

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

CASE NO.: 50 2011 CA 017953

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.

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

Intervenor.

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DEC 15 2011

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

**AMENDED COMPLAINT IN INTERVENTION, CROSS-CLAIM, AND
COUNTERCLAIM FOR DECLARATORY AND OTHER RELIEF**

Intervenor, Sharon R. Bock, in her official capacity as Clerk & Comptroller of Palm Beach County (the "Clerk & Comptroller"), by and through her undersigned counsel, intervenes as a party-defendant; cross-claims against Defendant/Cross-Defendant, Palm Beach County, a political subdivision (the "County"); and Counterclaims against Plaintiffs/Counter-Defendants, 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 Manalpan, 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 (collectively, the "Municipal Plaintiffs"), and alleges as follows:

INTRODUCTION

1. The Clerk & Comptroller seeks to intervene in this action in order to request declaratory relief as to whether her compliance with Palm Beach County Ordinance No. 2011-009 (codified at Art. XII, § 2-421, *et seq.*, County Code) and, within this ordinance, Article XII, § 2-429, County Code (the "Ordinance"), as it relates to financial support and budgeting by Palm Beach County municipalities (the "Municipalities") of the Office of Inspector General ("IG"), is consistent with the constitutional, statutory and other duties imposed on the Clerk & Comptroller.

2. The Clerk & Comptroller also seeks relief with respect to funds that have already been invoiced and paid by certain Municipalities pursuant to the Ordinance (the "Payor Municipalities"), and with respect to her continuing obligations and duties under the Ordinance.

3. The Clerk & Comptroller is a neutral third party and takes no position on the merits of the Complaint filed by the Plaintiffs (the "Municipal Plaintiffs"). Rather, the Clerk & Comptroller seeks to ensure that her actions are consistent with law.

4. The Florida Constitution establishes a separation of duties among local governmental entities. Executive and legislative powers are bestowed upon the Board of County Commissioners, including the power to authorize the spending of all County funds. However, the Board of County Commissioners does not have access to the County depository or any County funds.

5. As a check and balance, the constitutional responsibility for oversight, custody, auditing and safeguarding of County funds is bestowed upon the Clerk & Comptroller. Prior to executing an expenditure decision of the Board of County Commissioners, the Florida Constitution requires the Clerk & Comptroller to perform a review of each expenditure to ensure that the payment is lawful, funds are available, and the payment serves a public purpose.

6. The Ordinance requires financial support of the IG from the County and Municipalities. The Clerk & Comptroller collects funds pursuant to the Ordinance and deposits them in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"), which is a County depository under the custody and control of the Clerk & Comptroller pursuant to Article V, section 16 and Article VIII, section 1(d) of the Florida Constitution.

7. When the IG makes a payment request, the Clerk & Comptroller performs her constitutional and statutory audit and oversight responsibilities and, if proper, issues payment.

JURISDICTION AND VENUE

8. This Court has jurisdiction to grant declaratory relief pursuant to Article V, section 5(b) of the Florida Constitution and section 26.012 and 86.011, Florida Statutes.

9. Venue is proper in Palm Beach County pursuant to section 47.011, Florida Statutes, because all parties are located in Palm Beach County, the Ordinance was adopted in Palm Beach County, and the cause of action accrued in Palm Beach County.

PARTIES

10. The Municipal Plaintiffs are municipal corporations of the State of Florida located in Palm Beach County, Florida.

11. The County is a political subdivision of the State of Florida with its primary offices located at 301 N. Olive Avenue, West Palm Beach, Florida.

12. The Clerk & Comptroller is an independent constitutional officer with administrative and finance offices located at 301 N. Olive Avenue, West Palm Beach, Florida.

13. The Clerk & Comptroller is elected by the electors of Palm Beach County, pursuant to Article V, section 16 and Article VIII, section 1(d) of the Florida Constitution, to serve, inter alia, as "ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

14. The Clerk & Comptroller is the independent constitutional auditor for the expenditure of County funds. This constitutional authority, which provides a local check and balance, has been affirmed by *Alachua County v. Powers*, 351 So.2d 32 (Fla. 1977), *Brock v. Board of County Commissioners of Collier County*, 21 So.3d 844 (Fla. 2d DCA 2009) and *W & F Ltd. v. Dunkle*, 444 So.2d 554 (Fla. 4th DCA 1984).

15. The Clerk & Comptroller also has statutory responsibilities, pursuant to section 28.12, Florida Statutes, to serve as, inter alia, the "accountant of the board of county commissioners" who shall "keep ... accounts and perform such other duties as provided by law." As such, the Clerk & Comptroller is the independently elected Chief Financial Officer of Palm Beach County.

16. The Clerk & Comptroller also has statutory responsibilities pursuant to Section 28.12, Florida Statutes, to "have custody of the seal and affix the same to any paper or instrument as required by law." The Clerk & Comptroller's statutory duties include attesting to the legality of all checks or warrants drawn on the IG Account and, if proper, affixing the corporate seal thereto, per section 136.06(1), Florida Statutes.

17. The Clerk & Comptroller has possible personal and criminal liability under section 129.09, Florida Statutes, in the exercise of these duties as follows:

County auditor not to sign illegal warrants.--Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill of indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

§ 129.09, Fla. Stat.

18. Elaborating on the Clerk & Comptroller's audit responsibilities, section 136.08, Florida Statutes, states:

The accounts of each and every board and the county accounts of each and every depository, mentioned or provided for in this chapter, shall at all times be subject to the inspection and examination by the county auditor and by the Auditor General.

§ 136.08, Fla. Stat.

19. The Clerk & Comptroller has standing to bring this action, because:
- a. The Ordinance requires an expenditure of public funds;
 - b. The Clerk & Comptroller may be injured personally by virtue of complying with the Ordinance;
 - c. The Clerk & Comptroller has been prevented, in whole or part, from carrying out her duties under the Ordinance; and
 - d. The Clerk & Comptroller has a constitutional duty to protect public funds subject to the Ordinance.

GENERAL ALLEGATIONS

20. On May 17, 2011, the County Commission adopted the Ordinance, providing, *inter alia*, the mechanism for financial support and budgeting for the IG (the "Funding Mechanism"), and specifying that the Ordinance is retroactive to April 1, 2011.

21. The Ordinance, a copy of which is annexed as **Exhibit "A"**, requires the Clerk & Comptroller to undertake various actions in connection with the Funding Mechanism to include, without limitation, the following:

Sec. 2-429. - Financial support and budgeting.

(4) No later than the fifth business day of July of each year, the office of the clerk and comptroller shall prepare an allocation schedule based on the most current LOGER system data. The proportionate share to be paid by the county and each municipality shall be reduced proportionately by the anticipated revenues from sources other than the county and municipalities and the amount of funds estimated to be received but not expended by the inspector general in the current fiscal year.

(7) The office of the clerk and comptroller shall invoice the county and each municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April 10 and July 10 of each year. Payment shall be submitted to the board and due no later than thirty (30) days from the date of the invoice. Upon receipt, all funds shall be placed in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund. In the event payment is not timely received, the county or any municipality in compliance with this section may pursue any available legal remedy.

(8) The county and each municipality's proportionate share for the period of June 1, 2011 through September 30, 2011 shall be as set forth in Exhibit A which is attached to Ordinance 2011-009 and incorporated herein by reference. The office of the clerk and comptroller shall invoice the county, upon adoption of this article, nine hundred forty-six thousand seven hundred sixty-four dollars (\$946,764.00). This amount is based on the estimated expenses through June 1, 2011 of four hundred eighty-three thousand three hundred thirty-three dollars (\$483,333.00), plus the county's proportionate share as reflected on Exhibit A. The office of the clerk and comptroller shall invoice each municipality for their proportionate share as set forth in subsection (7) beginning with the first invoice on October 10, 2011.

Art. XII, § 2-429, County Code.

22. As required by the County Ordinance and Funding Mechanism, the Clerk & Comptroller has taken, inter alia, these steps:

a. Prepared the allocation schedules for Fiscal Year ("FY") 2011 for the period June 1 to September 30, 2011 and for FY 2012, based on the most current state Local Government Electronic Reporting ("LOGGER") system data.¹

b. Invoiced the County \$946,764 for financial support for the IG for FY 2011, and \$384,033 as the County's proportionate share of the financial support for the IG for the first quarter of FY 2012.

c. Invoiced the Municipalities \$327,898 for financial support for the IG for FY 2011, and \$315,878 as the Municipalities' proportionate share of the financial support for the IG for the first quarter of FY 2012.²

d. Deposited in the IG Account \$130,560 in funds received from the Payor Municipalities.

23. All funds in the IG Account, including those paid by the Municipalities pursuant to the Ordinance, are subject to use by the IG to pay bona fide expenditures and obligations. The IG regularly requests the Clerk & Comptroller to pay expenditures from the IG Account.

24. The IG Account contains insufficient revenue to fund all of the expenditures that the County budgeted for the IG for FY 2012, because the Municipal Plaintiffs, with the

¹ The Comptroller did not report and was not made aware of any revenues from sources other than the County, Solid Waste Authority and Municipalities, but did slightly adjust the total owing based upon funds received but not expended by the IG.

² The City of Lake Worth and Jupiter Inlet Colony were not invoiced for FY 2011, because they paid the Clerk & Comptroller upon approval of the Ordinance.

exception of the Town of Ocean Ridge, have not paid the Invoices the Clerk & Comptroller sent to them pursuant to the Ordinance.

25. On or about November 9, 2011, Municipal Plaintiff, the City of West Palm Beach ("City"), notified the Clerk & Comptroller that it declined to pay its invoices on the grounds that "the funding mechanism for the inspector general program is unlawful." The City reported that the other Municipal Plaintiffs agreed and intended to file the instant lawsuit seeking declaratory relief (the "Lawsuit"). A copy of the City's letter is attached and incorporated herein as **Exhibit "B"**.

26. In this Lawsuit, the Municipal Plaintiffs seek declaratory relief that the County is requiring them to pay an unlawful tax not approved by the electors of Palm Beach County.

27. If the Municipal Plaintiffs are correct, the Clerk & Comptroller may be liable for complying with the Funding Mechanism in the Ordinance by, inter alia,

- a. Invoicing the Municipalities; and
- b. Receiving and depositing funds received pursuant to the Ordinance from the Municipalities; allowing use of such funds in the IG Account to pay bona fide expenditures of the IG.

28. Accordingly, the Clerk & Comptroller seeks intervention in this matter not for the mere provision of legal advice by the courts or the answer to questions propounded by curiosity, but because this case involves concrete immunities, powers, privileges, rights, and responsibilities of the Clerk & Comptroller which are dependent on the facts of this case or the law applicable to such facts.

29. The Clerk & Comptroller also seeks intervention in this matter, because she has been prevented, in part, from performing her collection duties as prescribed in the Funding

Mechanism in the Ordinance by all Municipalities which have refused to make payment as required by the Ordinance.

30. The Attorney General is being served with a copy of this Complaint as required by Section 86.091, Florida Statutes.

31. All conditions precedent to maintaining this Lawsuit have been performed, have occurred or have been waived.

COUNT I - DECLARATORY RELIEF

32. The allegations in paragraphs 1-31 are realleged and incorporated herein by reference. *This is an action for declaratory and other relief.*

33. There is a bona fide, actual, present, practical need for this declaration.

34. The Clerk & Comptroller is uncertain whether she should take any of the following actions which are either required by the Funding Mechanism in the Ordinance, or may be required for the Clerk & Comptroller to comply with her constitutional, statutory and other duties:

a. Prepare allocation schedules for the County and the Municipalities based on the most current LOGER system data for future quarters in FY 2012 and beyond, adjusted for revenues from sources other than the County and Municipalities and funds estimated to be received but not expended by the IG;

b. Send Past Due Notices to the Municipalities that have not yet paid their invoices or take other enforcement actions;

c. Invoice the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for future quarters in FY 2012 and beyond;

d. Deposit in the IG Account any funds received in response to invoices mailed to the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for FY 2011 and 2012;

e. Return any funds deposited in the IG Account received in response to invoices mailed to the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for FY 2011 and 2012, or prevent use of such funds pending resolution of this Lawsuit; and

f. Attest to checks or warrants drawn on the IG Account, sign any warrant for the payment of any claim or pay any claim against any County funds in excess of those deposited in the IG Account by any source other than the Municipalities, and affix the corporate seal thereto.

35. The Clerk & Comptroller is subject to civil and/or criminal liability to the extent she must attest to checks or warrants drawn on the IG Account and sign any warrant for the payment of any claim against any County funds in excess of the expenditure allowed by law, pay any claim against the County not authorized by law, or affix the corporate seal thereto.

36. The Clerk & Comptroller is also empowered and required by County electors to audit, inspect and examine the IG Account, but is uncertain as to how to carry out her constitutional and statutory duties and responsibilities, as long as the lawfulness of the Funding Mechanism is in question.

37. The antagonistic and adverse interests are all before this Court by proper process including persons who have, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

WHEREFORE, Intervenor Sharon R. Bock, in her official capacity as Clerk & Comptroller of Palm Beach County, respectfully requests that this Court enter a final declaratory judgment binding on the Municipal Plaintiffs and Counties:

1. Declaring whether the Funding Mechanism of the Ordinance is lawful;
2. If the Funding Mechanism of the Ordinance is not lawful, declaring that the Clerk & Comptroller should:
 - a. permanently cease any further collection efforts (including without limitation, preparing allocation schedules, invoicing, collecting, and depositing funds received into the IG Account) pursuant to the Ordinance with respect to any of the Municipalities;
 - b. return all funds paid by Municipalities pursuant to the Ordinance that have been segregated and maintained pending the resolution of this Lawsuit;
 - c. refrain from processing or attesting to any payments from the IG Account with respect to funds budgeted to be received from the Municipalities pursuant to the Ordinance; and
 - d. otherwise perform her duties with respect to the IG Account in accordance with the remaining provisions of the Ordinance and the constitutional, statutory and other duties imposed on the Clerk & Comptroller under applicable law;
3. Ordering such temporary and permanent injunctive or other relief as may be necessary or proper; and
4. Awarding the Clerk & Comptroller's costs incurred in the prosecution of this action and such other and further relief as deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 15th day of December 2011, a true and correct copy of the foregoing has been furnished by electronic mail and U. S. Mail to the names on the attached service list.



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