

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO.

SHERYL STECKLER, in her Official
capacity as Inspector General of
Palm Beach County, Florida,

Petitioner,

vs.

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, TOWN OF MAGNONIA 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,

Respondent Municipalities,

PALM BEACH COUNTY, a political subdivision,

Respondent County, and

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

Respondent Clerk and Comptroller.

INSPECTOR GENERAL'S PETITION FOR WRIT(S) OF MANDAMUS

SHERYL STECKLER, in her official capacity as Inspector
General of Palm Beach County, by and through her undersigned
counsel, pursuant to Rule 9.100, Florida Rules of Appellate

Procedure, and files this Petition for Writ(s) of Mandamus, and states:

Basis for Invoking Jurisdiction of the Court

This Court has jurisdiction to grant the relief requested pursuant to Article V, section 4(b)(3) of the Constitution of the State of Florida.

Venue is proper in this Court pursuant to section 47.011, Florida Statutes because all parties are located in Palm Beach County and the cause of action accrued here.

The Facts

I. **The Parties**

1. The Inspector General (the IG) is an officer of Palm Beach County who in all material respects is independent of the Board of County Commissioners (the BOCC).

2. Each of the respondent Municipalities (the Municipalities) is a municipal corporation of the State of Florida, and each is located within Palm Beach County.

3. The respondent BOCC is a political subdivision of the State of Florida, with its primary offices located at 301 N. Olive Ave., West Palm Beach, Florida.

4. The respondent Clerk and Comptroller (the "Clerk") is an independent constitutional officer of Palm Beach County.

II. General Background

1. The Grand Jury

In the aftermath of a number of public corruption convictions of county and municipal elected officials, on May 1, 2009, a 15th Judicial Circuit grand jury issued a presentment in which they urged a number of significant ethics/public corruption reforms. One key recommendation was the establishment of an independent Inspector General:

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 government is real and change is necessary.

(Exhibit A, Record page 10)

2. The Ballot Referendum

On November 2, 2010, an "ethics reform" ballot referendum was submitted to the citizens of Palm Beach County. The ballot question asked:

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?

(Exhibit B, R 14)

Over 72% of the voters approved, as did a majority of the voters in each of the county's 38 municipalities.

3. The County Charter (Exhibit C, R 16-18)

The ethics reform package, which was proposed and enacted for the public welfare, is now incorporated in Article VIII of the County Charter and titled "Ethics Regulation," which requires:

- a. A county Code of Ethics (R 16);
- b. An independent Commission on Ethics to enforce the Code of Ethics (R 16); and
- c. An Inspector General and Office of Inspector General "to provide independent oversight of publicly funded transactions, projects, and other local government operations."
(R 16)

4. To assure the IG's independence, the Charter specifies:

- a. that the Inspector General will be selected by an "Inspector General Committee," comprised of the State Attorney, the Public Defender, and the five members of the independent Commission on Ethics (R 16);
- b. that the Inspector General will serve a fixed term, and may only be terminated for specified serious misconduct and by a supermajority vote of both the Inspector General Committee and the BOCC (R 16); and
- c. that the minimum funding level (the "Funding Base") of the Office of Inspector General (OIG) shall be: "one

quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General." (R 16-17)

This level of funding may only be reduced upon the request of the Inspector General. This is critical to the independence of the Inspector General because if basic funding for the OIG was a matter of pure discretion with the BOCC or other entities subject to the IG's authority, the IG's willingness to investigate and report on matters that could reflect poorly on those officials or their employees could be compromised.

Because the ballot question was also approved by a majority in each municipality, the IG has oversight responsibilities over all municipal governments within Palm Beach County, in addition to all BOCC agencies.

4. Article XII, the Inspector General Ordinance (Exhibit D, R 19-29)

In compliance with the Charter requirement (R 17-18), a "drafting committee" comprised of three county representatives, three municipal representatives, and the IG, was appointed to draft an "Inspector General Ordinance" (the "IG Ordinance") to implement the Charter's requirements. After numerous meetings spanning several months, the drafting committee unanimously approved a draft ordinance to propose to the BOCC.

In May, 2011, the BOCC unanimously approved without significant changes the drafting committee's proposed ordinance. The adopted IG Ordinance became effective on June 1, 2011. Sections 2-429 and 2-429.1 of the IG Ordinance specify how the OIG's funding shall be calculated, adopted, billed, and paid.

In September, 2011, in accordance with the Charter and the IG Ordinance requirements, the IG's budget for the fiscal year beginning October 1, 2011, was adopted by the BOCC. Collectively, the 38 Municipalities were to pay 45% (\$1.263 million) with the County projected to pay the remaining 55% (\$1.536 million) of the OIG's County/Municipal Budget.

As required by the IG Ordinance (R 27), on or about October 10, 2011, the Clerk sent each of the county's 38 municipalities bills for their respective quarterly shares of the OIG's funding.

III. Neglected Duties

1. The Municipalities

On November 14, 2011, the respondent Municipalities filed a Complaint for Declaratory Relief in Circuit Court in Palm Beach County challenging:

a. the requirement that they contribute to the OIG's funding;

b. the Ordinance's formula for determining the OIG's funding; and

c. the Ordinance's procedures for approving funding in any year that exceeds the funding base, or supplemental funding mid-year.

(Exhibit E, R 30-54)

The respondent Municipalities also refused to remit payment for the OIG during the pendency of their legal action, even though no court Order had been entered, or even requested, staying the Ordinance's requirements during the pendency of the litigation.

2. The Clerk

IG Ordinance assigns the Clerk limited duties. (R 26-27)

It requires the Clerk to:

a. Prepare allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget;

b. Invoice the County and municipalities quarterly for their respective shares; and

c. Deposit funds received into the Inspector General Special Revenue Fund.

The Clerk, as constitutional and statutory clerk, auditor, and custodian of county funds has additional duties relating to the OIG which are similar to her duties for other county entities. Specifically and as is relevant here, she

must issue warrants for the payment of legitimate and legal expenses incurred by the OIG.

On November, 22, 2011, the Clerk filed a Motion to Intervene in the suit, attaching her intended Complaint in Intervention. (Exhibit F, R 55-79) On December 25, 2011, the Clerk filed her Amended Complaint in Intervention (Exhibit G, R 80-91). The Clerk took no position on the merits of the underlying lawsuit. In both her original and amended complaints (R 78,90) she requested that, if the Court determines that the funding mechanism in the IG Ordinance to be unlawful, the Court then declare whether the Clerk 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 constitutional, statutory and other duties imposed on the Clerk & Comptroller under applicable law;

Despite taking this position in her pleadings, in the cover letter to the County Attorney, dated November 22, 2011 (Exhibit H, R92-94), which accompanied delivery of her original Motion to Intervene and Complaint in Intervention, the Clerk advised the BOCC that prior to receiving direction from this Court, unless the BOCC agreed to fund any deficit in the OIG budget resulting from the non-payment by the suing municipalities, and further agreed to refund any expenditures of funds submitted by paying municipalities in the event the municipalities prevailed in their lawsuit, she would:

1. Discontinue further collection efforts pursuant to the Ordinance;
2. Segregate all funds paid by Municipalities pursuant to the ordinance; and
3. Discontinue processing payments from the IG Account, once County funds are exhausted.

(R 93)

The BOCC did not provide the requested guarantees to the Clerk, who then implemented this, including prohibiting the expenditure of funds received under the IG Ordinance from municipalities not participating in the lawsuit. The Clerk's actions were taken even though no court Order had been entered, or even requested, which stayed during the pendency of the litigation the requirements of the IG Ordinance or other laws governing her conduct.

Both the Municipalities and BOCC readily agreed to the intervention of the Clerk, and on December 1, 2011 an Agreed Order was filed permitting the Clerk's intervention. In response to some public criticism of her actions, in a letter to the Palm Beach Post published on December 4, 2011, the Clerk claimed that that she could be criminally liable under section 129.09, Florida Statutes, were she to do otherwise, and that (in her view) the OIG really doesn't need municipal funds. (Exhibit I, R 95-96)

3. The County (BOCC)

On December 5, 2011, the BOCC filed its Answer, Affirmative Defenses, and Counterclaim. (Exhibit J, R 97-110) In its Counterclaim it demanded damages from the Municipalities at the conclusion of the lawsuit because the lack of funding from the Municipalities will result in OIG oversight that is "substantially less comprehensive that it would be with full funding of the OIG." The BOCC further alleged that as a result of the underfunding of the OIG, the County had already been damaged "by the OIG's diminished oversight of its vendors and other activities the OIG conducts." (R 105-106) Because what is not discovered by the OIG is incapable of proof, this claim is speculative and ineffectual for an award of monetary damages.

On July 26, 2012, the BOCC filed an Amended Motion for Leave to Amend Answer, Affirmative Defenses and Counterclaim

(Exhibit K, R 111-131), in which it restated a form of its "failure to fund" claim, and added a claim against the Municipalities for breach of contract. (R 125-126) An Order permitting the unopposed pleading was entered on August 3, 2012.

Although the IG Ordinance specifies that the BOCC may take legal action to enforce the municipal payment of OIG funding, the BOCC took no such action. Nor did the BOCC act to require the Clerk to perform her duties under the Ordinance and state law to bill municipalities and permit the expenditure of the funds they remit.

Most significantly and as is critical to this request for relief, the BOCC failed to fully fund the OIG as required by the County Charter and its own IG Ordinance. Instead, its official position is that it is only responsible for "its share" of the OIG's funding, despite the public injury it admits has occurred and is continuing to occur as a result.

IV. The Abatement

In December 2011, shortly after the BOCC filed its initial Answer, Affirmative Defenses, and Counterclaim, all three parties had an Agreed Order entered which abated the litigation so they could engage in voluntary resolution proceedings under Chapter 164.

V. The Inspector General's Efforts

On June 7, 2012, shortly after the termination of the unsuccessful resolution proceedings under chapter 164, and seven weeks before the parties stipulated to the filing of the BOCC's Amended Answer, the Inspector General attempted to intervene in the case below in order to protect her interests in the challenge to the funding ordinance. The Inspector General attached to her Motion to Intervene pleadings that she proposed to file upon intervention, directed to obtaining compliance from the municipalities and the Clerk during the pendency of the suit. (Exhibit L, R 132-172) All three parties, led by the BOCC, challenged the Inspector General's right to intervene. The result was an Order from the circuit court denying the IG's Motion to Intervene which effectively precluded the IG from addressing in circuit court the current failure to fund the OIG, which is continuing to damage her and the public. (Exhibit M, R 173-174) The Order denying the IG's Motion to Intervene is currently on appeal in this court in case no. 4D12-4325, and a Motion to Expedite that appeal has been filed.

Nature of the Relief sought

The Inspector General seeks the entry by this Court of one or more Writs of Mandamus directed to each of the respondents herein in which:

1. The respondent Clerk is Ordered to comply with her ministerial duties to calculate each municipality's proportionate obligation for OIG funding, send out quarterly bills, deposit the funds received in the Inspector General Special Revenue Fund, and allow the use of municipal funds to pay the OIG's legitimate expenses;

2. Each of the respondent Municipalities is Ordered to timely pay their proportionate shares of the Inspector General's funding during the pendency of this litigation, including obligations past due and obligations yet to be due; and

3. The respondent the BOCC is Ordered to fully fund the OIG "funding base," irrespective of the availability of municipal receipts.

Legal Argument in Support of the Relief Sought

Each of the respondent entities is under the direction of public officers who are required to proceed on the assumption that a duly enacted Ordinance which affects their duties is lawful:

"A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601, 602 (Fla. 1950).

"State officers and agencies must presume legislation affecting their duties to be valid..." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982).

"The contention that the oath of a public official requiring him to obey the constitution, places upon him the duty or obligation to determine whether an Act is constitutional before he will obey it, is, I think, without merit. The fallacy in it is that every Act of the legislature is presumably constitutional, until judicially declared otherwise, and the oath of office "to obey the constitution," means to obey the constitution -- not as the officer decides -- **but as judicially determined.**

The doctrine that the oath of office of a public official requires him to decide for himself whether or not an Act is constitutional before obeying it, will lend to strange results, and set at naught other binding provisions of the constitution." (Bold added)

State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers, 94 So. 681, 682-683 (Fla. 1922).

"Turning to the paramount issue before this Court, we find that this Court's decision in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 84 Fla. 592, 94 So. 681 (Fla. 1922), which held that a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute, is binding authority in the instant case."

Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri, 991 So. 2d 793, 797 (Fla. 2008).

This is common sense. Government could not function if the mere filing of a lawsuit challenging a funding requirement automatically halted all such funding. This is particularly egregious when, as here, the lack of funding is causing ongoing harm to the public welfare, as one of the primary parties hereto has implicitly admitted. The current challenge could take years to finally resolve. And when it does resolve, any of the 24 municipalities not party to this litigation could file its own

multi-year challenge under its own theory, and then another municipality and so forth ad infinitum, thereby rendering the Charter's minimum funding requirements theoretical only.

Mandamus requires that the petitioner establish both a clear legal right to have a public officer perform a ministerial duty, and that there are no other legal remedies available.

In Order for a court to issue a writ of mandamus, a petitioner 'must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.' *Hatten v. State*, 561 So. 2d 562, 563 (Fla. 1990).

Holcomb v. Department of Corrections, 609 So. 2d 751 (1st DCA 1992).

Section 8.3 of the County Charter provides, in relevant part:

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...in no event shall be Funding Base be reduced below one quarter of one percent unless the request for such reduction is made by the Inspector General. . . .

Section 2-429 of the IG Ordinance provides, in relevant part:

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

(1) Pursuant to their annual budgeting processes, the county and each municipality shall provide sufficient financial support for the inspector general's office to fulfill its duties as set forth in this article. The county and municipalities shall fund the inspector general's

office proportionately, based on the actual expenses of each governmental entity as recorded in the most recent audited year and reported in the Florida Department of Financial Services Local Government Electronic Reporting system (LOGER), pursuant to Florida Statutes, § 218.32, as may be amended.

. . . .

(4) No later than the fifth business day in 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.

(5) In the event the county or a municipality does not submit the most recent fiscal year data in the LOGER system, the proportionate share for that municipality shall be based upon its last LOGER system submittal, subject to an escalator for each year the submittal was not made. The escalator shall be based on the Consumer Price Index for All Urban Consumers, U.S. City Average, as set forth in Florida Statutes, § 193.155, as may be amended.

. . . .

(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.

. . . .

Section 2-429.1 of the IG Ordinance provides, in relevant part:

Sec. 2-429.1. - Funding base.

(1) 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. The purpose of establishing the funding base is to ensure the office is adequately funded. The funding base is currently set at an amount equal to one quarter of one (0.25) percent of the contracts as described in section 2-429(2). . . .

In the case below, no challenge was made to the Charter's requirement that the OIG be provided annual funding of no less than 0.25% of the contracts of the covered entities, but this requirement is not being complied with. Due to the failure of all parties to comply with their ministerial duties relating to the OIG's funding, the OIG is being unlawfully underfunded.

The acts and omissions of all three parties, individually and collectively, have prevented the IG from implementing her staffing and operational plan that was developed based on the "funding base" mandated in the Charter and the IG Ordinance. These acts and omissions contributed to causing the IG in 2012 to halt the hiring planned. The continuation of this into 2013 may further result in the need to layoff or terminate some existing staff.

These acts and omissions are in derogation of the public's overwhelming vote to require an "independent" Inspector General and place in the Charter a minimum "funding base" for the OIG. As such they are in violation of Article I, Section 1 of the Florida Constitution, which provides:

"SECTION 1. Political power.—All 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."

The vitality of this constitutional provision was recently reaffirmed by the Florida Supreme Court in *Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012).

The IG has no adequate legal remedy. The damages that are resulting, and that will continue to result, from the OIG's failure to discover irregularities due to lack of resources will not be identified and cannot be fully remedied in the future.

I. The Clerk & Comptroller

The Clerk, as a public official, must comply with the legal requirements governing her Office. She must presume the statutes and ordinances which govern her conduct to be legal until ruled otherwise, and act accordingly. The fact that an Ordinance may be ruled illegal at a future time is irrelevant.

The Clerk's duties under section 2-429(4) and (7) of the IG Ordinance (above) are to apply the Ordinance's formula to determine each entity's proportionate share of the OIG's required funding, to send out quarterly billings, and to deposit the funds received into the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund.

The Clerk's duties under Article VIII, section 1(d) of the Florida Constitution, and section 125.07, Florida Statutes, are

to pay the legitimate bills of the County's entities from appropriately available funds.

These duties are ministerial in nature, and the IG has a right to their performance. No court Order has been entered, or even requested, to stay these duties of the Clerk during the pendency of the litigation below.

The IG has no adequate remedy at law to the Clerk's failure to perform these ministerial duties. As admitted by the BOCC in the case below, the resulting underfunding of the OIG is causing ongoing public harm, because of "the OIG's diminished oversight of its vendors and other activities the OIG conducts." What is not discovered cannot be quantified for a later award of monetary damages.

The Clerk maintains that she is justified in refusing to perform these duties because section 129.09, F.S., places her in danger of personal liability and possible criminal prosecution if she performs them. But this is incorrect. That law states:

129.09 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 or 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.

The Clerk's ministerial duties to apply a specified formula to determine proportionate shares of an obligation, send out bills, and deposit the receipts, cannot constitute the payment of an illegal charge and therefore subject the Clerk to personal liability or criminal charges.

Additionally, because the Clerk must presume the ordinances which govern her conduct to be valid "until the contrary is shown." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950), paying legitimate expenses from funds remitted by municipalities in compliance with an Ordinance cannot constitute a violation of section 129.09. Therefore, the Clerk would not be in jeopardy of personal liability or criminal prosecution as a result of permitting the expenditure of funds remitted by municipalities under the IG Ordinance.

Even if the Clerk was actually in jeopardy of personal liability or criminal charges for performing her legal duties, through the simple act of issuing a Mandate requiring her to perform those duties this Court would insulate her from any conceivable liability.

The failure of Clerk to perform these ministerial duties is causing irreparable injury to the IG and to the citizens of the county and its municipalities. The IG has a clear legal right to have the Clerk perform these ministerial duties.

II. The Municipalities

The officers of the respondent Municipalities are obligated to comply with the requirements of the Inspector General Ordinance, as is relevant here section 2-429(1), (4), and (7) (above), and remit their proportionate shares of OIG funding in a timely manner.

This obligation remains in effect until and unless a Court strikes those provisions, or enters an Order staying this requirement during the pendency of the legal action below. The obligation is not abated merely because the respondent Municipalities have filed a legal challenge. No court order has been entered, or even requested, to stay this obligation during the pendency of the litigation below.

The IG has a clear legal right to the performance of the respondent Municipalities' duty to comply with the Charter and the Ordinance to timely pay their respective proportionate shares for OIG funding. The failure to comply with this ministerial duty is causing irreparable injury to the OIG and to the citizens of the county and its municipalities. The IG has no adequate remedy at law.

III. The BOCC

The BOCC is the primary party responsible for funding the OIG. It both approves and funds the OIG's annual budget. The

County Charter requires that the OIG's budget be fully funded to the minimum levels specified therein. Neither the Charter nor the BOCC's own IG Ordinance make the BOCC's obligation to fund the OIG's budget contingent on whether all 38 municipalities timely remit payment to the BOCC each quarter.

Although the IG Ordinance requires that all funds received from the municipalities be placed in the "Office of Inspector General, Palm Beach County, Florida Special Revenue Fund," nowhere does the IG Ordinance confine the OIG to only the moneys in that fund at any specific moment in time. Nor do either the Charter or the Ordinance make the BOCC's duty to provide the minimum level of OIG funding contingent upon the BOCC's timely receipt each quarter of payment from each of the 38 municipalities.

There are good policy reasons for this. First, the funding of the OIG was obviously a priority to the citizens who, by their vote, specified in the Charter the minimum level of funding that must be provided, and specified that the OIG must be "adequately funded.". Secondly, without a dependable budget it is difficult to fully staff an operation and effectively plan and schedule its efforts. Third, while the \$1.263 million that the municipalities were to pay for fiscal year 2012 constituted 45% of the OIG's minimum budget, it constituted only a

microscopic portion of the hundreds of millions of dollars that the BOCC had available to distribute in that fiscal year.

Although the BOCC has authority under section 2-429(7) of the IG Ordinance (above) to pursue legal action against municipalities which do not timely pay, it is not required to do so. Nor is the BOCC required to pursue legal remedies against the Clerk for refusing to perform her duties under the IG Ordinance and refusing to permit the expenditure of municipal funds received under the IG Ordinance. The BOCC may even "lead the charge" against the IG's efforts to require compliance by the Municipalities and the Clerk, as it has done here.

But the BOCC cannot effectively "defund" the OIG by these acts and omissions. Because it is legally required to provide the OIG the minimum funding specified by the Charter and its own Ordinance, if it chooses to engage in these acts and omissions it does so at its own peril, not at the peril of the IG.

The BOCC's obligation to fund the OIG to the minimum levels specified in the County Charter, its Ordinance, and the budget it adopted for the OIG is a ministerial duty.

As the BOCC itself has implicitly admitted, the failure to fully fund the OIG is damaging the OIG and the county's citizens. There is no adequate remedy at law for the resulting damages.

The IG has a clear legal right to have the BOCC perform its ministerial duty to fully fund the OIG to the extent required by the Charter, its own Ordinance, and the budget it has approved for the OIG.

Because the acts and omissions of the three classes of respondents described above is causing ongoing and irreparable damage to the IG and the public welfare, this is a matter of urgency and the IG respectfully requests that this Court expedite its consideration of it.

WHEREFORE, the Inspector General respectfully requests that this Court issue one or more Orders to Show Cause to each of the named Respondents, advance this matter on its calendar, and thereafter enter one or more Writs of Mandamus in which it:

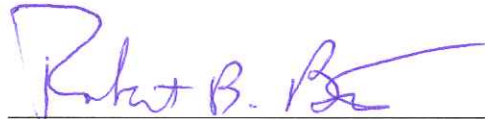
a. Orders the Clerk to comply with her ministerial duties to calculate each municipality's proportionate obligation for OIG funding, send out quarterly bills, deposit the funds received in the Inspector General Special Revenue Fund, and allow the use of municipal funds to pay the OIG's legitimate expenses;

b. Orders the respondent Municipalities to timely pay their proportionate shares of the Inspector General's funding during the pendency of this litigation, including both obligations past due and obligations yet to be due; and

c. Orders the BOCC to continue to approve the OIG's budget in accordance with the requirements of Charter and Ordinance, and fully fund that budget irrespective of municipal receipts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Inspector General's petition for Writ(s) of Mandamus has been provided by email this 14th day of December, 2012, to those on the attached service list.



Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Inspector General
Of Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Reply Brief is Courier New 12-point font, in compliance with Fla. R. App. P. 9.210(a)(2).



Robert B. Beitler

SERVICE LIST

Claudia M. McKenna, City Attorney
Douglas N. Yeargin, Assistant City Attorney
Kimberly L. Rothenburg, Assistant City Attorney
City of West Palm Beach
P.O. Box 3366
West Palm Beach, Florida 33402
Phone: (561) 822-1350
Fax: (561) 822-1373
Emails: cmckenna@wpb.org
dyeargin@wpb.org
[krothenburg@wpb.org](mailto: krothenburg@wpb.org)

COUNSEL FOR CITY OF WEST PALM BEACH

John C. Randolph, Esquire
Jones, Foster, Johnson & Stubb, P.A.
P.O. Box 3475
West Palm Beach, Florida 33402-3475
Phone: (561) 659-3000
Fax: (561) 832-1454
Email: jrandolph@jones-foster.com

COUNSEL FOR TOWN OF GULF STREAM

Keith W. Davis, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: keith@corbettandwhite.com
**COUNSEL FOR VILLAGE OF TEQUESTA,
TOWN OF PALM BEACH SHORES and
TOWN OF MANGONIA PARK**

Pamela Hanna Ryan, City Attorney
City of Riviera Beach Attorney's Office
600 W. Blue Herron Boulevard
Riviera Beach, Florida 33404-4311
Phone: (561) 845-4069
Fax: (561) 845-4017
Email: pryan@rivierabch.com
COUNSEL FOR CITY OF RIVIERA BEACH

Thomas Jay Baird, Esquire
Jones, Foster, Johnson & Stubbs, P.A.
801 Maplewood Drive, Suite 22A
Jupiter, Florida 33458-8821
Phone: (561) 650-8233
Fax: (561) 746-6933
Email: tbaird@jones-foster.com
**COUNSEL FOR TOWN OF JUPITER and
TOWN OF LAKE PARK**

Diana Grub Frieser, City Attorney
City of Boca Raton
201 W. Palmetto Park Road
Boca Raton, Florida 33432-3730
Phone: (561) 393-7700
Fax: (561) 393-7780
Email: dgricoli@myboca.us
COUNSEL FOR CITY OF BOCA RATON

Martin Alexander, Esquire
Holland & Knight, LLP
222 Lakeview Avenue, Suite 1000
West Palm Beach, Florida 33401
Phone: (561) 833-2000
Fax: (561) 650-8399
Email: martin.alexander@hklaw.com

Nathan A. Adams, IV, Esquire
Post Office Drawer 810
Tallahassee, Florida 32302
Phone: (850) 224-7000
Fax: (850) 224-8832
Email: Nathan.adams@hklaw.com

Denise Coffman, Esquire
General Counsel for Clerk and Comptroller, Sharon Bock
301 North Olive Avenue, 9th Floor
West Palm Beach, Florida 33401
Phone: (561) 355-1640
Fax: (561) 355-7040
Email: DCOFFMAN@mypalmbeachclerk.com
COUNSEL FOR PALM BEACH COUNTY CLERK & COMPTROLLER

Andrew J. McMahon, Esquire
Palm Beach County Attorney's Office
P.O. Box 1989
West Palm Beach, FL 33402
Phone: (561) 355-6021
Fax: (561) 355-4234
Email: amcmahon@pbcgov.org

Philip Mugavero, Esquire
Palm Beach County Attorney's Office
P.O. Box 1989
West Palm Beach, FL 33402
Phone: (561) 355-6021
Fax: (561) 355-4234
Email: pmugaver@pbcgov.org
COUNSEL FOR PALM BEACH COUNTY (BOCC)

R. Brian Shutt, City Attorney
Terrill Pyburn, Assistant City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, Florida 33444-2768
Phone: (561) 243-7090
Fax: (561) 278-4755
Email: shutt@MyDelrayBeach.com
pyburn@MyDelrayBeach.com

COUNSEL FOR CITY OF DELRAY BEACH

Trela J. White, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: trela@corbettandwhite.com

COUNSEL FOR TOWN OF MANALAPAN

R. Max Lohman, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: max@corbettandwhite.com

COUNSEL FOR CITY OF PALM BEACH GARDENS

Glenn J. Torcivia, Esquire
Torcivia & Associates, P.A.
Northpoint Corporate Center
701 Northpoint Pkwy, Suite 209
West Palm Beach, Florida 33407
Phone (561) 686-8700
Fax (561) 686-8764
Email: glenn@torcivialaw.com

COUNSEL FOR TOWN OF HIGHLAND BEACH

Kenneth G. Spillias, Esquire
Lewis, Longman & Walker
515 N. Flagler Drive, Suite 1500
West Palm Beach, Florida 33401-4327
Phone: (561) 640-0820
Fax: (561) 640-8202
Email: kspillias@llw-law.com

COUNSEL FOR TOWN OF OCEAN RIDGE