for the OIG constitute an unlawful tax; in Count III that the funding mechanism in the OIG ordinance requires citizens of the municipalities to pay twice for one service; and in Count IV that the funding mechanism in the ordinance conflicts with general law as it infringes on the budgeting power of the municipalities.

8. On December 28, 2013, the County filed an Amended Answer and Affirmative Defenses asserting that (1) the municipalities do not have sovereign immunity to avoid the county ordinance; (2) to the extent sovereign immunity applies such sovereign immunity was waived by the vote approving the ballot referendums; (3) the ordinance is not inconsistent with general law as the fees are either regulating fees or user fees; (4) municipal residents are not being taxed as the fees may be passed on; (5) the fees are not an illegal double tax; (6) the ballot informed the voters that the OIG would be funded in part by each municipality; and (7) speculative increases in fees was not ripe for review.

CONCLUSIONS OF LAW

The charges to the municipalities for support of the OIG are not barred by the doctrine of Sovereign Immunity.

9. In Count I of the Amended Complaint the municipalities contend that sovereign immunity bars this suit by the County to collect the charges in the invoices. The County disputes that contention and asserts that sovereign immunity either does not apply or does not prevent the County's efforts to enforce the provisions in the referendum.

10. In fact, the County directs this Court to Article VI, Section 6.3 of the Palm Beach County Charter which specifically provides: "Approved charter amendments that transfer or limit a service, function, power or authority of a municipality shall be effective in a municipality only if the amendment is also approved by a majority of voters in that municipality voting in the referendum." (Ordinance No. 2009-17). The County asserts that the provision before this Court was placed on the ballot and would have exempted any municipality from the provisions of the Inspector General and Ethics Charter amendment if a majority of the voters in the municipality had voted against it. Instead, an overwhelming majority of the voters approved the establishment of the OIG and its funding obligation.

11. The doctrine of sovereign immunity provides that a sovereign cannot be sued without its own permission. American Home Assurance Company v. National Railroad Passenger Corporation, 908 So.2d 459, 471 (Fla. 2005). Sovereign (or governmental) immunity derives entirely from the constitutional doctrine of separation of powers. Kaisner v. Kolb, 543 So.2d 732, 737 (Fla. 1989). See also Article II, §3, Florida Constitution.

12. The Court could not find and the parties did not cite to any authority that applies directly to the issue at hand, specifically the authority of a county to sue a municipality for charges authorized by popular vote in a a validly held referendum pursuant to a county Home Rule Charter Amendment. The municipalities rely on Article II, Section 3 of the Florida Constitution, which provides: "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the branches unless expressly provided herein".

13. Pursuant to the Constitution and case law, the judicial branch must not interfere with the discretionary functions of the legislative or executive branches of government absent a violation of constitutional or statutory rights. Trianon Park Condominium Association, Inc. v. City of Hialeah, 468 So.2d 912,918 (Fla. 1985). The municipalities thus contend that they cannot face liability or suit for making budgetary decisions or for deciding what programs to fund because these types of decisions are inherently governmental, legislative or discretionary.

14. However, the municipalities over state the extent of their discretion with respect to establishing a budget as it relates to this issue. By approving the charter amendment, the voters in the respective municipalities approved the funding for the OIG. This eliminated any discretion by the municipalities to avoid funding the program. Thus, the cases cited by the municipalities merely support the conclusion that a citizen may not sue a municipality to quibble with its budgetary decisions. See, Crowe v. City of Jacksonville Beach, 167 So.2d 753, 755 (Fla. 1 DCA 1964)(action to enjoin city from expending funds from sale of revenue bonds and purchasing land and constructing public buildings; "[w]hile the issues raised by the complaint may form the basis for opposition to the council members' bid for re-election to office, they deal with acts lying within the discretion of the council with which courts are reluctant to interfere").

15. Further, the municipalities rely on section 166.241, Florida Statutes, to support their contention that they have exclusive discretion to make a budget. However, this statute merely provides that each municipality must make a balanced budget each fiscal year. §166.241, Florida Statutes (2011). This section does not vest the municipalities with unfettered discretion with respect to appropriations. The Attorney General recognized this in an Opinion concerning whether a city could amend its charter pursuant to a petition initiative to require voter approval for any capital improvement project exceeding \$500,000.00 without conflicting with the city's constitutional home rule power. See Attorney General Opinion 2009-12. The Attorney General concluded that, in the absence of a conflicting general law, a city could so amend its charter. Additionally, Attorney General Opinion 90-38 concluded that a city's charter could be amended to require referendum approval for the issuance of all municipal bonds. However, in Attorney General Opinion 86-89, it was concluded that a municipality may not amend its charter to provide that no ad valorem tax on real and personal property may be levied without referendum approval. Such a charter amendment would have limited the authority of the municipality's governing body to levy ad valorem taxes in direct contravention of section 195.207, Florida Statutes, prohibiting a municipal charter from limiting the governing body's authority to levy ad valorem taxes.

16. Attorney General Opinion 2009-12 further concluded that the statutes governing the adoption of a budget for a municipality are not as extensive as those provided in Chapter 129, Florida Statutes. Section 166.241, Florida Statutes merely provides that the governing body of each municipality shall adopt a budget each fiscal year. The opinion acknowledged that there are no general prohibitions against a charter requiring citizens' initiatives for municipal salaries. However, it was noted that the propriety of referendum approval for capital projects may depend upon the particular project in question and the existence of any general law providing for such projects.

17. Thus, each municipality's power to make a budget is not a purely discretionary function as its discretion may be modified or restricted by the electorate through its referendum powers. In this case, the approval by the voters of the referendum authorized the governing bodies to establish a line item in the budget to contribute to funding of the OIG. This eliminated any discretion that the municipalities may have had as to the funding.

18. "Judgmental or discretionary functions are immune from legal action, whereas operational acts are not protected by sovereign immunity". Willingham v. City of Orlando, 929 So.2d 43, 50 (Fla. 5 DCA 2006); see also City of Freeport v. Beach Community Bank, 108 So. 3d 684, 687 (Fla. 1 DCA 2013) ("[W]here governmental actions are deemed discretionary, as opposed to operational, the government has absolute immunity from suit"). When the Courts describe a "discretionary" function for which a municipality enjoys sovereign immunity, they mean that the governmental act in question involved an exercise of executive or legislative power such that, for the Court to intervene ..., it inappropriately would entangle itself in fundamental questions of policy and planning". Kaiser, 543 So.2d at 737. An "operational" function, meanwhile, "is one not necessary to or inherent in policy or planning that merely reflects a secondary decision as to how those policies or plans will be implemented". *Id.* Thus, "[s]overeign immunity prohibits the judiciary from second guess[ing] the political and police

power decisions of coordinate branches of government about a violation of constitutional or statutory rights". City of Freeport, 108 So. 3d at 687 (quoting Trianon Park Condominium Association, 468 So.2d at 918).

19. In this case, sovereign immunity would bar an action against the municipalities by the county if the resultant litigation would require the Court to become inappropriately entangled in the discretionary budgeting decisions of the municipalities. The issue in this case does not involve a discretionary decision. This Court concludes that there is a legal obligation pursuant to the implementing ordinance requiring the municipalities to pay the charge. This suit does not require any judicial "second guessing" or weighing of policy matters.

The County's Charges to the Municipalities for the OIG Do Not Unlawfully Interfere with the Municipalities' Home Rule Power to Decide Their Own Budgets.

20. The Implementing Ordinance does not infringe upon the authority of the municipalities to budget and appropriate funds. Although it requires the municipalities to contribute to the funding of the OIG, it only references the budgeting process because expenditures may only be made pursuant to a municipality's annual budget. The language in the Implementing Ordinance acknowledges that each municipality will have to include in its budget a line item for the OIG. It does (1) not require the municipalities to fund the program out of their general fund, (2) not indicate how the municipalities should obtain the money for contribution, or (3) indicate how the municipalities should budget to pay the fees. Hence, the doctrine of sovereign immunity does not prevent the county from enforcing the Implementing Ordinance.

The Municipalities Cannot Invoke the Doctrine of Sovereign Immunity Against Themselves.

21. The Municipalities assert that sovereign immunity bars collection of the charges imposed by the Implementing Ordinance. They further assert that the County has no authority to dictate what programs are funded by the municipalities. In this instance, the citizens of the municipalities approved the extension of the OIG to their respective municipalities and the requirement to contribute funding to support the OIG.

22. The Florida Constitution provides that all political power is inherent in the people. Article I, Section I, Florida Constitution. In Florida Land Company v. City of Winter Springs, 427 So.2d 170, 172 (Fla. 1983), the Court held that "[t]he concept of referendum is thought by many to be a keystone of self government and its increasing use is indicative of a desire on the part of the electorate to exercise greater control over the laws which directly affect them". In this case, the people exercised their referendum power when a majority of the voters from each municipality voted to extend the operations of the OIG to their respective municipality and contribute funding thereto. The governing bodies now attempt to circumvent the actions of their people by invoking the doctrine of sovereign immunity. This suit to enforce the charges is based on the legal obligations approved by the citizens of the respective municipalities. Further, the municipalities present no persuasive legal authority to support these assertions that sovereign

immunity invalidates the vote of approval by their respective citizens.

The Citizens of the Municipalities Entered into a Contract on Behalf of Their Governing Bodies to Fund the OIG.

23. As noted above, each municipality must adopt a budget for each fiscal year and the budget must regulate the expenditures of the municipality. §166.241, Florida Statutes (2011). An officer of the municipality may not expend or contract for expenditures except pursuant to the adopted budget. As also noted above, however, “[a]ll political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people”. Article 1, Section 1, Fla. Const.

24. The Fourth District Court of Appeal has thus held that the people could repeal an ordinance by referendum that authorized the sale of an auditorium and property owned by the municipality. Brooks v. Watchtower Bible & Tract Society of Florida, Inc., 706 So. 2d 85, 90 (Fla. 4th DCA 1998). In Brooks, the city approved ordinances that authorized the sale of the city auditorium and property surrounding the auditorium. After the ordinance took effect, the mayor and city clerk signed the contract to sell the property. Some of the registered voters of the city filed a petition to repeal the ordinance and the city notified the buyer that it could not proceed with the contract until after the election on the petition was held. The buyer filed suit to enjoin the city from holding an election to vote on the referendum. *Id.* The court held that the people of the city have a right to a referendum and even though the city has the right to contract, an ordinance repealing a contract by the city does not necessarily make the ordinance unconstitutional.

25. Consequently, because the citizens of a municipality through a referendum may repeal a contract, it follows that the citizens of a municipality may enter into a contract (or force the city officials to do so) by exercising their referendum power. In this case, the majority of voters from the thirty-eight municipalities who voted on the ordinance used their referendum power and voted that the OIG should apply to their respective municipalities and that the municipalities should contribute to the funding of the program. Therefore, the Municipalities may not invoke sovereign immunity to avoid the obligation. See American Home Assurance Company, 908 So. 2d at 476 (municipality may not use sovereign immunity to defeat its obligations under a contract). The people are the municipalities and the officials who represent the people may not undermine the electorate process because they disagree with the vote of the people.

The Implementing Ordinance Does Not Impose an Unlawful Tax, as it is a Valid User Fee or Regulatory Fee.

26. In Count II of their Amended Complaint, the Municipalities contend that the Implementing Ordinance imposes an unlawful tax. “[A] tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform”. State v. City of Port Orange, 650 So. 2d 1, 3 (Fla. 1994) citing City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992). “The power of state and local governments to levy taxes is governed by the constitution”. Collier County v.

State, 733 So. 2d 1012, 1014 (Fla. 1999). “No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.” Article VII, §1(a), Florida Constitution. Moreover, local governments, including counties, are authorized by law to levy ad valorem taxes, and may be authorized by general law to levy other taxes, except ad valorem taxes on intangible personal property and taxes prohibited by the Florida Constitution. *Id.*, §9(a). Here, the charge for the OIG cannot be a lawful tax because it is not an ad valorem tax and it is not authorized by general law.

27. While the charge cannot be imposed lawfully as a tax, the County does possess the authority to impose user fees. See Collier County, 733 So. 2d at 1014. “User fees are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved”. Port Orange, 650 So. 2d at 3. In Port Orange, the Florida Supreme Court offered the following three-prong test to determine whether a particular charge is a user fee or a tax:

Such fees share common traits that distinguish them from taxes: [1] they are charged in exchange for a particular governmental service [2] which benefits the party paying the fee in a manner not shared by other members of society, and [3] they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge.

Id. (citations omitted). The Municipalities contend that the charge for the OIG Program fails the second and third prongs of this test.

28. The Municipalities assert that the charge for the OIG does not benefit the individual Municipalities in a manner not shared by other members of society: Their argument ignores the obvious benefits that the Inspector General uniquely provides to municipal governments. The Inspector General is performing a service in the form of investigations, audits and reviews of municipalities’ governments, and such services are only available in municipalities that approved the referendum. The fee is also proportionate to the amount of services the municipalities may receive from the OIG. The ordinance states “the funding base is a minimum level of funding, determined as a percentage of contract activity of the governmental entities subject to the authority of the inspector general”. (emphasis added). Thus, the contribution of each municipality is determined by the contract activity of each municipality that comes within the jurisdiction of the OIG. Although the County conceded at trial that at any given time one municipality may receive more attention than another municipality depending on situations, the contribution is still proportionate to the contracts subject to the OIG and the services and benefits to municipalities will inevitably balance out over the years. This argument is without merit.

29. The Municipalities’ primary contention with respect to the user fee issue is that the charge for the OIG is mandatory and thus not paid by choice. Notably, “[o]f the three prongs set forth in City of Port Orange, this prong is considered the least significant”. City of Miami v. Haigley, 143 So. 3d 1025, 1031 (Fla. 3d 2014) (citing I-4Commerce Center, Phase II, Unit I v. Orange County, 46 So. 3d 134, 136 (Fla. 5th DCA 2010) (noting that of the three

requisite traits for a valid user fee set forth in City of Port Orange, the “most significant of these traits” are the first two).

30. The Municipalities further assert that a party must be able to “opt out” for a fee to be paid by choice. But Port Orange, provides that the party must only have the option of not utilizing the governmental service and thereby avoiding the charge. Port Orange, 650 2d at 3. The Municipalities had that option in the November 2, 2010 referendum vote. At that time, the Municipalities had the opportunity to opt-out, but the referendum was passed by a significant number of the voters. Furthermore, just as the voters opted into the service through referendum, the voters can opt out of the service by referendum. See §§ 5.1 and 6.3, Palm Beach County Charter, Hence, the court concludes that the charge for the OIG the Implementing Ordinance is a valid user fee and not an unlawful tax.

31. The County’s position is that the charge for the OIG is a valid regulatory fee and case law supports that position. A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter”. § 166.221, Florida Statutes (2011); see also Palm Beach County v. Bellsouth Telecommunications, Inc., 819 So. 2d 876, 878 (Fla. 4th DCA 2002) (“[O]ur supreme court has consistently found the term ‘municipality’ to include ‘charter county’ unless the statute under review draws a clear distinction between the two or expresses an intent to exclude charter counties from its purview”. A regulatory fee may be charged pursuant to the states police powers, however, such fee may not be used for the purpose of raising revenue. Broward County v. Janis Development Corporation, 311 So. 2d 371, 375 (Fla. 4th DCA 1975). Regulatory fees are solely to offset the expenses of regulation.

32. In this instance, Palm Beach County is a charter county and thus, has all the powers of self-government granted by the constitution and state of Florida. In the event of conflicts with municipal laws, the county’s laws prevail in matters related to ethics with regard to the OIG where the majority of voters in such municipality approved the OIG referendum. On November 2, 2010, the majority of voters in all thirty-eight municipalities voted through referendum to approve OIG and make the Municipalities subject to the jurisdiction of the OIG and contribute funding. Therefore, because charter counties have the power of self-government and the Municipalities’ voters, by majority vote, approved the referendum, Palm Beach County was given the power to regulate and enforce ethics through the OIG.

33. The Municipalities contend that a regulatory fee must be imposed pursuant to a regulatory scheme with detailed standards, rules, guidelines, and requirements relating to the conduct to be regulated. See, e.g. City of North Miami v. Williams, 555 So. 2d 399 (Fla. 3d DCA 1990). The Office of Inspector General was created to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in county and municipal government. The Inspector General has the authority to investigate county and municipal matters, publish the results of such investigations, review and audit past and present programs, accounts, records, contracts, change orders, and transactions, and prepare reports and recommendations to present to the county and municipalities. It also requires county

administrators, municipal managers, municipal administrators, or mayors where the mayor is the chief's executive officer to notify the inspector general of suspected mismanagement of a contract or loss exceeding \$5,000.00, and to be notified of meetings duly noticed to the public that involve the procurement selection committee concerning the procurement of goods or services by the county or any municipality. Thus, although the OIG ordinance does not include explicit regulations directing the management of the Municipalities' departments, upon an investigation, audit, or review the OIG provides recommendations of how such departments may be operated in a more efficient manner. The also ordinance includes regulations that require the county and municipalities to take actions in specific situations. The lack of explicit standards with which the county and municipalities must comply is not fatal to the ordinance, as there is not a specific formula as to how to ethically operate governments and governmental departments.

34. Finally, the charges defray the cost of the investigations, audits, and reviews the Inspector General provides to the county and municipalities and enforcement of the notification requirements. See Flores v. City of Miami, 681 So. 2d 803, 808 (Fla. 3d DCA 1996) (holding that the fee was a regulatory fee and not a tax because the fee was designated to defray the cost of enforcing an ordinance that placed limitations on vendors). Therefore, because the county has the power to regulate, the OIG regulates the county and municipalities, and the fee is charged to offset the cost of regulation, the fee is a valid regulatory fee.

The Implementing Ordinance is not Invalid for Requiring Payment for the Same Services Twice.

35. In Count III of their Amended Complaint, the Municipalities allege that the funding mechanism is unlawful (and inequitable) because it requires the residents of municipalities to pay for the services of the Inspector General twice: once by paying ad valorem taxes to the County, and again through the funding mechanism. In contrast they assert that residents of the unincorporated areas of the County only pay for it once through ad valorem taxes. The Municipalities appear to have abandoned this claim, as they did not brief it in their Trial Memorandum or argue it at trial. This assertion is without merit.

36. Article VIII, Section 1(h) of the Florida Constitution provides: "Taxes; limitation. Property situate within municipalities shall not be subject to taxation for services rendered by the County exclusively for the benefit of the property or residents in unincorporated areas". "The somewhat unique concept embodied in this constitutional provision which prohibits taxation without corresponding (but not necessarily commensurate) benefit does not prohibit 'dual taxation' or 'double taxation' as those terms are ordinarily understood". Palm Beach County v. Town of Palm Beach, 426 So. 2d 1063, 1066 (Fla. 4th DCA 1983). "What is prohibited is 'taxation without benefit[.]'" Id. "A petitioner bears the burden of proving the 'negative-that a service provided by the county and funded by county-wide revenues does not provide a real and substantial benefit to the particular municipality'". Palm Beach County v. City of Boca Raton, 995 So. 2d 1017, 1019 (Fla. 4th DCA 2008).

37. Here, the Municipalities erroneously contend that "[a] taxpayer receives the same services from the OIG, whether he or she is within an incorporated municipality or the unincorporated areas of the County". (Amended Complaint ¶ 97.) This is simply incorrect

based on the unique benefit the OIG offers the citizens of the Municipalities. In addition to the oversight of the County government that the OIG offers, the Municipalities and their citizens have the opportunity to file complaints and receive investigations, audits and reviews of their own governing bodies. This is clearly a real and substantial benefit uniquely provided to the Municipalities.

The Implementing Ordinance is Not Inconsistent with General Law.

38. Finally, in Count IV of their Amended Complaint, the Municipalities contend that the Implementing Ordinance is inconsistent with general law. Under section 1(g) of Article VIII of the Florida Constitution, a county may not enact an ordinance which is inconsistent with general law. See, e.g., Hillsborough County v. Florida Restaurant Association, Inc., 603 So. 2d 587 (Fla. 2d DCA 1992).

39. The only general law that the Municipalities suggest the Implementing Ordinance is inconsistent with is section 166.241, Florida Statutes. That statute provides that “[t]he governing body of each municipality shall adopt a budget each fiscal year. The budget must be adopted by ordinance or resolution unless otherwise specified in the respective municipality’s charter. The amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total appropriations for expenditures and reserves. The budget must regulate expenditures of the municipality, and it is unlawful for any officer of a municipal government to expend or contract for expenditures in any fiscal year except in pursuance of budgeted appropriations.” §166.241, Florida Statutes (2011).

40. Based on section 166.241, Florida Statutes, the municipalities that they have the exclusive authority to decide when to spend municipal monies, what programs to spend monies on, how much to spend, and how to allocate money in periods of limited resources. However, the statute does not actually clearly vest them with those powers and does not make such powers exclusive. Instead, it merely requires the municipalities to make a balanced budget each year. See State ex rel. Cole v. Keller, 129 Fla. 276, 176 So. 176 (1937) (annual budget “is nothing more than an invoice of the city’s activities during the ensuing year and an estimate of their cost.”); Town of North Miami v. Travis Company, 118 Fla. 879, 884, 160 So. 360, 362 (1935) (“The purpose of adopting a budget is to determine what amount of money is necessary to be raised by taxation.”).

41. Thus, “[t]here is conflict between a local ordinance and a state statute when the local ordinance cannot coexist with the state statute”. Phantom of Brevard, Inc. vs. Brevard County, 3 So. 3d 309, 314 (Fla. 2008). “Stated otherwise, ‘[t]he test for conflict is whether ‘in order to comply with one provision, a violation of the other is required’”. *Id.* (quoting Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So. 2d 637, 649 (Fla. 2d DCA 2007)). The Implementing Ordinance requires the Municipalities to make a particular appropriation. Section 166.241, Florida Statutes, meanwhile, requires the Municipalities to ensure that they account for that appropriation with revenue. The Municipalities are fully capable of complying with both the Implementing Ordinance and section 166.241. There is thus no conflict between the two, and no violation of Article VIII, section 1(g), Florida Statutes.

Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs' request for declaratory relief is GRANTED as follows:

A. The Municipalities do not enjoy sovereign immunity from suit to collect the charges in the invoices pursuant to the Implementing Ordinance;

B. The Implementing Ordinance does not impose an unlawful tax, as it constitutes both a valid user fee and a valid regulatory fee which the County may impose upon the Municipalities;

C. The Implementing Ordinance is not invalid for requiring payment for the same services twice; and

D. The Implementing Ordinance is not inconsistent with general law, specifically section 166.241, Florida Statutes.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this ___ day of March, 2015.

SIGNED & DATED
MAR 12 2015
CATHERINE M. BRUNSON
CIRCUIT JUDGE

CATHERINE M. BRUNSON, Circuit Court Judge

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

TOWN OF GULF STREAM, et al.,
Plaintiffs,

CIVIL DIVISION: AO
CASE NO.: 502011CA0017953XXXXMB

v.

PALM BEACH COUNTY, a political
Subdivision of the state of Florida.
Defendant.

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CITY ATTORNEYS
OFFICE.

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

ORDER DENYING PLAINTIFFS' MOTION FOR REHEARING

THIS CAUSE came before the Court upon Plaintiffs' Motion for Rehearing, filed March 26, 2015. Defendant Palm Beach County filed a Response on April 1, 2015. The Court has reviewed the Motion, the Response, and the court file, and is otherwise fully advised in the premises. It is hereby

ORDERED that Plaintiffs' Motion for Rehearing is **DENIED**.

DONE and SIGNED in Chambers, at West Palm Beach, Palm Beach County, Florida,
this ____ day of April, 2015.

SIGNED & DATED
APR - 9 - 2015
CATHERINE M. BRUNSON
CIRCUIT JUDGE

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