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March 19, 2010

Via Electronic Mail

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

Re: Single Member Districts for County Commissioners

Ladies and Gentlemen:

The current charter provides for elections of the county commissioners on a countywide basis. Sec. 2.2(A), Alachua County Charter. Requiring county commissioners to be elected from single member districts is the subject of several suggestions embodied collectively in Proposal 18. The concept was tentatively approved by the Charter Review Commission at its February meeting. The analysis of whether a charter may require single member districts is similar to the examination of non-partisan elections for county commissioners, the subject of our January 15th correspondence.

Article VIII, section 1(e), provides:

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Art. VIII, §1(e), Fla. Const. (Emphasis supplied.)

To summarize our previous analysis of a proposal requiring non-partisan elections, we concluded based on the specificity of Article VIII, section 1(e), the Legislature is solely responsible for determining the method of electing county

commissioners. Because the Legislature has not authorized non-partisan elections of commissioners, a charter may not require them.

On the issue of single member districts, the Legislature has specifically authorized county commissioners to be elected from either single member districts or multi-member districts.

124.011 Alternate procedure for the election of county commissioners to provide for single-member representation.—

(1) County commissioners shall be nominated and elected to office in accordance with the provisions of s. 124.01, or as otherwise provided by law, unless a proposition calling for single-member representation within the county commission districts is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in this section. . . .

(3) A proposition calling for single-member representation within the county commission districts of the county shall be submitted to the electors of the county at any primary, general, or otherwise-called special election, in either manner following:

(a) The board of county commissioners may adopt a formal resolution directing an election to be held to place the proposition on the ballot.

(b) The electors of the county may petition to have the proposition placed on the ballot by presenting to the board of county commissioners petitions signed by not less than 10 percent of the duly qualified electors of the county. The number of signatures required shall be determined by the supervisor of elections according to the number of registered electors in the county as of the date the petitioning electors register as a political committee. . . .

§124.011, Fla. Stat. (Emphasis supplied.) Compare, section 1000.362, Florida Statutes, providing a similar process for changing county school district members from multi-member to single member districts.

The statute mandates that county commissioners shall be elected in multi-member districts unless another method is provided by law or until a county adopts single member districts in the manner authorized in the statute. The statute provides two methods for changing from multi-member to single member districts with referendum approval. A board of county commissioners may propose the change by resolution. Or the switch may be proposed by citizen's initiative. Note that the statute does not expressly allow such a change to be made by charter amendment. The statute's language "in the manner provided in this section" signifies that the statutory methods for proposing single-member districts are the only two methods permitted. A charter amendment is not among the two statutorily authorized methods.

A single reported appellate court decision considered a charter amendment proposing single member districts See, Harris v. Moore, 752 So. 2d 1241 (Fla. 4th DCA 2000). The charter amendment at issue was proposed by special act. The Court did not comment on legislative authority to propose single member district charter amendments. Thus, the opinion is not instructive on whether a charter can require single member districts where the Legislature has not authorized them.

There is some difference of opinion among local government lawyers about single member districts proposed by charter amendment. We are mindful of the opinion given by Mr. Nickerson, our predecessor, that the charter can provide for single member districts. He relied upon a 1977 opinion of the Attorney General which approved single member districts for county commissioners in Escambia County.¹ But, the Attorney General's opinion in Escambia relied upon an unpublished circuit court order that approved a Volusia County single member district provision authorized by special act. The Attorney General did not distinguish between a special act charter amendment and those initiated locally. It is our view that a special act ratified by the voters can require single member districts. But without some sort of authorization "by law" a charter cannot authorize single member districts. Regarding the requirement in article VIII, section 4 that "One commissioner residing in each district shall be elected as provided by law," the Supreme Court has stated: "this is a substantive amendment delegating to the legislature the task of establishing procedures for election of county commissioners . . ." State v. Grassi, 532 So. 2d 1055 (Fla. 1988).

No law authorizes the charter of Alachua County to propose single member districts. However, the statute as emphasized above authorizes a board of county commissioners to adopt a formal resolution calling for a referendum on single member districts. Sec. 124.011(3)(a), Fla. Stat. Pursuant to the Alachua Charter, the Charter

¹ Op. Atty. Gen 1977-119.

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Review Commission proposals are required to be placed on the ballot by the Board of County Commissioners by resolution. If the Charter Review Commission approves a single member district proposal, the Board of County Commissioners must put it on the ballot by adopting a resolution. Since the statute allows single member district proposal to be placed on the ballot by a board of county commissioner resolution, it would appear a resolution adopted by the Board of County Commissioners to place the Charter Review Commission single member district proposal on the ballot meets the requirements of the statute. Thus, the Charter Review Commission may lawfully propose a charter amendment calling for elections of county commissioners from single member districts instead of county wide elections currently embodied in the Charter.

Sincerely yours,

Sarah M. Bleakley

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