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ON CHARTER GOVERNMENT IN FLORIDA
JANUARY 17, 2007

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January 17, 2007

**PUBLIC WORKSHOP OF THE BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER COUNTY TO HEAR A
PRESENTATION ON CHARTER GOVERNMENT IN FLORIDA,
PRESENTED BY VIRGINIA “GINGER” DELEGAL, GENERAL
COUNSEL, FLORIDA ASSOCIATION OF COUNTIES**

The Board of County Commissioners of Indian River County, Florida, met in a Public Workshop at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Wednesday, January 17, 2007. Present were Chairman Gary C. Wheeler, Vice Chair Sandra L. Bowden, Commissioners Wesley S. Davis, Joseph E. Flescher and Peter D. O’Bryan. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, Executive Aide to the Board Kimberly Massung, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

Chairman Gary C. Wheeler called the Workshop to order at 2:01 p.m.

2. INVOCATION

Commissioner Wesley S. Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Chairman Gary C. Wheeler led the Pledge of Allegiance to the Flag.

4. PRESENTATION ON CHARTER GOVERNMENT IN FLORIDA

VIRGINIA “GINGER” DELEGAL, GENERAL COUNSEL, FLORIDA ASSOCIATION OF COUNTIES.

Chairman Wheeler introduced Ms. Delegal who came from Tallahassee to provide information on what a county may or may not do if it intends to adopt a “Charter” form of government. He invited questions, after the presentation, and thanked everyone for taking the time to attend the workshop.

Virginia Delegal, General Counsel, on behalf of the Florida Association of Counties, brought greetings from Tallahassee. She introduced herself providing background on her education and experience. She declared being a “huge proponent of Home Rule for local governments in the State of Florida”, and stated she was only here to provide information on Charter government in a county.

Through a PowerPoint presentation **Ms. Delegal** gave a brief background on the functions of the Florida Association of Counties (a not-for-profit, non-partisan corporation), outlining its mission and guiding principle, which is Education.

To effectuate her goal of providing information on what a Charter government can or cannot do for us, she first named all the counties involved in Charter government. In regard to Home Rule Powers, **Ms. Delegal** advised that Non-Charter counties in Florida have Home Rule power, and a county does not have to be a Charter to have Home Rule power.

She provided information on the Power of Taxation and what a Charter county can do in that area. She also discussed Relationships With Others, meaning how conflict with

municipalities is handled if you are a Charter county; what the options are in the Charter; and, how to govern at the regional level from a Charter perspective.

Ms. Delegal compared county and municipal governments noting that historically counties were simply just subdivisions of the State, serving at the pleasure of the State and providing administrative services in a convenient fashion. She disclosed there are sixty-seven (67) counties in Florida nineteen (19) of which are Charter counties and close to 80% of the State's population live in a Charter county. She also discussed Diversity of Charter Counties in Florida, and County Functions.

She explained where a County's authority to act comes from, for example, the Florida Constitution, the Florida Statutes, Special Acts, County Ordinances, etcetera, and displayed a map of Florida showing the nineteen (19) Charter counties in Florida.

Ms. Delegal discussed Home Rule Authority, which was a major reform that came out of a 1968 Constitutional Revision. She advised that prior to 1968, in order to have any authority as a city or county in the State of Florida, we needed Tallahassee to tell us how to do it. Today those are not the rules; we only look to Tallahassee to tell us what we cannot do.

She contrasted Non-Charter Counties' Constitutional Authorities pointing out the differences. She also explained a county's Statutory Powers and "What is Home Rule to the Counties". She advised that a Charter County has the privilege or burden of choosing the form of government that it will operate under; they get to establish how they want to govern and what their procedures will be; they have the power to tax in the unincorporated areas; and depending on the language in the Charter, they have the power to alter functions of county officers; power to have the county ordinances prevail over municipal ordinances; and Special acts that limit a Charter county's power that must be approved by the electors to have a limiting effect.

Under “Governmental Reform” she discussed the legislative and executive branches’ functions and options under a Charter government; constitutional officers, reserved powers to the people, which means there is opportunity for greater citizen involvement in a Charter form of government, and the opportunity to give yourself regional countywide powers. These provisions need to be in the Charter, she advised.

On the topic of “Preempted Power” **Ms. Delegal** explained that in the area of taxation, all taxes other than ad valorem property taxes are pre-empted to the State, and the Legislature has the absolute power of pre-emption in the area of taxes. She also discussed other Additional Revenue Sources for a Charter county, which are not many that a Charter county can levy that a non- Charter cannot, but include Public Service Tax, and Communication Services Tax.

Under “Government Partner Views” **Ms. Delegal** pointed out that when a county becomes a Charter its government partners look at them differently. She related that in the past year, Community Redevelopment Agencies (CRA) were good examples in terms of the disproportionate negotiating power that a non-Charter county would have with a municipality that might want to create a CRA versus a Charter county. With CRAs, if municipalities create a CRA then all of the tax increments, the increase in property values from the investment that has been put in that area, goes to the CRA. Until last year the negotiating power for a Charter county was dramatically different.

In closing **Ms. Delegal** talked about “Regionalism and Reform”. She advised that the peoples of the counties of Florida can chose to have Charter governments and certain regional powers and there was also the opportunity for governmental reform. She reminded that sometimes change comes in increments, and they should try to take small steps in dealing with local issues.

5. BOARD DISCUSSION

Chairman Wheeler thanked Ms. Delegal for the report and invited questions from the audience.

Ms. Delegal wanted to respond to a question that was asked regarding the “Ways of Creating a Charter”. She stated that by State laws there are three (3) ways that a Charter can come into existence and fundamental to all of them is that the citizens vote. Further, there can be a special act that comes through the Legislature, through the local legislative delegation, then goes to the ballot, and a Charter review Commission can be created either by resolution of the Board or by 15% (a petition process of 15% of the registered voters). She disclosed that three (3) of the 19 counties were created by Special Act; eight (8) by ordinance of the Board of County Commissioners; and seven (7) by Charter review proposal. Charter counties created by Ordinance are Hillsborough, Leon, Palm Beach, Alachua, Orange, Osceola, Seminole and Lee, and of that group at least four (4) had strong Citizen Review Committees.

Chairman Wheeler invited questions first from the Board and then the public, expressing that there was no need for a debate as this may be dealt with later at other workshops and no actions would be taken today.

Commissioner O’Bryan thanked Ms. Delegal for “a very educational presentation”. He noticed the majority of other Charter counties elected not to change the status of the constitutional officers, and asked if we were to decide to go that way, was there anything we could do so the constitutional officers are more protected as elected officials and they remain under general Florida laws to perform their duties.

Ms. Delegal advised that one way to accomplish that was to have a provision in the Charter saying the Charter is not altering their constitutional status and that could only be later changed by an amendment of the Charter.

Commissioner O'Bryan had heard of a Charter that was either called a "simple or starter" type Charter. He asked Ms. Delegal if a county could go from Charter to non-Charter.

Ms. Delegal explained that a "starter Charter" is exactly as it sounds. It sets forth the most basic things that a county would need and the function of it would not change the way you govern right now. Further, the only thing that has to be constitutionally in the Charter is that you have to choose which of the ordinances will prevail. The county would also need to articulate how the Charter gets amended and it can be repealed.

6. PUBLIC COMMENTS

Mayor Thomas Cadden, Town of Indian River Shores, wanted to know the name of the county that used "planned control growth". **Ms. Delegal** said it was Seminole County.

Jason Nunemaker, City Manager, City of Fellsmere, asked if there was a general timeframe for implementation for Special Acts and Ordinance. **Ms. Delegal** said there was no timeframe statutorily.

Andrea Coy, Councilmember, City of Sebastian, asked if there was any anecdotal information about "grandfathered" Community Redevelopment Agencies (CRA), and whether there were any restrictions.

Ms. Delegal replied that it would be subject to general laws, the laws that already exist, and there were “grandfathering” provisions that are controlled by State law. She further explained that there was Legislation that passed last year and there was Legislation that was already on the books that dealt with the powers of a Charter county for new CRAs.

Commissioner Davis sought to broaden his knowledge on what legislatively is in place with negotiating powers between a municipality and a Charter form of government for a CRA.

County Attorney William Collins explained that whatever is set out in the Statute is considered general and whether Charter or non-Charter any law passed has to be consistent with State law.

Ms. Delegal referred Commissioner Davis to Chapter 163 where there are certain notice provisions that are now in place.

Sal Neglia, Councilmember, City of Sebastian wanted to know how becoming a Charter government would affect municipalities in DST, gas tax, and franchise fees, and whether a county would receive more or if it affected it at all. **Ms. Delegal** said it does not affect it at all.

Joseph Paladin, 6450 Tropical Isle, noticed that in a lot of the Charters the municipality prevail and thought that was done for cooperation between the municipality and the county and wondered if that would be voluntary or not.

Chairman Wheeler remarked that they would need to have workshops to get inputs from municipalities and work with them on this.

Mr. Paladin was also concerned about moving the urban service line. He asked if there was any data on how many times the urban service boundary is moved with or without the

Charter being in place in the State of Florida. **Ms. Delegal** did not have the answer but felt Charter counties could be surveyed to find out.

Attorney Collins inquired that the only case he was aware of was in the St. Petersburg/Pinellas area.

Mr. Paladin's question on Comprehensive Plan changes was whether all changes had to be approved by municipalities and the counties. **Ms. Delegal** advised that State law would pre-empt that and county and municipality would still have their own Comprehensive Plan.

Fred Mensing, 7580 129th Street, asked (1) if large Comprehensive Plan amendments would still go to the State; and, (2) if there was a way under Charter government for the Charter to define the change in location of voting districts. **Ms. Delegal** replied, "Yes", to the former and "These are decisions that a Charter can make", to the latter.

Mr. Mensing also wanted to know if with selecting a size of commission, under Charter government, could the Chairman/Mayor of the County be an elected official who would be the non-voting head of the Commission for the term of his/her election rather than having the power pass between the various commissioners. **Ms. Delegal** replied, "Yes".

Chairman Wheeler clarified that it would be a form of Charter that could be adopted and would be up to the electorate also.

John Williams, Smugglers Cove, asked if the Brevard Charter could also be seen as a simple or starter type Charter. It seemed to him that the simplicity itself changes nothing except setting up an opportunity for citizen initiative. He questioned whether it would be conceivable to offset some of the "red herrings" that might be raised on the constitutional

officers issue to have a structured Charter that would provide a 5% citizen initiative, except if a change needs to be made to the constitutional officers it would require a 10% or 15% initiative. He was told there could be two provisions in response to his question.

Chairman Wheeler replied that the issue could be debated at other workshops.

Rene Renzi, Waverly Place, sought to clarify her understanding that under Charter government there can be a non-partisan county commission. She also wanted to know if the voters would be able to set the pay scale for the county commission.

Ms. Delegal replied, “Yes”, to both questions, advising that it is a choice that can be made in the Charter.

Mayor Tom White, City of Vero Beach asked if a county’s voter referendum would override a city’s Charter for its height and density.

Ms. Delegal said it depends, for example, if there were conflicts like an annexation or new development going in then the Charter could choose and the people would vote on that particular choice.

Mayor White asked if there were any provisions for a dual referendum. **Ms. Delegal** informed him that there are provisions for that in certain circumstances.

Bea Gardner, Vero Beach, was looking for “perceived unintentional consequences” and asked if there was a list or red flag items to be had so that we could perceive unintentional consequences of going to a Charter. **Ms. Delegal** did not know of such a list but said there were consultants and attorneys with expertise in that area that could help.

David Nolte, 900 Royal Palm Place, did not hear anything about the concept of sovereign immunity. **Ms. Delegal** assured him that a Charter does not alter sovereign immunity.

Al Minner, City Manager, City of Sebastian, 386 Belfast, commented on conflicts and whose Charter supersedes in zoning type regulations or CRA issues. He argued that those issues would only come up after an annexation, so the way the jurisdictional boundaries are now stays and county and city remain in their respective areas and we would not get into those conflicts unless the city would annex out after the immediate date of the formation of the Charter.

Chairman Wheeler believed that would be by intent.

Mr. Minner said that was how home rule existed when he was in Polk County.

Commissioner O'Bryan believed it would be like Seminole County whose Charter reads that municipal ordinances will prevail over county ordinances except for those lands that fall under the "rural area", which would basically be lands outside the urban service area.

Ms. Delegal again advised that it depends on the choices that are in the Charter. On the issue of dual referendum she informed that there are provisions in the Constitution that require dual referenda whenever functions of government are going to be transferred from one to another. So, if there were to be usurpation of an entire municipal function in the county government then the Constitution would require a referendum of the municipalities as well as a countywide referendum, which it is intended to protect. She recommended that as issues come up, before the county decides which direction to go, an independent analysis should first be conducted. She remarked that every land use choice that is made is going to require independent analysis and determination of whether a dual referendum is required.

Chairman Wheeler thanked Ms. Delegal and expressed appreciation for her taking the time to come and speak with us. He also thanked everyone for participating.

7. ADJOURNMENT

There being no further business, the Board adjourned at 3:26 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/AA/01/17/07 Minutes/Workshop