

Meeting Date
July 12, 2016



AGENDA	
Section	New Business
Item No.	VI D 3

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Richard Pierce, an individual, and the Brevard County Professional Firefighters, Local 2969, International Association Of Firefighters, Inc., a Florida Non-Profit Corporation v. Board Of County Commissioners, of Brevard County, a Home Rule Charter County of the State of Florida
DEPT/OFFICE:	County Attorney's Office

Requested Action:

It is requested that the Board consider options for representation of the County including retaining outside counsel.

Summary Explanation & Background:

Background:

The IAAF has filed suit to invalidate both the special act that authorized the referendum giving rise to the charter cap amendment and the charter amendment imposing the cap.


The County Attorney's office recommends retaining the services of outside counsel to defend the Charter Cap amendment. During the legal panel review of that amendment, attorney Carolyn Ansay, with the firm of Torcivia, Donlon, Goddeau & Ansay, P.A. outside counsel opined that the Charter Cap was consistent with general law, which includes the state constitution. The County would recommend contacting Ms. Ansay to represent the County in above styled case.

Fiscal Impact: approximately \$200-\$250 per hour for outside counsel.

Clerk to the Board Instructions:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension County Attorney 
Stockton Whitten	Assistant County Manager	



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July 13, 2016

M E M O R A N D U M

TO: Scott Knox, County Attorney

RE: Item VI.D.3., Board Consideration of Options for Representation of the County, Including Retaining Outside Counsel, in the Case of Richard Pierce, an Individual, and Brevard County Professional Firefighters, Local 2969, International Association of Firefighters, Inc., a Florida Non-Profit Corporation v. Board of County Commissioners of Brevard County, a Home Rule Charter County of the State of Florida

The Board of Commissioners, in regular session on July 12, 2016, authorized an Executive Session on Thursday, July 14, 2016, after the conclusion of the Transportation Planning Organization (TPO) meeting which will be sometime between 9:00 a.m. and 12:00 p.m., in the County Manager's Conference Room, Third Floor, Building C, 2725 Judge Fran Jamieson Way, Viera, for the purpose of discussing strategy related to litigation in Richard Pierce, an individual, and the Brevard County Professional Firefighters, Local 2969, International Association of Firefighters, Inc., a Florida Non-Profit Corporation v. Board of County Commissioners of Brevard County, a Home Rule Charter County of the State of Florida, Case No. 05-2016-CA-032836-XXXX-XX.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: County Manager
Each Commissioner
SCGTV Director

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA
NOTICE OF ATTORNEY-CLIENT PRIVATE MEETING

NOTICE IS HEREBY GIVEN that the Board of County Commissioners will meet on Thursday, July 14, 2016, after the conclusion of the TPO meeting which will be sometime between 9:00 a.m. to 12:00 p.m., in the County Manager's Conference Room, Third Floor of Building "C" at the Brevard County Government Operations Center, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, for the purpose of discussing strategy related to litigation in Richard Pierce, an individual, and the Brevard County Professional Firefighters, Local 2969, International Association Of Firefighters, Inc., a Florida Non-Profit Corporation v. Board Of County Commissioners, of Brevard County, a Home Rule Charter County of the State of Florida, Case No. 05-2016-CA-032836-XXXX-XX.

The session is commenced as part of an open special meeting on the above indicated date. As part of an open special meeting, the Chair of the Board announces that the attorney-client session has commenced and, upon approval of a motion to adjourn for an attorney-client session, the attorney-client session shall thereafter adjourn and reconvene in the County Manager's office. The estimated length of the attorney-client session is one hour or less. The persons attending the executive session are:

Robin Fisher, County Commissioner, District 1
Jim Barfield, County Commissioner, District 2
Trudie Infantini, County Commissioner, District 3
Curt Smith, County Commissioner, District 4
Andy Anderson, County Commissioner, District 5
Stockton Whitten, County Manager
Scott L. Knox, County Attorney
Margaret Eddy-Sheffield, King Reporting Services, Inc.

At the conclusion of the private attorney-client session, the open special meeting shall be re-opened and the Chairperson shall announce the termination of the session. A transcript of the executive session shall be made part of the public record upon conclusion of the litigation.

**IN THE COUNTY CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL
CIRCUIT IN AND FOR BREVARD
COUNTY, FLORIDA**

RICHARD PIERCE,
an individual, and the
**BREVARD COUNTY
PROFESSIONAL FIREFIGHTERS,
LOCAL 2969,
INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, INC.,**
a Florida Non-Profit Corporation,

Plaintiffs,

v.

CASE NO.:

**BOARD OF COUNTY COMMISSIONERS,
OF BREVARD COUNTY,**
a Home Rule Charter County
of the State of Florida,

Defendant.

COMPLAINT

Plaintiffs, RICHARD PIERCE (“Pierce”) and the BREVARD COUNTY PROFESSIONAL FIREFIGHTERS, LOCAL 2969, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, INC. (the “Brevard County Professional Firefighters”) (collectively, Pierce and the Brevard County Professional Firefighters shall be referred to as the “Plaintiffs”), pursuant to Rule 1.071 of the Florida Rules of Civil Procedure, by and through their undersigned counsel, hereby bring this action against the Defendant, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (“Defendant” or the “Board”), and allege the following:

NATURE OF ACTION

1. This is an action challenging the constitutionality of Chapter 2007-310, Laws of Florida, a special law which limits the increase in the Brevard County's operating budget, and Section 2.9.3.1 of the Brevard County Home Rule Charter, which, among other things, implements limitations on growth in ad valorem tax revenues. Such action is brought pursuant to Fla. Const. Art. VIII, § 1(g), as a "special law" Chapter 2007-310 and Section 2.9.3.1 of the Brevard County Home Rule Charter are in conflict with the general law of Florida, namely Chapters 129 and 200 of the Florida Statutes. Plaintiffs seek an order declaring this special law 2007-310 and Section 2.9.3.1 of the Brevard County Home Rule Charter as unconstitutional.

JURISDICTION and VENUE

2. Jurisdiction in this Court is proper pursuant to Article V, Section 5 of the Florida Constitution, Sections 26.012 and 86.011 of the Florida Statutes, and Rule 1.610, Florida Rules of Civil Procedure.

3. The acts and omissions that give rise to this action occurred in Brevard County, Florida. Venue is therefore proper in this Circuit and before this Court, pursuant to Section 47.011, Florida Statutes.

4. At all times material hereto, the Plaintiffs are or were residents of Brevard County, Florida.

5. Defendant is the Board of County Commissioners, the legal representative of Brevard County, a charter government of the State of Florida.

PARTIES

Plaintiffs

6. Plaintiff Pierce is, and was, at relevant times hereto a resident of Brevard County, Florida. Further, Pierce is employed by and honorably serves Brevard County as a firefighter.

7. Plaintiff Brevard County Professional Firefighters is, and was, at all relevant times hereto, a Florida non-profit corporation which serves as the collective bargaining unit for firefighters employed by Brevard County. Membership within the union is comprised entirely of employees of Brevard County, Florida, including Plaintiff Pierce.

8. Plaintiff Brevard County Professional Firefighters' principal place of business is 571 Haverty Court, Suite N, Rockledge, Brevard County, Florida 32955.

9. The salaries of the Brevard County Professional Firefighters, including Plaintiff Pierce, among other Brevard County employees, are determined, in part, by funds provided from the Brevard County operating budget.

10. The Brevard County operating budget is set by the Board.

11. The operating budget for Brevard County is funded, in part, by revenues generated by ad valorem tax.

12. The Board, however, pursuant to Section 2.9.3.1 of the Brevard County Home Charter, as amended in 2008, is unconstitutionally restrained from imposing any "any ad valorem tax for county purposes at a millage rate which causes the budgeted revenue therefrom to the County to increase over the budgeted ad valorem revenue for

the previous fiscal year by more than the lesser of: (1) three percent, or (2) the percentage change in the Consumer Price Index from the preceding calendar year, as measured in accordance with Section 193.155(1)(b), Florida Statutes (as that Section exists in 2008 or may thereafter be amended or transferred).”

13. Because of the limitations imposed by Section 2.9.3.1 of the Brevard County Home Charter and the inability of the Board to increase its operating budget, Brevard County is unable to fairly and justly pay wages to the Plaintiffs and other Brevard County employees comparable to other Florida counties and municipalities.

Defendant

14. Defendant is the Brevard County Board of County Commissioners, as direct and legal representative of Brevard County.

15. Brevard County (“the County”) is a political subdivision of the State of Florida. See Fla. Const. art. VIII, § 1(a); Brevard Cnty. Charter § 1.1.

16. The Board is the legislative and governing body of Brevard County. See Fla. Const. art. VIII, § 1(e); Fla. Stat. § 125.01; Brevard Cnty. Charter § 1.5.

17. The Board has the power to carry on county government. Fla. Stat. § 125.01(a).

18. The Board’s powers include the “final budgetary determinations for... (a) All County Governmental operations including but not limited to County management; (b) All administrative departments of the government;” Brevard Cnty. Charter § 2.9.3.

19. The Board takes official action by adopting, amending, or repealing ordinances, resolutions, and motions. Brevard Cnty. Charter § 2.10.1; *see also* Fla. Stat. §

125.01(t). The Board is further empowered to amend the Brevard County Home Rule Charter in a manner which is “not inconsistent with the State Constitution and with general law.” Brevard Cnty. Charter § 7.3.1.

20. Under Florida Statutes § 125.15, “[t]he county commissioners shall sue and be sued in the name of the County.”

FACTUAL ALLEGATIONS

Chapter 2007-310

21. On January 9, 2007, general bill H 193 was filed with the Florida House of Representatives. The general bill proposed “limiting annual increases in county operating budgets.” On May 4, 2007, the H 193 bill died in the Committee on State Affairs.

22. On January 19, 2007, general bill H 363 was filed with the House of Representatives. The general bill proposed “limiting annual increases in county and municipal operating budgets.” On March 5, 2007, the H 363 bill was withdrawn.

23. The next day, on March 6, 2007, local bill H 1587 was filed with the House of Representatives. The local bill proposed “limiting annual increases in the county’s operating budget” for Indian River County. On May 4, 2007, the H 1587 bill died in the Committee on Urban and Local Affairs.

24. On March 6, 2007, local bill HB 1577 was filed with the House of Representatives. The local bill HB 1577 proposed “limiting annual increases in Brevard County’s operating budget.”

25. Unlike the nearly identical three bills filed in 2007 before HB 1577, all of which failed due to their unconstitutionality, on May 2, 2007, the Legislature of the State of Florida passed local bill HB 1577.

26. The HB 1577 local bill entitled, "An act relating to Brevard County; limiting annual increases in Brevard County's operating budget; providing for exceptions to the limitation; providing a ballot statement; requiring a referendum; providing an effective date," was signed by the governor on June 19, 2007, and has been codified into law as Chapter 2007-310.

27. Chapter 2007-310 states:

Section 1. Limitation on increases in the county's operating budget.-- Except as provided in this section, annual increases in Brevard County's operating budget shall not exceed the percentage increase in the county's population, as determined by the University of Florida Bureau of Economic and Business Research's latest Florida Estimates of Population, in addition to the percentage change in the Consumer Price Index as provided in section 193.155(1)(b), Florida Statutes. This limitation in annual increases in the county's operating budget may be overcome by a finding of necessity due to emergency or critical need approved by a super majority vote of the county commission.

Section 2. Referendum.-- (1) In conjunction with the next general election, and in accordance with the general laws governing elections, the Board of County Commissioners of Brevard County shall call and the Brevard County Supervisor of Elections shall conduct a referendum of qualified electors of the county for the purpose of posing the following question:

Shall annual increases in Brevard County's operating budget be limited to the percentage change in the county's population in addition to the percentage change in the Consumer Price Index unless the county commission finds, by a super majority vote, that exceeding the limitation is necessary due to emergency or critical need?

Yes

___No

"Qualified elector" means a person who is registered to vote in a general election held in Brevard County.

28. Chapter 2007-310 is a "special law" that applies only to Brevard County. Fla. Const. Art. X, § 12(g). A law that applies "only in, a specifically indicated part of the State" and does not "operate universally throughout the state," is a "special law." *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); Fla. Const. Art. VIII § 1(g).¹ Special laws cannot amend general laws. *Alachua County v. Adams*, 702 So. 2d 1253, 1255 (Fla. 1997).

29. Chapter 129 and 200 of the Florida Statutes are general laws that already set out a structure for establishing the budget and resulting millage rate for all counties in Florida. Therefore, any provisions "attempting to limit the statutory authority given by the legislature to county commissions in establishing budget and millage rates" will be found to be "unconstitutional as being inconsistent with general law." *Ellis v. Burk*, 866 So. 2d 1236, 1238 (Fla. Dist. Ct. App. 5th Dist. 2004).

30. Chapter 2007-310 is a special law that poses a limitation in annual increases in the county's operating budget. This is contrary to the general laws of Florida, specifically Chapter 129 and 200 of the Florida Statutes, and therefore is unconstitutional.

¹ "Special laws referred to in Fla. Const. Art. VIII § 1(g) are those which relate to local self-government of charter counties; that is, those which accomplish such things as adopting or amending or adding powers or limitations to county charters." AGO 1990-27, 1990 Fla. AG Lexis 27.

Section 2.9.3.1 of the Brevard County Home Rule Charter

31. On August 19, 2008, presumably following the authority of Chapter 2007-310, the County approved Section 2.9.3.1 as an amendment to the Brevard County Home Rule Charter.

32. Section 2.9.3.1, entitled "Limitations on growth in ad valorem tax revenues," added sections (a) through (e) to the Brevard County Home Rule Charter.

33. Section 2.9.3.1 took effect November 11, 2008 and has been formally added to the Brevard County Home Rule Charter.

34. Section 2.9.3.1 limits the power granted to the Board under the Florida Statutes by imposing a cap on the millage rates. The section states:

[T]he Board of County Commissioners shall not impose any ad valorem tax for county purposes at a millage rate which causes the budgeted revenue therefrom to the County to increase over the budgeted ad valorem revenue for the previous fiscal year by more than the lesser of: (1) three percent, or (2) the percentage change in the Consumer Price Index from the preceding calendar year, as measured in accordance with Section 193.155(1)(b), Florida Statutes (as that Section exists in 2008 or may thereafter be amended or transferred).

35. Chapter 129 and 200 of the Florida Statutes grant the county commission the statutory authority to prepare and approve the budget as well as set the millage rates. Therefore, any provisions "attempting to limit the statutory authority given by the legislature to county commissions in establishing budget and millage rates" will be found to be "unconstitutional as being inconsistent with general law." *Ellis* at 1238.

36. The Florida Constitution states that “Counties operating under county charters shall have all powers of local self-government **not inconsistent with general law.**” Fla. Const. Art. VIII, § 1(g) (emphasis added).

37. Although Section 2.9.3.1 is created under a special law, Chapter 2007-310, neither has the authority to amend or be inconsistent with general laws, specifically Chapter 129 and 200 of the Florida Statutes.

38. In 2004, the County amended its Charter to include section 5.4. This section was almost identical to the current Section 2.9.3.1 presently at issue. Section 5.4 stated:

Brevard County shall not increase its ad valorem tax revenue for operating funds (exclusive of revenues from new construction and improvements) in any one year by more than three percent (3 %) or the percentage change in the Consumer Price Index for the previous year, whichever is less, over the ad valorem revenues in the previous year, without approval of a majority of the electors of the County voting thereon at a general election or special election called for purposes of such approval.

39. In 2004, Section 5.4 was challenged and the Fifth District Court of Appeals of Florida deemed the amendment unconstitutional as it was inconsistent with Chapter 129 and 200 of the Florida Statutes.

40. In 1982, Marion County attempted to amend its charter to include a section creating “a cap of .25 mills of ad valorem taxes.” *Board of County Comm'rs v. McKeever*, 436 So. 2d 299, 300 (Fla. Dist. Ct. App. 5th Dist. 1983). In 1983, the Fifth District Court of Appeals in Florida deemed the amendment unconstitutional according to Chapter 129 and 200 of the Florida Statutes.

41. In 1993, Charlotte County attempted to amend their charter to include a section indicating “the Board of County Commissioners shall not adopt any millage rate which would result in more than three percent (3%) increase.” *Charlotte County Board of County Commissioners v. Taylor*, 650 So. 2d 146 (Fla. 2d DCA 1995). In 1995, the Second District Court of Appeals of Florida deemed the amendment unconstitutional according to Chapter 129 and 200 of the Florida Statutes.

42. In 2001, the Florida Attorney General issued an opinion to the Hillsborough County Charter Review Board considering an amendment to their charter creating a “cap on increases in the county’s operating budget.” The Florida Attorney General indicated that “the county may not amend its charter to place a cap on the annual increase in the county’s operating budget...Such an amendment would conflict with the provisions of Chapter 129 and 200, Florida Statutes.” Florida Attorney General Opinion 2001-04.

43. Although limiting a county’s operating budget has been deemed unconstitutional on four separate occasions (including Brevard County) by Florida Courts or the Florida Attorney General, Chapter 2007-310 and Section 2.9.3.1 have somehow passed and remained unchallenged.

COUNT I: DECLARATORY JUDGMENT
As a “special law,” Chapter 2007-210 is Unconstitutional.

44. The Plaintiffs repeat, adopt and re-allege the allegations of paragraphs 1-43, as if fully set forth herein.

45. This is an action challenging the constitutionality of Chapter 2007-310, a special law, brought pursuant to Fla. Const. Art. VIII, section 1(g); Chapter 129 of the Florida Statutes; and Chapter 200 of the Florida Statutes.

46. Article VIII, section 1(g) prohibits “counties operating under county charters” from exercising powers “inconsistent with general law.”

47. Chapters 129 and 200 of the Florida Statutes sets forth “the exclusive statutory scheme for establishing the budget and the resulting millage rate.” *Ellis* at 1238.

48. By imposing a different scheme in establishing the county budget and millage rate, the special law of Chapter 2007-310 is directly inconsistent with the power exclusively reserved to the county commission by general laws, specifically Chapter 129 and 200 of the Florida Statutes.

49. This limit in the County’s operating budget mandated by Chapter 2007-310 is in violation of Article VIII, section 1(g) of the Florida Constitution.

50. For reasons including but not limited to those stated herein, an actual dispute exists between Plaintiffs and Defendant, which the parties have a genuine and opposing interests, which interests are direct and substantial, and of which dispute a judicial determination would be final and conclusive.

51. Alternatively, this matter raises an important constitutional question as to whether Chapter 2007-310, a special law, is in conflict with the general laws of Florida and impermissibly limits the statutory authority given to the Board to establish its budget and millage rates. A judicial opinion in this regard will benefit the County, its residents, and its employees.

COUNT II: DECLARATORY JUDGMENT
Section 2.9.3.1 of the Brevard County Home Rule Charter is Unconstitutional

52. The Plaintiffs repeat, adopt and re-allege the allegations of paragraphs 1-43, as if fully set forth herein.

53. This is an action challenging the constitutionality of Section 2.9.3.1 of the Brevard County Home Rule Charter and is brought pursuant to Fla. Const. Art. VIII, section 1(g); Chapter 129 of the Florida Statutes; and Chapter 200 of the Florida Statutes.

54. Article VIII, section 1(g) prohibits “counties operating under county charters” from exercising powers “inconsistent with general law.”

55. Chapters 129 and 200 of the Florida Statutes sets forth “the exclusive statutory scheme for establishing the budget and the resulting millage rate.” *Ellis* at 1238.

56. By imposing a different scheme in establishing the county budget and millage rate, Section 2.9.3.1 of the Brevard County Home Rule Charter is directly inconsistent is in conflict with the general laws of Florida and impermissibly limits the statutory authority given to the Board to establish its budget and millage rates.

57. This limit in the County’s operating budget mandated by Section 2.9.3.1 of the Brevard County Home Rule Charter is in violation of Article VIII, section 1(g) of the Florida Constitution.

58. For reasons including but not limited to those stated herein, an actual dispute exists between Plaintiffs and Defendant, which the parties have a genuine and opposing interests, which interests are direct and substantial, and of which dispute a judicial determination would be final and conclusive.

59. Alternatively, this matter raises an important constitutional question as to whether Section 2.9.3.1 of the Brevard County Home Rule Charter is in conflict with the general laws of Florida and impermissibly limits the statutory authority given to the Board to establish its budget and millage rates. A judicial opinion in this regard will benefit the County, its residents, and its employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand the following relief:

- (a) That the Court enter a declaratory judgment that Chapter 2007-310 violates Article VIII section 1(g) of the Florida Constitution and is in conflict with the general laws of Florida, including Chapter 129 and 200 of the Florida Statutes;
- (b) That the Court enter a declaratory judgment that Section 2.9.3.1 entitled “Limitations on growth in ad valorem tax revenues” under Article 2 of the Brevard County Home Rule Charter violates Article VIII section 1(g) of the Florida Constitution and is in conflict with the general laws of Florida, including Chapter 129 and 200 of the Florida Statutes;
- (c) Such other and further relief as may follow from the entry of a declaratory judgment;
- (d) Reasonable attorney fees, expenses and costs, to the fullest extent allowed by law and equity; and
- (e) Any other such relief as this Court deems just and proper.

DATED this 8th day of July, 2016.

Respectfully submitted,

s/ Nathan A. McCoy

Nathan A. McCoy, Esq.

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