

TALLAHASSEE
Suite 200
1500 Mahan Drive
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax

**Nabors
Giblin &
Nickerson** P.A.
ATTORNEYS AT LAW

FORT LAUDERDALE
208 S.E. Sixth Street
Fort Lauderdale, Florida 33301
(954) 525-8000 Tel
(954) 525-8331 Fax

TAMPA
Suite 1060
2502 Rocky Point Drive
Tampa, Florida 33607
(813) 281-2222 Tel
(813) 281-0129 Fax

January 15, 2010

Via Electronic Mail

Alachua County Charter
Review Commission
County Administration Building
12 S.E. 1st Street
Gainesville, Florida 32602

Re: Non-Partisan Election of Supervisor of Elections: Proposal 2

Ladies and Gentlemen:

This proposal changes the method of electing the county supervisor of elections from a partisan to a non-partisan election. In today's separate correspondence, we analyzed a charter proposal for non-partisan elections of county commissioners. There, we concluded that a charter cannot lawfully require non-partisan elections for county commissioners; only the Legislature by general or special law may establish non-partisan elections. For reasons expressed in the county commissioner correspondence and additional reasons outlined here, we are of the opinion that the charter cannot require a non-partisan election for the office of supervisor of elections as that office exists under the current charter.

Article VIII, section 1(d), Florida Constitution, establishes county officers, including the supervisor of elections:

(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 otherwise provided by county charter or special law approved by vote of the electors, 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.

Article VIII, §1(d), Fla. Const. (Emphasis supplied.)

Unlike the constitutional provision regarding county commissioners, the county officer provision expressly authorizes “any county officer may be chosen in another manner . . . specified [in the charter].” The Florida Supreme Court has ruled the authorization to choose any county officer in another manner as specified in the charter does not allow for the imposition of term limits by charter for county officers whose offices have not been abolished by county charter and the duties transferred to another official. See, Cook v. City of Jacksonville, 823 So 2d 86 (Fla. 2002). The Court implied that a charter cannot change the method of electing county officials or add disqualifications for elections unless and until the county office is abolished and its duties transferred to another official.

Section 3.1. of the Charter of Alachua County provides:

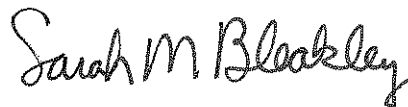
The offices of sheriff, property appraiser, tax collector, clerk of the circuit court and supervisor of elections shall remain as elected constitutional offices and the powers, duties and functions shall not be altered by this home rule charter. The constitutional officers shall perform their executive and administrative functions as specified by law.

Section 3.1, Alachua County Charter. This provision clearly establishes that the County charter has not altered the county officers.

Because the Alachua County charter has not abolished the office of supervisor of elections, under the rationale of Cook, the charter may not require non-partisan elections for that office as it now exists under the charter. The Legislature may do so, however, by general law or by special law ratified by the voters of the County.

Our view may be different if the charter provided for the abolishment of the office of the supervisor. At this point, we express no opinion on this issue.

Sincerely yours,



Sarah M. Bleakley

SMB:sib