

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

TOWN OF GULF STREAM, et al.,

Plaintiffs,

v.

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

Defendant.

CASE NO. 502011CA017953XXXXMB
DIVISION: AO

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

Intervenor.

**DEFENDANT, PALM BEACH COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Defendant, PALM BEACH COUNTY (County), states as follows for its Answer and Affirmative Defenses to Plaintiffs' Amended Complaint for Declaratory Relief (the paragraph numbers of the Answer correspond to those of the Complaint):

ANSWER

1. Admitted.
2. Admitted that this action arises out of the establishment of a Countywide Office of Inspector General; otherwise, denied.
3. Admitted.
4. Admitted.

5. Denied, Plaintiff Municipalities lack standing because they have not been adversely impacted by the subject ordinance.

6. Admitted.

7. Denied, Plaintiffs have failed to remit the Municipalities' share of the Inspector General Program funding pursuant to section 2-429 of the Inspector General Ordinance (IGO).

8. Admitted Palm Beach County adopted a Charter in 1985, which Charter speaks for itself, denied as to any interpretation of the Charter. Further, the Countywide Ordinance at issue in this case created and constitutes a Countywide regulatory scheme approved by 72% of the voters throughout the County, including within each municipality.

9. Admitted.

10. Admitted, although none of these amendments are related in any way to the subject of this action.

11. Admitted as to the subject matter of the five countywide amendments, although none of these amendments are related in any way to the subject of this action, and these amendments predate section 6.3 of the County Charter.

12. Admitted, except denied that Protection of Wells and Wellfields, and Countywide Impact Fees are entirely funded by the County.

13. Admitted.

14. Admitted.

15. Denied that what are described as Ethics ordinances were solely the result of County Commissioner crimes; otherwise, admitted.

16. Admitted, except denied to the extent the descriptions are intended to be complete.

17. Denied, the Original Ordinance was applicable to Palm Beach County Governmental Operations, without regard to geographic location.

18. Admitted that the Ordinance speaks for itself, and without emphasis.

19. Admitted.

20. Admitted that the Ordinance speaks for itself.

21. Admitted that the Ordinance speaks for itself; except denied that the funding described was for the entire fiscal year.

22. Admitted.

23. Admitted that the Ordinance speaks for itself, and without emphasis.

24. Admitted.

25. Admitted, with the exception of decentralized purchase orders as set forth in the county purchasing ordinance, section 2-51(f)(1)(l).

26. Admitted.

27. Admitted that the County adopted what is described as the Ballot Ordinance; otherwise denied.

28. Admitted.

29. Admitted that the ordinance speaks for itself, and without emphasis.

30. Admitted that a specific proportionate share for the municipalities was not specified in the ballot ordinance.

31. Admitted that the ordinance speaks for itself, and without emphasis; denied as to any interpretation of the ordinance.

32. Admitted as to the application of the language; otherwise denied.

33. Admitted only as to the specified programs.
34. Admitted that the ordinance speaks for itself; denied as to any interpretation of the ordinance.
35. Denied.
36. Admitted that once the majority of voters in a municipality approved the referendum, the municipality was obligated to accept the IG service; denied that this is mandatory cost sharing.
37. Admitted that the ordinance speaks for itself; denied that the Municipalities were or are powerless to determine the source of the funding; denied as to any interpretation of the ordinance.
38. Admitted that the Referendum and Ballot Language speak for themselves.
39. Admitted that the Ballot Language speaks for itself; however, it is specifically denied that the Ballot Language is legally required to specify the method of funding with precision.
40. Admitted that the Ballot Ordinance and Ballot Language speak for themselves; however, it is specifically denied that the Ballot Language is legally required to specify the method of funding with precision.
41. Admitted that the Ballot Ordinance and Ballot Language speak for themselves.
42. Denied that the Ballot Ordinance directed that the voters rely on either the Original Ordinance or the Amended Ordinance as to estimated costs, included or excluded contracts, or in any respect, nor were they legally required to do so; second sentence denied.
43. Admitted.
44. Admitted.

45. Admitted that the Implementing Ordinance is not identical to the Original Ordinance and/or the Amended Ordinance.

46. Admitted that the Ordinance speaks for itself, and without emphasis; denied as to any interpretation of the Ordinance.

47. Admitted that the Ordinance speaks for itself; denied as to any interpretation of the Ordinance.

48. Admitted that the Ordinance speaks for itself; denied as to any interpretation of the Ordinance.

49. Admitted that the Ordinance speaks for itself; denied as to any interpretation of the Ordinance.

50. Denied. The Clerk & Comptroller issued the invoices.

**COUNT I – CHARGES TO MUNICIPALITIES ALLEGEDLY
BARRED BY SOVEREIGN IMMUNITY**

51. The County restates and incorporates by reference paragraphs 1-50 of this Answer.

52. Admitted that the Ballot Ordinance, the County Charter Amendment, and the Implementing Ordinance speak for themselves; denied as to any interpretation of the Charter or these ordinances.

53. Admitted that the Implementing Ordinance speaks for itself; denied as to any interpretation of the Implementing Ordinance.

54. Denied.

55. Denied that municipalities have sovereign immunity as alleged; denied there has been no express waiver of the municipalities' sovereign immunity because the waiver of sovereign immunity occurred on approval of the referendum by a majority of voters in each municipality.

- 56. Admitted.
- 57. Denied.
- 58. Denied.
- 59. Denied.

COUNT II – ALLEGEDLY UNLAWFUL TAX

- 60. The County restates and incorporates by reference paragraphs 1-50 of this Answer.
- 61. Admitted that the Ballot Ordinance, the County Charter Amendment, and the Implementing Ordinance speak for themselves; denied as to any interpretation of the Charter or ordinances.
- 62. Admitted that the Implementing Ordinance speaks for itself; denied as to any interpretation of the Implementing Ordinance.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. Admitted.
- 67. Denied.
- 68. Admitted that the statute speaks for itself; denied as to any interpretation of the statute.
- 69. Admitted that the regulatory fees can only be imposed where there is a regulatory scheme; denied as to the second sentence.
- 70. Denied; however it is admitted the fee is not a special assessment.

71. Denied that the Municipalities proportionate share of the program constitutes a tax that is unlawful or unenforceable.

72. Admitted that the voters approved the ballot question making the Municipalities subject to the Inspector General Program; denied as to the second sentence.

73. Admitted.

74. Denied to the extent this would be the only alternative.

75. Admitted that they could be similar; denied to the extent that this would be the only alternative.

76. Denied.

77. Admitted that the Implementing Ordinance speaks for itself; denied as to any interpretation of the Implementing Ordinance.

78. Denied.

79. Denied. It is also specifically denied that there is any unlawful tax.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied. It is also specifically denied that any unlawful tax is involved.

85. Denied.

86. Denied.

87. Denied.

COUNT III – ALLEGED DOUBLE PAYMENT

88. The County restates and incorporates by reference paragraphs 1-50 of this Answer.

89. Admitted that the Ballot Ordinance, the County Charter Amendment, and the Implementing Ordinance speak for themselves; denied as to any interpretation of the Charter or these ordinances.

90. Admitted that the Implementing Ordinance speaks for itself; denied as to any interpretation of the Implementing Ordinance.

91. Denied.

92. Admitted.

93. Denied.

94. Denied.

95. Admitted that they pay municipal taxes; denied that such taxes are necessary for, or are used to, fund the Office of Inspector General (OIG, or the program).

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

COUNT IV– ALLEGED CONFLICT WITH GENERAL LAW

103. The County restates and incorporates by reference paragraphs 1-50 of this Answer.
104. Admitted that the Florida Constitution speaks for itself; denied as to any interpretation of the Florida Constitution.
105. Admitted that Chapter 166 of the Florida Statutes speaks for itself; denied as to any interpretation of the statutes.
106. Admitted.
107. Admitted that section 166.241, Florida Statutes speaks for itself; denied as to any interpretation of this statute.
108. Denied.
109. Admitted as to the first sentence; denied as to second sentence.
110. Denied.
111. Admitted that the County Charter and Implementing Ordinance speak for themselves; denied as to any interpretation of the Charter or Implementing Ordinance; remaining allegations are denied.
112. Denied.
113. Denied.
114. Denied appropriation is necessary.
115. Admitted that the Implementing Ordinance speaks for itself; denied as to any interpretation of the Implementing Ordinance.
116. Denied.
117. Denied appropriation is necessary.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiff municipalities do not enjoy sovereign immunity to avoid the County Ordinance they ask this Court to interpret. Municipalities are not granted constitutional sovereign immunity under Article X of the Florida Constitution, which is the source of the law which requires that a waiver of sovereign immunity must be express and must be affirmatively pled; rather, municipal corporations only enjoy sovereign immunity to the extent granted by the legislature, and no such grant has been made as to the subject matter of this suit.

2. Article I, section 1 of the Florida Constitution provides that “[a]ll political power is inherent in the people.” The Florida Constitution allows the county to adopt charter amendments that specify when county ordinances can supersede municipal ordinances. The County Charter Amendment at issue here, which applies to all municipalities, was approved by the majority of voters of Palm Beach County pursuant to this constitutional grant of power. To the extent sovereign immunity applies to the corporate municipalities, such sovereign immunity was waived by the vote approving the ballot referendum which required “the Board of County Commissioners to establish by ordinance[]” an Inspector General, and further required “all municipalities approving this amendment” to fund the Inspector General.

3. The subject ordinance is not inconsistent with general law, but is consistent with the Florida Constitution and general law, including but not limited to Article VIII, section 1 of the Florida Constitution, and Chapter 125 and Section 166.221 of the Florida Statutes. Any fees imposed on the Municipalities are either regulatory fees or user fees lawfully imposed, and are reasonably commensurate with, and do not exceed the cost of, OIG operations.

4. Residents of the Municipalities are not being taxed at all, as the OIG may be funded through fees which may be passed on by each Municipality pursuant to Florida Law, so neither the citizens, nor the Municipalities directly fund the operation of the OIG. Municipalities need not suffer an adverse impact, and certainly have not to date because they have paid nothing pursuant to the OIG Ordinance, and therefore cannot demonstrate the adverse impact necessary to establish standing.

5. Any fees imposed on municipalities by the subject ordinance are not an illegal double tax. Municipal residents already pay both city and County ad valorem taxes, for different purposes. The benefits of OIG oversight accrue to taxpayers in any municipality in varied and additional ways than such benefits accrue to taxpayers in unincorporated parts of the County or to taxpayers in another municipality. In any event the Municipalities lack standing to bring this claim on behalf of its taxpayers because the Municipalities are not adversely impacted by an alleged double payment of taxes.

6. The County Charter, as amended, is valid and provides authority for the subject fees pursuant to the LOGER cost apportionment methodology, even though a precise funding methodology was not specifically identified in the ballot ordinance. The ballot title and summary fairly informed the voters of the chief purpose of the amendment (funding of the OIG), and the

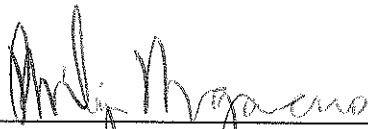
language of the title and summary did not mislead the public in that they specifically informed the public that the OIG will be funded, in part, by each Municipality. Greater specificity is not contemplated or required by Section 101.161(1), Florida Statutes (2010), nor is it legally required to exhaustively explain every ramification of the proposed amendment.

7. Any allegations or issues concerning alleged speculative, future increases to the funding base for the Inspector General Program, or alleged speculative, future supplemental budget request, are not ripe for review.

WHEREFORE, the County respectfully requests that this Court enter judgment on Plaintiffs' Complaint in the County's favor, and against Plaintiffs, at Plaintiffs' cost.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided by Electronic Mail this 28th day of August, 2013, to those listed on the attached service list.



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