

Memorandum

TO: Chris Hart, Chief Executive Officer

FROM: Fred W. Baggett

DATE: December 27, 2018

RE: Revised Explanation and Operational Impact of Amendment 10

The following is a revision of an earlier memorandum dated November 30, 2018 and is provided at the request of the FCCC Executive Committee to assist in better understanding the impact the recent amendment to Article VIII of the Florida Constitution on Clerks of the Circuit Court collectively and individually.

Section 1 (d) of Article VIII of the Florida Constitution was amended by vote of the electorate in the 2018 Florida General Election (hereafter referred to as Amendment 10) as follows (words struck through is language deleted by the amendment and underlined is language added):

ARTICLE VIII
LOCAL GOVERNMENT

SECTION 1. Counties. —

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; ~~except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not~~ Unless otherwise provided by ~~county charter or special law approved by vote of the electors~~ or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

The FCCC Executive Committee has requested our office to provide an explanation as to the operational impact of Amendment 10 on the various Clerks of the Circuit Court and Comptroller when it is implemented. The following is in response to that request and attempts to explain the purpose of the amendment and identify those Clerks who may expect to see duties previously transferred from their office to other county offices by county charter returned.

To: Chris Hart, Chief Executive Officer
From: Fred W. Baggett
Date: December 27, 2018
Re: Revised Explanation and Operational Impact of Amendment 10

Page 2

The intent and effect of Amendment 10 was to protect the election and duties of the five-enumerated county constitutional offices from modification by county charters. Note that specific to the Clerk of the Circuit Court, Amendment 10 provides “[u]nless otherwise provided by ~~county charter~~ or special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds”.

While it is clear that neither the method of selection by election nor the duties of the office of the Clerk of the Circuit Court may be changed by county charter, the duties of the Clerk as ex officio Clerk of the Board of County Commissioners, auditor, recorder and custodian of all county funds may be transferred from the office of the Clerk by special or general law adopted by the legislature and approved by vote of the electors or pursuant to Article V, section 16 which states that “the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds”. (Article V Section 16, Fla. Const.)

It should be noted that a special act approved by the voters of the county can transfer non-court related duties of the Clerk (collectively or individually) to other county offices or agencies while a transfer of the duties pursuant to Article V, section 16 would be of all the non-court related duties and may be made by general law or special act (without reference to ratification by the county voters) to a separate officer, the County Comptroller.

Additionally, Amendment 10 creates a schedule for its implementation in section 6 (g) (1) and (2) of Article VIII as follows:

SECTION 6. Schedule to Article VIII. —

(g) SELECTION AND DUTIES OF COUNTY OFFICERS. —

(1) Except as provided in this subsection, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 5, 2021, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2020.

(2) For Miami-Dade County and Broward County, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 2, 2025, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2024.

While Amendment 10 is protective of the office and duties of the Clerk from future county charter enactments, the question arises as to the impact of the amendment on existing provisions in various county charters which have impacted duties of the office in those counties. In its

To: Chris Hart, Chief Executive Officer
From: Fred W. Baggett
Date: December 27, 2018
Re: Revised Explanation and Operational Impact of Amendment 10

Page 3

opinion validating the ballot and summary of proposed Amendment 10, which appeared on the 2018 general election ballot, the Florida Supreme Court addressed the question of possible retroactive application to counties where duties or the manner of selection of constitutional officers had been altered by previously adopted charter provisions. The Court held that whether the amendment operates retroactively should be resolved in a post-election action and declined to consider the issue further (County of Volusia vs. Kenneth J. Detzner, SC18-1339 (Fla. September 7, 2018)). The Court went on to cite two previous cases, one holding a constitutional amendment to act retroactively and the other limiting implementation of a different amendment prospectively. Florida Hospital Waterman, Inc. v. Buster, 984 So. 2nd, 478 (Fla. 2008) held that if a constitutional amendment is self-executing, meaning that no legislative action is required for it to be implemented and its clear purpose did not eliminate an individual's existing and vested right or restriction, it will act retroactively. State v. Lavasolli, 434 So. 2nd 321 (Fla. 1983) found that neither the ballot summary or the wording of the amendment "manifested any intent that the amendment be applied retroactively. Therefore the amendment must be given prospective effect only". The Court in Lavasolli went on to say that the subject amendment "unquestionably alters a substantive right" of an individual which was one of the test for retroactivity set forth in the Buster case.

A major consideration in both the cases cited by the Court and others rest on determining the intent of the framers of the constitutional amendment which in this case was the Constitutional Revision Commission and the language of the amendment and ballot summary. The language of both the ballot summary and the amendment itself suggest the intent to have all the constitutional officers elected and with the full complement of duties provided by statute. The record of the proceedings of the Commission is replete with instances where the sponsors of the amendment as well as other commission members, public supporters and opponents collectively spoke to the anticipated retroactive application of the amendment when adopted. Additionally, there is no vested right of any individual being altered or impacted.

Assuming the Supreme Court subsequently considers the issue and determines Amendment 10 to act retroactively, it would render void those county charter provisions which had previously transferred duties otherwise performed by the Clerk pursuant to constitutional or statutory mandate. Numerous counties have enacted charters which reference the Clerk as a county rather than constitutional officer but do not alter the method of selection or transfer any duties. Amendment 10 should not have impact those Clerks. Additionally, some charters provide for additional duties for the Clerk. The issue of additional duties is not addressed in Amendment 10 and should remain applicable to the office. Those counties that we are aware of where non-court related duties of the Clerk have been transferred to other county offices include:

Broward: County charter transfers duties as ex officio Clerk of the County Commission to the County Administrator or the Administrator's designee. The Clerk's statutory duties as custodian of county funds, auditor and recorder are transferred the Department of Finance and Administrative Services. These functions will be returned to the Clerk on January 2, 2025.

To: Chris Hart, Chief Executive Officer
From: Fred W. Baggett
Date: December 27, 2018
Re: Revised Explanation and Operational Impact of Amendment 10

Page 4

Clay: County charter transfers duties as ex officio Clerk to the Board, county auditor and custodian of county funds to the County Manager. Clerk retains recorder functions. The transferred duties will be returned to the Clerk on January 5, 2021.

Duval: The adopted county charter retains the office of the Clerk of the Circuit Court as a county officer as well as an officer of the consolidated city government. The Clerk was no longer the ex officio Clerk to the Board (now the city council). Duties related to the auditor function were transferred to a city auditor appointed by the City Council. Funds “coming into possession of the clerk of the circuit and county court of the fourth judicial circuit in and for Duval County which are due the consolidated government shall be promptly turned over to the tax collector on a daily basis.” Additionally, the charter provides for a two-term limit for the Clerk. After adoption of the charter, which by itself would have been subject to Amendment 10, the Florida legislature enacted Chapter 92-341, Laws of Florida which adopted and incorporated the charter by special act. Assuming the Chapter 92-341 was approved by referendum vote of the Duval county voters, which we believe it was, Amendment 10 would not result in the return of duties transferred by the charter.

Miami-Dade: Charter provides that the Mayor and Clerk shall together appoint a county finance director “who shall have charge of the financial affairs of the county”. It is unclear if this language includes the functions of the county auditor as the charter provides for the appointment of an independent CPA to do an annual audit of the county. Likewise, there is no reference to the ex-officio Clerk to the Board. Assuming these functions have been transferred they will be returned to the Clerk on January 2, 2025.

Orange: Pursuant to Article V, Section 16 of the Constitution, the office of the Clerk was divided into two offices by legislative enactment of Chapter 72-461. The Clerk of the Circuit Court and the County Comptroller who serves as ex officio Clerk of the Board of County Commissioners, auditor, recorder and custodian of all county funds. Both officers are elected and have the same compensation as provided by statute. Amendment 10 does not apply to Orange.

Osceola: Charter provides for transfer duties relating to the ex officio Clerk and accountant to the Board, auditor and custodian of all county funds to the county manager. Recording stays with the Clerk. The transferred duties will be returned to the Clerk on January 5, 2021.

Volusia: Charter provides for the transfer of duties relating to the auditor and custodian of county funds to the county’s department of finance and duties related to ex officio Clerk to the Board and keeper of the minutes of the Board to the county department of central services. However, like Duval county, the legislature in 1970 adopted and incorporated the charter in a special act. Chapter 70-966, Laws of Florida was subsequently approved by vote of the Volusia county electorate. As a result, the transferred duties will remain with the other county departments referenced above.

To: Chris Hart, Chief Executive Officer
From: Fred W. Baggett
Date: December 27, 2018
Re: Revised Explanation and Operational Impact of Amendment 10

Page 5

DeSoto: By a 1943 special act, Chapter 22261, Laws of Florida, the legislature authorized the DeSoto Board of County Commissioners to employ a Secretary and Accountant “who shall serve in addition to the Clerk of the Circuit Court”. The duties transferred from the Clerk included not only the functions of the ex officio Clerk to the Board and accountant but “to sign warrants, checks and vouchers on all funds in the custody of said Board”. This would be the pre-audit portion of the auditor function of the Clerk. If Chapter 22261 was approved by vote of the DeSoto county electorate, the transferred duties would not be returned to the Clerk. If there was no referendum approval, the duties would be returned to the Clerk effectively January 5, 2021.

As previously referenced, the counties listed above are those where we are aware non-court related duties of the Clerk have been transferred to other offices. In most cases, the transfer has been by county charter provisions and subject to a return to the Clerk assuming a retroactive application of Amendment 10. This list may not be complete and should be reviewed by all Clerks to determine if we have missed any county or described the application of applicable charter provisions or special acts incorrectly.