

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



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

June 8, 2010

**Via Electronic Mail**

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

Re: Non-Partisan Elections of Constitutional Officers (Question 7)

Ladies and Gentlemen:

At your request, we have reviewed the broad election preemption language in HB 131 (now chapter 2010-167, Laws of Florida) and analyzed any effect it may have on the non-partisan election of charter officers. In doing so, we have reviewed our correspondence of January 15, 2010 and our analysis leading to the conclusion that the charter may not be amended to require the non-partisan election of the supervisor of elections. Based on the rationale in that correspondence, the Charter Review Commission ("CRC") has tentatively proposed Question 7 which abolishes the constitutional officers and transfers all their duties to charter officers of the same name and provided for their election on a non-partisan basis. At the last CRC meeting some concern was expressed about the question proposing to "abolish" the officers, as suggesting that the question may lead electors to believe the question accomplishes much more than the non-partisan election of the charter officers. With that concern in mind and in consideration of HB 131, we have conducted further research and analysis of the main question. We have reviewed the constitutional provision providing for constitutional officers and the appellate case law concerning non-partisan elections and term limits for county officers. We have also sought the advice of other local government attorneys. As outlined below, this further study and analysis has lead us to the revised conclusion that a charter amendment may propose the non-partisan election of constitutional officers without the necessity of abolishing them and replacing them with charter officers.

Article VIII, section 1(d), Florida Constitution, establishes county officers:

(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].” In our earlier correspondence, we had relied on a Florida Supreme Court opinion which 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). Our earlier correspondence reached the conclusion that Cook stands for the propositions that a charter cannot change the method of electing county officials unless those offices are abolished. Upon a closer reading of the opinion, it is our belief that Cook simply forbids a charter amendment from adding a disqualification for elections (such as term limits) unless and until the county office is abolished and its duties transferred to another official.

A narrower reading of Cook leads us to conclude that its only focus was on disqualifications such as term limits. Cook should not be read to prohibit non-partisan elections of county officers given that Article VIII, section 1(d) expressly provides for the selection of county officers in another manner as provided by a county charter. A further review of the case law addressing non-partisan elections for county officers and school board members support this view. HB 131 does not alter this conclusion.

Accordingly, Question 7 has been redrafted to delete any reference to abolishing the constitutional officers and to simply provide for their non-partisan election.

Best regards,

*Sarah M. Bleakley*

Sarah M. Bleakley

SMB:sib