

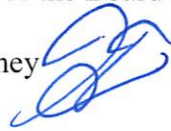
# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

VIA ELECTRONIC DELIVERY

To: Honorable Chairman and Members of the Board of County Commissioners

From: Herbert W.A. Thiele, County Attorney



Date: June 17, 2019

Subject: County Attorney's Office Opinion on Charter Provisions Concerning Elections

---

The Leon County Charter establishes, in Article II "Organization of County Government", Section 2.2, "Legislative Branch", that the County Commission be established and that "elections for all seven (7) members of the County Commission shall be non-partisan". Furthermore, Article III, "Elected County Constitutional Officers" provides in Section 3.1 "Preservation of Constitutional Offices" that the "offices of the Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as independently elected constitutional offices, and the status, powers, duties and functions of such offices, shall not be altered by this Home Rule Charter, or any revisions or amendments thereto, except as provided in Section 5.2 below". In Section 3.2 "Non-Partisan Elections", the Charter provides that the Supervisor of Elections office shall be non-partisan, and the Section further provides for the election procedures for such non-partisan elections.

Questions have arisen with regard to the application of Revision 5 which was approved by the voters in November of 2018, and the recently issued decision by the Florida Supreme Court on April 18, 2019 in the case of Orange County v. Rick Singh, 2019 WL 1716301.

In general, Revision 5 amended Sections 1 and 6 of Article VIII of the State Constitution to remove the authority of a County Charter or a special law to provide for choosing County officers in a manner other than election and to prohibit a County Charter from abolishing County officers, transferring the duties of a County officer to another officer or office, changing the length of terms of County offices, or establishing any manner of selection of County officers other than by election.

The holding in the Orange County case is that County ordinances providing for non-partisan elections for "County Constitutional Officers" was expressly preempted by the Florida Election Code and that the ordinance conflicted with the Florida Election Code such that it had no effect.

As to the Revision 5, it is the opinion of the County Attorney's Office that none of the provisions that are set forth in the Leon County Charter were affected thereby. Specifically, it has been held by the Florida Supreme Court in Telli v. Broward County that the term limits provided in the

Broward County Charter did not violate the Florida Constitution, receding from a prior decision entitled Cook v. City of Jacksonville, 823 So.2d 86 and Thomas v. State ex rel. Cobb, 58 So.2d 173. While the provisions of the Florida Constitution provide that County Commissioners are constitutional officers, as well as the other County officers (Sheriff, Tax Collector, Clerk of the Court, Property Appraiser, and Supervisor of Elections) County Commissioners are not considered to be County officers as it relates to the Revision 5 modifications.

Furthermore, in light of the decision in the Orange County case, we likewise distinguish Leon County Commissioners from the Supervisor of Elections. While each is established by the Florida Constitution (and by the Leon County Charter), County Commissioners are not County officers as are described in the Supreme Court opinion. However, the Supervisor of Elections is such a County officer.

Thus, we conclude, that the provisions set forth in the Leon County Charter establishing non-partisan election for the Supervisor of Elections have been rendered unenforceable by operation of law by the Orange County case. There is no impact to the County Commissioners as to your authority or non-partisan election status either by the Orange County case or Revision 5.

The additional issue created by this opinion is how to effectuate changing the office of Supervisor of Elections back to partisan status. While such a change could be done as a Charter amendment on the general election ballot or in a special election, we believe that that is not a viable option. We believe that the change may be done by merely indicating as an editorial note in the County Charter that the non-partisan status was removed by the Orange County case and that that office shall now be partisan. The language could be modified in some future Charter change, but we do not believe that it is required at present. We believe that the Leon County Commission has the authority to direct the Municipal Code Corporation in our upcoming recodification to put that editor's note in the County Charter.

Thus, while the general election cycle for 2020 will remain unchanged for County Commissioners, the office of the Supervisor of Elections will be designated as a partisan election for purposes of qualifying and the subsequent election process.

If you have any questions about this matter, please contact the Leon County Attorney's Office.

HWAT/et

cc: Vincent S. Long, County Administrator  
Alan Rosenzweig, Deputy County Administrator  
Hon. Mark Early, Supervisor of Elections