

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB

Plaintiffs,

DIVISION: AO

v.

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.

**DEFENDANT, PALM BEACH COUNTY'S RESPONSE TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT ON COUNT I OF THEIR
AMENDED COMPLAINT FOR DECLARATORY RELIEF**

COMES NOW, Defendant, Palm Beach County, a political subdivision of the State of Florida (hereinafter the "County"), and files its Response to Plaintiff's Motion for Partial Summary Judgment on Count I of Their Amended Complaint for Declaratory Relief, and in support thereof, states the following:

**I. Historical Background and Origin of the Palm Beach County Office
of Inspector General, The Ethics Commission and Related Ordinances**

A. Grand Jury Report 2009

1. In the Spring of 2009, an initial Grand Jury was convened to investigate Palm Beach County governance, public corruption and related issues. On May 21, 2009, the Final Presentment of the Palm Beach County Grand Jury was released (the "Grand Jury Report 2009"). The summary and scope of inquiry of the Grand Jury Report 2009, is attached hereto as Exhibit "A".

2. In the Grand Jury Report 2009, certain findings, recommendations and conclusions were reached. These findings, recommendations and conclusions of the initial Grand Jury are attached hereto as Exhibit "B".
3. In response to the findings, recommendations and conclusions of the initial Grand Jury, in the summer of 2009, the Palm Beach County Board of County Commissioners (the "BCC") directed staff to draft the Office of Inspector General Ordinance (the "OIG Ordinance"). This was the BCC's initial, partial response to the Grand Jury Report 2009.

B. The Ethics Commission

1. Next, the Ethics Commission and Code of Ethics Ordinances were to be drafted, reviewed, and finalized for adoption and application to County government (the "Ethics Ordinances"). Upon formal adoption, the OIG and Ethics Ordinances were not initially intended to apply to the cities, but instead were to be models to be tailored or amended for future application to the cities.

C. Community Input for Inspector General and Ethics Ordinances

1. Following these steps, the BCC directed its staff to obtain a wide range of community input, and develop County charter amendment language to allow these ordinances (OIG and Ethics Ordinances, collectively referred to as the "Initial Ordinances") to apply to the municipalities as well.
2. This community input came from a variety of groups and individuals from an active Ethics Initiative, which included members from Leadership Palm Beach County and the Voter's Coalition, and such other groups as the Economic Council, the State Attorney, School District staff, and the League of Cities and its counsel also provided such community input throughout the drafting process of the Initial Ordinances.
3. Since the cities were later intended to be subject to the ordinances, as later amended, the initial ordinances were presented to the Executive Board of the League of Cities and its general membership for final review and comment.

4. To expedite the application of the Initial Ordinances and oversight of the Office of Inspector General (the "OIG") to the County, on December 15, 2009, the BCC adopted the Initial Ordinances made applicable to the County government only.
5. The Initial OIG Ordinance included a ¼ of 1% contract fee to help defray the costs of running the OIG. [Example – on a \$10,000 county contract, a vendor would be charged an additional \$25.00 to be put toward funding the OIG].
6. In January 2010, the BCC created the Office of Inspector General and the Commission on Ethics Implementation Advisory Committee. The purpose of the Ethics Advisory Committee was to ensure that the initial ordinances were implemented as intended.

D. Palm Beach County Charter Amendment Process

1. Beginning in April 2010, a committee was assembled to begin drafting the County Charter amendment and ballot question language to be submitted to a public referendum in November 2010, to make the Ethics Ordinances applicable to the Cities upon approval of the voters. This was the Charter Amendment Committee. This committee included members of the League of Cities and its General Counsel. At the League of Cities request, the Charter Amendment itself was drafted to require/include a specific Ordinance Drafting Committee. The meetings of this Committee were all PUBLIC meetings.
2. The Ordinance Drafting Committee was made up of an equal number of appointees from the League of Cities and the BCC. This Drafting Committee included the Executive Director of the Ethics Committee for the drafting of the specific Ethics Ordinances, and the Inspector General for the drafting of the OIG Ordinances.

The purpose of the Ordinance Drafting Committee was to develop/draft new ordinances based on the Initial Ordinances. These new ordinances were intended to apply Countywide and within each municipality upon the approval of the voters. The meetings of this committee were also all public meetings, and all broadcast live on Palm Beach County Channel 20 television.

3. In July 2010, the BCC adopted by Ordinance No. 2010-019, the County Charter amendment ballot language as developed and presented by the Charter Amendment Committee. The Charter Amendment ballot language, (Ordinance No. 2010-019) is attached hereto as Exhibit "C", specifically at Part 2, on Page 2. This ordinance is separate and distinct from the "Initial Ordinances".
4. In November 2010, the County Charter amendment ballot language was presented and overwhelmingly approved (72%) by the voters, including the municipal voters, expressing their unequivocal consent to OIG oversight and meaningful ethics reform.
5. The Palm Beach County Charter itself contains a provision in Section 6.3 that states, ***"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."*** This provision, placed on the ballot and approved by the voters, would have exempted any municipality from the provisions of this charter amendment if a majority of the voters in the municipality had voted against it, which they did not.

E. Present Funding Methodology – The Office of Inspector General

1. In September 2010, the BCC amended the OIG ordinance to eliminate the contract fee and have the County fund the OIG operations solely out of its general fund.
2. Between December 2010 and May 2011, in an effort to adequately fund the OIG in light of its expanded role of municipal oversight in response to overwhelming voter demand, the Ordinance Drafting Committee began meeting to adapt the existing, Initial Ordinances to Countywide application and to provide "sensible" subsequent amendments, as may be needed.
3. Within the Ordinance Drafting Committee, a separate "Funding Sub-Committee" was created to specifically address how to adequately fund the OIG in light of its expanded role as demanded by the public.
4. This "Funding Sub-Committee", was comprised of representatives from the County, OIG and the League of Cities.

5. Collectively, and with input from all parties, including members and representatives of the municipal parties to this lawsuit, the "Funding Sub-Committee" recommended to the Ordinance Drafting Committee that the Cities contribution to the OIG's budget, in light of its expanded role as demanded by the voters, would be based on their budget activity as reflected in 3 object categories as reported under the "LOGGER" system.
6. "LOGGER" is an acronym for Local Government Electronic Reporting System. This is a uniform system of reporting all audited revenue and expenses whereby each municipality and the County, in an identical manner, report to the state all revenue and expenses within specifically delineated object categories. The specifically delineated categories of reporting were also agreed upon between Cities and County.

The annual funding obligation of the County and each municipality is based upon each government's percentage of the total expenditures reported under LOGGER. For example, if the County's annual expenditures equal 55% of the total expenditures reported by the County and all the municipalities, the County's obligation for the coming year would equal 55% of the OIG's budget. Municipalities with smaller budgets have less transactional activity, less need on average for OIG oversight, and as a result, a smaller proportionate share. The Funding Committee found this method to be the only verifiable, objectively fair means to apportion funding amounts among all the parties. The cities, even though they originally agreed to this funding methodology, now object to this funding methodology as more fully set forth in their lawsuit.

7. This massive collective effort culminated in May 2011, with the BCC approval of the new or amended ordinances that are the subject of this lawsuit, which included the cities funding contribution to OIG oversight based on the LOGGER system. This funding mechanism came from the funding committee specifically designed for this purpose.

ARGUMENT

II. County vs. Municipal Sovereign Immunity

The sovereign immunity of the State of Florida, and Counties as political subdivisions of the state, emanates directly from the Florida Constitution. Art. X, Section 13, Florida Constitution.¹ (“Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.”) There is no provision at all in the Florida Constitution providing sovereign immunity to municipalities.

Therefore, County sovereign immunity derives directly from the Florida Constitution, while the municipalities’ does not. As a result, “these common law differences dictate that the sovereign immunity of municipalities must be strictly construed, whereas the immunity of the state must be construed more broadly.” *American Home Assurance Company v. National Railroad Passenger Corporation*, 908 So.2d 459, 477 (Fla. 2005) (Cantero, J., concurring). The Plaintiff municipalities are not “constitutionally authorized” entities for sovereign immunity purposes. *Cauley v. City of Jacksonville*, 403 So.2d 379 (Fla. 1981).

In order for the municipalities to enjoy sovereign immunity in this case, it must have been “granted” to them from the Florida Legislature. Justice Cantero specifically recognized this when looking at sovereign immunity in the context of tort cases. He noted,

Section 768.28, therefore, affected the State and Counties differently than it did municipalities. As to the State, the statute **waived** its sovereign immunity up to specified limits. As to municipalities, the statute **granted** them immunity from judgments above those limits.

American Home Assurance, 908 So.2d at 478 (emphasis in original).

¹ It is undisputed that the County is a political subdivision of the State of Florida.

The municipalities recognize in their memorandum of law that “a waiver of sovereign immunity cannot be accomplished by any law other than one enacted by the State Legislature.” See, Plaintiffs’ Memorandum of Law in Support of Their October 10, 2013 Motion for Partial Summary Judgment at p. 3, citing, Arnold v. Shumpert, 217 So.2d 116, 120 (Fla. 1968). It stands to reason that if only the legislature can “provide” immunity by law as it did with the enactment of section 768.78, then the legislature has to grant it. There is no legislative grant of such immunity to the municipalities in this case. This is entirely consistent with Justice Cantero’s concurring opinion in American Home Assurance.

In this case the municipalities do not point out a single Florida constitutional or statutory provision providing them sovereign immunity in this case. The municipalities have no sovereign immunity in this case.

Further, to the extent the municipalities can argue that they have sovereign immunity in this case, the legislative purpose in enacting sovereign immunity is to protect the public from profligate encroachments on the public treasury. Jaar v. University of Miami, 474 So.2d 239 (Fla. 3rd DCA 1985); see also City of Freeport v. Beach Community Bank, 103 So.3d 684 (Fla. 1st DCA 2013) (policy considerations underpinning the doctrine of sovereign immunity include the protections of the public treasury and the maintenance of the orderly administration of government).

The Palm Beach County Office of Inspector General was specifically and intentionally modeled after the Miami-Dade County Office of Inspector General. Patra Liu, Esquire., is an Assistant Inspector General/Legal Counsel of the Miami-Dade County Office of Inspector General. Ms. Liu’s affidavit was filed in this case with the 2010 and 2011 reports of her office attached as Exhibits “A” and “B”. (Docket Entry #64). The reports show the multi-million dollars of questionable costs, losses, damages and savings in future revenue that can be obtained by implementing the Inspector General’s cost saving and loss recovery measures.

Similarly, the Palm Beach County Inspector General, Sheryl G. Steckler, filed her affidavit in this case showing her office’s participation in the comprehensive regulatory scheme put in place by implementing the OIG program in Palm Beach County. The 2011 Annual Report of the Palm Beach County Inspector General is attached to her affidavit as

Exhibit "1" indicates the large cost savings and potential loss recovery for the County taxpayers, including the municipalities, if her saving and cost recovery measures are implemented. (Docket Entry #63). The Inspector General also expressly states that "[a]ny dollars questioned and/or recovered as a result of the OIG activity go directly back to the affected individual and/or government entity." (Docket Entry #63 at Ex. 1, p. 3).

Finally, the affidavit of Commissioner Jess R. Santamaria has been filed and is of record in this case. (Docket Entry #61). Commissioner Santamaria is a well educated and experienced business executive and entrepreneur with personal factual knowledge of both public and private sector contracting. Based on this, Commissioner Santamaria is in a unique position to have firsthand knowledge that in both a public and private context, neither the County, municipalities, or the municipal taxpayers will absorb the cost of funding the Office of Inspector General. Instead, this fee will be absorbed by the vendors as a cost of doing business.

Therefore, the municipalities' budgets need not be negatively affected in any way. The LOGER funding methodology used to fund the Office of Inspector General does not contravene, and is consistent with the legislative purpose of sovereign immunity. Therefore, to the extent that the municipalities even have sovereign immunity in this particular case, the intent of doctrine has no application here.

Putting aside the municipalities' interpretation of the historical origin of municipal sovereign immunity, the gravamen of their argument is that how to allocate their municipal budgets is a legislative or discretionary function for which sovereign immunity applies. They assert that the court cannot infringe on, or deny their Motion for Partial Summary Judgment on sovereign immunity grounds, based on the doctrine of separation of powers that prevents the judiciary from reviewing discretionary legislative acts. (See pages 4-7 of Plaintiff's Memorandum of Law in Support of their October 10, 2013 Motion for Partial Summary Judgment and all authorities cited therein). Put another way, the municipalities insist that if they are forced to allocate a line item in their respective budgets to fund the OIG program that it would be an unconstitutional infringement on their legislative budget making authority. The authorities relied on by the municipalities are readily distinguishable as set forth herein and when applied to the specific facts of this case, several substantial

factual questions are raised.

Assuming that the municipalities do have sovereign immunity for legislative or “discretionary” matters such as where and how to allocate their budgetary dollars, there is no evidence at all that the LOGER funding mechanism in the OIG ordinance will have any effect on their respective budgets because: a) they have not even implemented the funding portion of the OIG program; and b) as a result, they have not even considered passing along the cost of the OIG program to their respective vendors. As of the time of hearing, the municipalities simply have no idea what effect, if any, the OIG program will have on their budgets. The municipalities’ assertions that their budgets will be affected in any way is not supported by any evidence at all. These assertions are conclusory in nature and not legally sufficient to support their Motion for Partial Summary Judgment on sovereign immunity grounds. *Bahadue v. Sanaullah, M.D.*, 946 So.2d 1247 (Fla. 1st DCA 2007) (conclusory statements alone are insufficient to support the grant of Motion for Summary Judgment). The Affidavits of Assistant Inspector General Patra Liu, Inspector General Sheryl G. Steckler and Commissioner Jess R. Santamaria, raise substantial factual questions to the contrary.

Finally, to the extent this Court determines that the Municipalities enjoy sovereign immunity, the citizens of the municipalities expressly waived any such sovereign immunity by their majority vote approving the Inspector General referendum, which plainly stated that the Office of the Inspector General would be “funded by the County Commission and all other governmental entities subject to the authority of the Inspector General.” The highest court of Massachusetts has held that sovereign immunity is waived when a majority of voters approve a law which necessarily implicates a waiver of sovereign immunity. This Court is urged to adopt this well-reasoned opinion.

In *Bates v. Director of Office of Campaign and Political Finance*, 436 Mass. 144 (Mass. 2002), the Supreme Judicial Court of Massachusetts was presented with the question of whether the people’s enactment of the clean elections law, pursuant to initiative, waived sovereign immunity, despite the lack of a specific statement or clear implication of waiver by the legislature. *Id.* at 172-73. The Court concluded that the people’s enactment of the law constituted a waiver of sovereign immunity:

The people, not the Legislature, enacted the clean elections law, under the initiative provisions of art. 48. To the extent that we are required to ascertain whether there has been a waiver of sovereign immunity, it is to the wishes of the people, not the Legislature, that we must look. Their position is clear: the abrogation of sovereign immunity is inherent in the certification process and in the regulatory purpose of the statute that we have described above. The power to bind the Commonwealth to payments of public funds by the process of certification is required “by necessary implication” from the clean elections law; . . . the certification process, and the director’s role in it, has no meaningful function without the obligation for payment. We will not impute to the voters who enacted the clean elections law an “intention to pass an ineffective statute.”

Id. at 173 (citations omitted); see also City of Canyon v. Fehr, 121 S.W.3d 899 (Tex. App. 2003) (noting initiative and referendum entail the exercise of a power reserved to the people (who become the legislative branch of government when they do so), and concluding sovereign immunity did not bar a suit brought by citizens against a municipality as a means of enforcing the initiative and referendum provisions contained in the city charter).

The opinions of the Massachusetts and Texas courts are in line with the fact that sovereign immunity is not an “absolute” for Florida municipalities, because the Florida Constitution allows for the electors in a county to adopt a county charter, which among other things, allows a county to adopt ordinances which trump city ordinances, when in conflict. This charter power is clearly a limit on a city’s legislative authority. As the Court explained in Seminole County v. City of Winter Springs, 935 So. 2d 521 (Fla. 5th DCA 2006):

The most significant feature of charter counties is the direct constitutional grant of broad powers of self-government, which include local citizens’ power to enable their charter county to enact regulations of county-wide effect which preempt conflicting municipal ordinances. See Art. VIII, § 1(g), Fla. Const., D’Alemberte commentary, reprinted in 26A Fla. Stat. Ann. 155, 157 (West 1995) (“This entirely new subsection provides for the broadest extent of county self-government or ‘home rule’ as it is commonly described . . . the power which may be granted to county governments under a charter is the power to have county ordinances take precedence over municipal ordinances.”).

Id. at 523.

In *Seminole*, the Court concluded:

Florida's Constitution recognizes that: "All political power is inherent in the people." Art. I § 1, Fla. Const. When it comes to charter counties and municipalities within those counties, the Constitution expressly grants the electorate a right to determine by charter which government they desire to vest with preemptive regulatory power. Art. VIII, § 1(g), Fla. Const.

Seminole County, 935 So. 2d at 528.

The Municipalities cite no case that stands for the proposition that a city can use sovereign immunity to thwart a county's charter authority, nor can they.

In the instant case, political power inhered in the people of Palm Beach County who voted on November 2, 2010, to "establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: . . . an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General." Inspector General Referendum Ballot Question. Any sovereign immunity the municipalities might claim to enjoy was waived by the vote of the people.

Therefore, the Municipalities' Motion for Partial Summary Judgment based on sovereign immunity must be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail this 15th day of November, 2013, to the counsel listed below:



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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
SPRING TERM 2009

IN RE: PRESENTMENT OF THE GRAND JURY CONCERNING INVESTIGATION
OF PALM BEACH COUNTY GOVERNANCE AND PUBLIC CORRUPTION
ISSUES

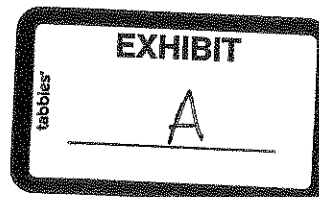
CHIEF JUDGE KATHLEEN J. KROLL, PRESIDING

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

I. GRAND JURY SUMMARY

The Grand Jury finds that Palm Beach County currently is facing a crisis of trust in public governance. In the past several years, three county and two West Palm Beach city commissioners have pled guilty to federal corruption charges. Indeed, the reputation of Palm Beach County has deteriorated to the point that Palm Beach County is derisively referred to as "Corruption County." The erosion of public trust in the institutions of governance, whether caused by actual or perceived corruption, has undermined the legal, political and economic pillars which support this community.

While some tentative efforts are being made within the county government to combat the pervasive perception of corruption, the core aspects of effective governance - accountability and transparency - are not being adequately addressed. Solutions to these problems will prove elusive unless and until meaningful independent oversight exists to identify waste, fraud and abuse in county government practices. The Grand Jury finds such meaningful, independent oversight to be a necessary ingredient in good governance and not an option. In addition, the Grand Jury finds that current state laws governing both ethics and criminal misconduct are



inadequate to effectively deter the broad-based misconduct (including non-disclosure of personal interests and conflicts) that has become all too common, not only in Palm Beach County, but throughout the State of Florida.

Based on our findings, the Grand Jury makes numerous specific recommendations to address the most pressing of the issues which have led us to this crisis of confidence in good governance: 1) strengthen state criminal statutes and county ordinances to address conflict of interest, gratuity and theft of honest services by public servants; 2) fully fund an effective independent "watchdog" entity to monitor the activities of the county government; 3) increase transparency, accountability and oversight of county matters involving land transactions; 4) eliminate bond underwriting by rotation and adopt the Government Finance Officers Association (GFOA) recommended practices; and 5) eliminate the current system of commissioner-based discretionary funding of county recreation and infrastructure projects.

II. BACKGROUND AND SCOPE

This Grand Jury investigation was called for by State Attorney Michael McAuliffe to review certain specific areas of Palm Beach County governance and to make appropriate findings and recommendations to improve governance in Palm Beach County. Pursuant to Florida Stat. §905.16, the Grand Jury is uniquely situated as the "guardian of all that is comprehended in the police power of the State." *Owens v. State*, 59 So. 2d 254 (Fla. 1952).

Unlike a Federal Grand Jury, Florida grand juries can, and should, serve a dual purpose in that:

[Florida grand juries]...have a lawful function to investigate possible unlawful actions for all persons, private citizens and public officials alike and to return indictments when warranted, and also have a lawful and proper function to consider actions of public bodies and officials in use of public funds and report or present findings and recommendations as to practices, procedures,

incompetency, inefficiency, mistakes and misconduct involving public officers and public monies.

Kelly v. Sturgis, 453 So. 2d 1179 (5th DCA 1984).

The objective of this Grand Jury was to review and report on five areas of county governance. The areas chosen represent a cross section of governmental processes and activities within Palm Beach County (PBC Organizational Chart attached as Exhibit 1). The areas of review included specific government functions within the county as well as issues related to anti-corruption efforts. Specifically, the Grand Jury reviewed: 1) Palm Beach County bond underwriting practices; 2) county commissioner's discretionary funds; 3) the county's internal and external auditing system; 4) Palm Beach County governmental land transactions; and 5) existing criminal, ethics and other public integrity laws. The Grand Jury believes these specific areas of inquiry adequately reflect the larger governance landscape in Palm Beach County.

The Grand Jury gathered information regarding each issue area, then evaluated the evidence submitted, reached findings and made recommendations. The Grand Jury heard from numerous witnesses, including government employees, private citizens, business leaders, attorneys and elected officials including constitutional officers. The Grand Jury reviewed thousands of pages of documents ranging from policy and procedure manuals to published articles and state and federal statutes (both current and proposed). Testimony included information about other anti-corruption initiatives adopted in other Florida counties. As a result of this inquiry, the Grand Jury was able to make specific findings and recommendations, both on the county and state level.

The Board of County Commissioners currently is taking steps to change some practices; however, the Grand Jury finds that the Commission must take additional and bolder steps – in

short, the Commission must lead in the effort to restore confidence and faith that elected officials serve the public's interests and not their own.

III. DISCUSSION

A. BOND UNDERWRITING

1. Current Practices and Procedures

The Grand Jury reviewed the Palm Beach County's issuance and underwriting of bonds. Bonds are issued by governments to finance large capital projects and spread the cost of these improvements over a number of years. In this way, the county can fund needed projects that benefit current and future taxpayers alike. As of September 30, 2008, the total outstanding debt for Palm Beach County was approximately \$1.89 billion. During fiscal year 2008, Palm Beach County incurred \$445 million in new debt and made debt payments totaling \$200 million or approximately \$320 per taxpayer.

The Grand Jury identified two basic means of selling bonds - competitive bids and negotiated sales. According to the Government Finance Officer's Association (GFOA) recommended practices (attached as Exhibit 2), the most cost effective means of marketing general obligation bonds by a political subdivision with a solid tax base is through the competitive bid process. Bonds that are seen as less secure generally are underwritten by negotiated sale. Documents and testimony revealed that competitive sales on "full faith and credit" backed bonds were standard operating procedure in Palm Beach County prior to 1993. In 1992, the Board of County Commissioners ("BCC") made a decision that all bond underwriting would be by negotiated sale. This decision was against the recommendation of the PBC Office

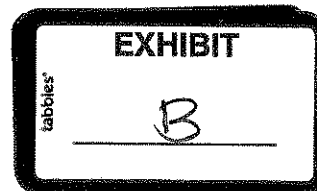
traditional, and it's the corruption of waste, fraud, mismanagement and abuse. And as I recall the Certified Fraud Examiners Institution, and other institutes, have basically said that essentially out of every dollar that government takes in as revenue, ten percent of it is lost because of waste, mismanagement and abuse...Most of the resources that we see employed to combat corruption go to the traditional side...Very little bit is left with the non-traditional. And as a result, we have these huge problems of waste, mismanagement and millions and millions and millions of dollars of taxpayer money was squandered. That is why an Inspector General's Office is so critically important...

3. Findings and Recommendations

The Grand Jury finds that a fundamental need exists for an entity within the Palm Beach County governmental structure with meaningful independence from the governing body to be an effective "watchdog" for the citizens of Palm Beach County. The need for effective oversight of county governance is real and change is necessary.

Using existing bureaucracies within the current county governmental structure without meaningful independence is an inadequate approach. Specifically, the Grand Jury finds that enhancing the powers of the current Palm Beach County internal auditor will not be effective. In addition, the Grand Jury finds that the current external auditor position is by its very nature unsuitable to conducting forensic investigations. The Grand Jury finds that any meaningful improvement to the current audit roles will require additional resources, structural changes and adequate forensic expertise.

The Grand Jury also finds that the proposal for the Office of the Clerk to absorb the function into her existing duties is unlikely to be accepted by the BCC and may interfere with the existing roles of the respective office and entity. The Grand Jury acknowledges that personality conflicts or tension should not dictate or preclude appropriate and needed structural changes. However, the palpable acrimony that exists between the two governmental offices was not



missed by this Grand Jury. Second, the Office of Clerk proposal provides for fraud investigations to be turned over to the Sheriff's Office or State Attorney's Office but provides no template or resources for effective investigation and follow-up of non-criminal matters. The Grand Jury finds that an effective "watchdog" entity will need the institutional knowledge, resources and mandate to investigate waste, mismanagement and abuse as well as criminal fraud. Third, such an independent entity must not audit for policy reasons. The Grand Jury finds that previous Office of the Clerk audits of the Convention and Visitor Bureau in 2006 (attached as Exhibit 23) and *The Debt Process Review* in 2009 were primarily policy audits and not for investigative or forensic audit purposes.

The Grand Jury finds that the Miami-Dade County model of the Office of Inspector General (OIG) is the most effective means of achieving a truly independent and robust "watchdog" agency in Palm Beach County governance. The Grand Jury finds that far from being a "layer of bureaucracy" costing taxpayer dollars in a shrinking economy, an independent entity (whether an Office of Inspector General, a Performance and Chief Compliance Officer or an Independent Forensic Auditor) is a necessary component of an effective, responsive government. The Grand Jury also finds that the benefit to the taxpayer would not only be found in the exposure of fraud, waste, mismanagement and abuse, but also in the value of deterrence and the enhanced reputation of this county in the business community. The Grand Jury further finds that, with careful initial planning, only a fraction of the OIG budget will need to be funded through the county's general fund.

The Grand Jury recognizes that political will is the key component to a successful Inspector General's Office. The Grand Jury believes that the BCC must assertively and openly pursue this independent oversight. Thus, the Grand Jury recommends the following:

- The Grand Jury recommends that the Board of County Commissioners draft and pass an Ordinance establishing an independent Office of Inspector General or Performance and Chief Compliance Officer with the ability to obtain any and all records from Palm Beach County governmental entities, vendors doing business with the county and entities funded in whole, or in part, by county tax dollars.
- The Grand Jury recommends that the Board of County Commissioners establish an independent oversight board consisting of the State Attorney's Office, Public Defender's Office, Sheriff's Office, President of the Police Chief's Association, the Chairman of a newly established Ethics Commission and a private resident of Palm Beach County to nominate and oversee the Inspector General/Performance & Chief Compliance Officer.
- The Grand Jury recommends the functions of the Inspector General/Performance/Chief Compliance Officer be modeled after the Miami-Dade County Ordinance establishing an Office of Inspector General.
- The Grand Jury recommends that to offset any direct taxpayer funding for this office the Board of County Commissioners require an agreement with county revenue producing departments to reimburse investigative costs and on site resources provided to those departments. In addition the Grand Jury recommends that all vendor contracts include a built-in proprietary fee of ¼ of 1% to help fund this new entity.
- The Grand Jury further recommends as previously indicated that the BCC fund an OIG or other similar independent "watchdog" entity through discretionary fund account dollars and pursue funding sources in subsequent years to reduce the use of county tax dollars.
- The Grand Jury recommends that the Palm Beach County Board of County Commissioners take immediate steps to establish and publicize a Palm Beach County Government hotline to report waste, fraud, mismanagement and abuse. This hotline must be administered by an independent entity once established.

IV. CONCLUSION

The Grand Jury acknowledges both the Palm Beach County governmental staff and the individual county commissioners for their cooperation in providing documentary evidence, and when requested, testimony regarding the five areas of governance reviewed by this Grand Jury. The Grand Jury acknowledges the numerous elected officials and other witnesses, who likewise voluntarily testified during the past four months. The Grand Jury recognizes that the areas reviewed have been, and continue to be, of great concern to the residents of Palm Beach County.

The Grand Jury concludes that Palm Beach County must consider, select and implement specific reforms to restore confidence in local governance. In this inquiry, the goal was not to develop a criminal case against any individual or entity. The objective was to identify and develop specific recommendations to achieve structural change in county government so that the community can have renewed confidence that the government works for them.

ORDINANCE NO. 2010- 019

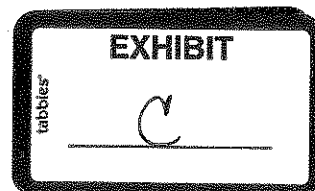
AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHARTER OF PALM BEACH COUNTY, FLORIDA; PERTAINING TO ETHICS REGULATION, THE ESTABLISHMENT OF A COUNTY CODE OF ETHICS, AN INDEPENDENT COMMISSION ON ETHICS, AND AN INDEPENDENT OFFICE OF INSPECTOR GENERAL; PROVIDING FOR CHARTER AMENDMENT LANGUAGE; PROVIDING FOR REFERENDUM AND BALLOT LANGUAGE; PROVIDING FOR FORM OF NOTICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 1(c), Article VIII of the Constitution of the State of Florida provides that by general law a county government may be established by charter; and

WHEREAS, the voters of Palm Beach County adopted the Charter of Palm Beach County on November 6, 1984, effective January 1, 1985; and

WHEREAS, the Charter of Palm Beach County provides that the Board of County Commissioners may propose a charter amendment by ordinance subject to voter approval; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined it is in the best interest of the citizenry of the County and will promote confidence in government to place a charter amendment on the ballot which will require the County to adopt by ordinance an independently appointed County Commission on Ethics adequately funded by the County Commission and an independently selected Office of Inspector General adequately funded by the County Commission and other governmental entities subject to the authority of the Inspector General; and



WHEREAS, passage of this Ordinance will allow the residents of Palm Beach County to vote on the proposed charter amendment at the general election held on November 2, 2010.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

PART I. AMENDMENT OF CHARTER

Subject to the approval of the electorate as required by the Constitution and Laws of Florida, the Charter of Palm Beach County shall be amended by adding a new subparagraph (6) to Sec. 1.3. Scope of County Ordinances; Conflict with Municipal Ordinances; by amending Sec. 3.2. Prevention of Conflict of Interest; and by adding Article VIII, Ethics Regulation, Sec. 8.1 County Code of Ethics, Sec. 8.2 Commission on Ethics, Sec. 8.3 Inspector General, and Sec. 8.4 Ordinance Preparation, Adoption and Amendment, as follows:

Sec. 1.3. Scope of County Ordinances; Conflict with Municipal Ordinances.

Municipal ordinances shall prevail over county ordinances to the extent of any conflict, regardless of the time of passage of the municipal ordinances, except that the county ordinances shall prevail over conflicting municipal ordinances:

* * *

(6) In matters related to the Ethics Regulation in accordance with Article VIII of this Charter. The Palm Beach County Code of Ethics, Palm Beach County Commission on Ethics and the Office of Inspector General in municipalities where the charter amendment is approved by a majority of voters in that municipality voting in the referendum as set forth in Sec. 6.3 of this Charter.

Sec. 3.2. Prevention of conflict of interest.

The Board of County Commissioners shall take whatever action is necessary on behalf of its residents to ensure that the County government's appointed officials, elected officials and employees abide by the code of ethics as set out in state law and the ethics regulations adopted by the Board of County Commissioners.

ARTICLE VIII. ETHICS REGULATION

Sec. 8.1. County Code of Ethics.

The County shall, by ordinance, adopt a Palm Beach County Code of Ethics, which shall be at least as stringent as Chapter 112, Part III, Florida Statutes, the Code of Ethics for Public Officers and Employees. The ordinance shall be prepared, adopted, and amended pursuant to the procedures in Section 8.4 below.

Sec. 8.2 Commission on Ethics.

The County shall, by ordinance, establish an independent Commission on Ethics, comprised of a minimum of five members not appointed by or subject to removal by the County Commission or by any other entity subject to the jurisdiction of the Commission on Ethics, with the authority to review, interpret, render advisory opinions and to enforce the Palm Beach County Code of Ethics, and to provide ethics training to local governments, citizen groups and the general public of Palm Beach County. The ordinance shall be prepared, adopted, and amended pursuant to the procedures in Section 8.4 below. The Commission on Ethics shall be adequately funded by the County Commission and all other governmental entities that elect to be subject to the authority of the Commission on Ethics pursuant to interlocal agreement.

Sec. 8.3. Inspector General.

The County shall, by ordinance, establish an Office of Inspector General to provide independent oversight of publicly funded transactions, projects, and other local government operations. The ordinance shall be prepared, adopted, and amended pursuant to the procedures in Section 8.4 below (hereinafter "Implementing Ordinance"). The Implementing Ordinance shall provide that the Inspector General shall be selected by a Selection Committee, comprised of the Commission on Ethics, the State Attorney or designee, and the Public Defender or designee. The Implementing Ordinance shall further provide that the Inspector General shall serve a fixed term, and prior to completion of that term, may be removed only for cause and pursuant to a procedure requiring, at a minimum, supermajority votes at duly noticed public hearings of the Board of County Commissioners and the Selection Committee. The Office of Inspector General shall be funded at minimum in an amount equal to one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General (the "Funding Base") as determined by the Implementing Ordinance. The Board of County Commissioners may increase or decrease the Funding Base upon a showing of need for such adjustment based upon criteria contained in the Implementing Ordinance but in no event shall the Funding Base be reduced below one quarter of one percent unless the request for such reduction is made by the Inspector General. The demonstration of need shall be subject to review and recommendation by the Review Committee, which recommendation shall only be overruled by a supermajority vote of the Board of County Commissioners. No adjustment shall occur if such adjustment results in the Office of the Inspector General not being adequately funded.

Sec. 8.4. Ordinance Preparation, Adoption, and Amendment.

Ordinances providing for implementation and funding of Article 8, Ethics Regulation, of the Palm Beach County Charter shall be prepared, adopted, and amended in the following manner:

- (a) The Board of County Commissioners has adopted ordinances establishing and providing for the funding, authority and powers of the Palm Beach County Commission on Ethics and the Office of Inspector General (the "Existing Ordinances"). The drafting committee described below shall develop the ordinances enabling this Charter Amendment by beginning with the Existing Ordinances and making those changes necessary to conform the Existing Ordinances to the requirements of this Charter Amendment and proposing other such changes deemed necessary and proper by the drafting committee.
- (b) Each ordinance shall be developed by a drafting committee consisting of two representatives appointed by the Board of County Commissioners; two representatives appointed by the Palm Beach County League of Cities, Inc. (the "League") or any successor entity to the League; the County Attorney or his or her designee; and the General Counsel for the League or his or her designee. In addition, the committee will include the Executive Director of the Palm Beach County Commission on Ethics for matters pertaining to the Code of Ethics and Commission on Ethics Ordinances, and will include the Inspector General for matters pertaining to the Inspector General Ordinance ("the Initial Ordinance Drafting Committee"). The Initial Ordinance Drafting Committee may by majority vote agree to add up to three additional members representing other governmental entities that are subject to the regulation of the Inspector General, the Commission on Ethics, or both.

(c) The Board of County Commissioners may adopt any ordinance recommended by the Initial Ordinance Drafting Committee (the "Recommended Ordinance") by an affirmative vote of four members of the Board. If the Board of County Commissioners desires to change any Recommended Ordinance, the Board shall refer all proposed changes to the Initial Ordinance Drafting Committee, which shall either modify the Recommended Ordinance to include a proposed change or recommend that a proposed change not be adopted. Adoption of any change to a Recommended Ordinance requires an affirmative vote of five members of the Board. If the Initial Ordinance Drafting Committee fails to submit the Recommended Ordinance to the Board of County Commissioners within 90 days of effective date of this charter amendment or fails to take action on a proposed change within 30 days of receipt of such change from the Board, the Board of County Commissioners may take action to adopt the ordinance by an affirmative vote of four members.

(d) Amendments to any of the ordinances adopted pursuant to Section 8 of the Charter may be proposed by the Board of County Commissioners, the League, the Ethics Commission, the Inspector General, or the Executive Director of the Commission on Ethics. All proposed amendments must be reviewed by a committee with the same make-up as the Initial Ordinance Drafting Committee (the "Review Committee"). The Review Committee's recommendation shall be forwarded to the Board of County Commissioners. Any change recommended by the Review Committee may be adopted by an affirmative vote of four members of the Board of County Commissioners. Adoption of any change not recommended by the Review Committee requires an affirmative vote of five members of the Board of County Commissioners. If the Review Committee fails to submit an ordinance amendment to the Board of County Commissioners within 90 days after referral of an amendment from one of the above parties, the

Board of County Commissioners may adopt the amendment by an affirmative vote of four members of the Board.

PART 2. REFERENDUM AND BALLOT LANGUAGE

On November 2, 2010, a general election is to be held, and in accordance with the requirements of the Constitution and Laws of Florida, the following question shall be placed on the ballot by the Supervisor of Elections:

REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT ETHICS COMMISSION AND INDEPENDENT INSPECTOR GENERAL

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?

YES _____

NO _____

PART 3. FORM OF NOTICE

The form of notice of the election by which this Charter shall be submitted to a referendum shall contain the complete text of Parts 1 and 2 of this Ordinance.

PART 4. SEVERABILITY

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

PART 5. INCLUSION IN THE CHARTER

In the event this proposed amendment is approved by referendum, Part 1 of this Ordinance shall become and be made a part of the Home Rule Charter of Palm Beach County, Florida. The Articles or Sections of this Charter Amendment Ordinance may be renumbered or relettered to accomplish such, and the word "amendment" may be changed to "section," "article," or any other appropriate word.

PART 6. EFFECTIVE DATE

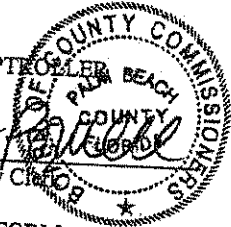
This Ordinance shall become law on January 1, 2011, if approved by a majority of those electors voting on the matter.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 20th day of July, 2010.

SHARON R. BOCK
CLERK AND COMPTROLLER

By:

[Signature]
Deputy Clerk



PALM BEACH COUNTY, FLORIDA,
BOARD OF COUNTY COMMISSIONERS

By:

[Signature]
Burt Aarenson Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By:

[Signature]
County Attorney

Filed with the Department of State on the 23rd day of July, 2010.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk and Comptroller
certify this to be a true and correct copy of the original

filed in my office on July 20, 2010

dated at West Palm Beach, Florida

By:

[Signature]
Deputy Clerk

