

BROWARD COUNTY CHARTER REVIEW COMMISSION

MEMORANDUM NO. 2017-020

TO: Thomas McDonald, Chair
Members of the Charter Review Commission

CC: Carlos Verney, Executive Director
Madison Cerniglia, Assistant Executive Director

FROM: Samuel S. Goren, General Counsel *SSG*
Jacob G. Horowitz, Assistant General Counsel *JGH*

DATE: October 24, 2017

RE: Broward County Charter Review Commission ("CRC") / Constitutional Officers –
Ethics Code

At the direction of the Ethics Subcommittee, the General Counsel's Office has examined whether the Broward County Charter (the "Charter") may require the county's constitutional officers to comply with the Broward County Code of Ethics for Elected Officials ("Code of Ethics").

Section 11.10 of the Charter currently provides, as follows:

CONSTITUTIONAL OFFICERS SUBJECT TO CODE OF ETHICS

The Broward County Sheriff, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court are elected officials subject to the Broward County Code of Ethics.

This provision was added to the Charter in November 2010 following the approval of a referendum that was initiated by the Board of County Commissioners. It is our understanding that this provision has never been implemented, and that the county's constitutional officers do not currently comply with the Code of Ethics. As directed by the Ethics Subcommittee, the General Counsel's Office has researched the enforceability of this provision.

As set forth in greater detailed herein, it is the opinion of the General Counsel's Office that Broward County's constitutional officers are independent under Florida law. Unless these positions are abolished by the electorate and converted to local offices created by the Charter, the constitutional officers are generally **not subject** to the County Charter and **not subject** to the Code of Ethics, which is an ordinance of the county commission. Moreover, it is our opinion that Section 11.10 of the Charter is **not legally enforceable**.

ANALYSIS

Article VIII, Section 1(d) of the Florida Constitution provides for the establishment of the following positions, which shall be elected by the electors of each county to a four-year term: 1) sheriff, 2) tax collector, 3) property appraiser, 4) supervisor of elections, and 5) clerk of the circuit court. This section further states that these positions may be abolished in charter counties, provided, however that all duties required of each office are transferred to another office. Broward County has abolished the office of tax collector pursuant to Section 3.06 of the Charter and transferred all functions and duties of that office to the Department of Finance and Administrative Services.

In Broward County, with the exception of the tax collector, each of the county constitutional officers currently remains legally independent under the Florida Constitution. Their powers and authority are not derived from the Charter or the Board of County Commissioners. *Demings v. Orange County Citizens Review Board*, 15 So.2d 604, 610 (Fla. 5th DCA 2009). Further, with certain limited exceptions, the constitutional officers are not accountable to the county commission nor subject to the county commission's direction in the fulfillment of their duties. *Id.*

In *Demings*, the Fifth District Court of Appeal examined whether Orange County could subject the county's sheriff to a citizens review board, which was established by that county's charter. The board was created when the Orange County Sheriff was a converted charter office and it remained intact after the Orange County electorate voted to approve a charter amendment abolishing the charter office of the sheriff and re-establishing the sheriff as an independent constitutional officer.

In examining the issue, the Court noted that the sheriff, as a constitutional officer, was independently accountable to the electorate of Orange County. Orange County, through a charter-based citizens review board, could not interfere with the sheriff's independent exercise of his duty to investigate misconduct by his deputies by mandating participation in board proceedings or even requiring the sheriff to make appointments to such a board. *Id.* Additionally, in the event of misconduct or misfeasance by the sheriff, it is the governor who is legally authorized to act against the sheriff, not the county's governing board. *Id.*

Similarly, Broward County's constitutional officers remain legally independent of the Charter. It is our opinion that the Broward County Charter cannot legally require these officers to comply with a Code of Ethics adopted by the county commission.¹ There is nothing which would preclude these constitutional positions from voluntarily complying with the Code of Ethics;

¹ Note that the Broward County constitutional officers are subject to Part III, Charter 112, F.S., known as the Code of Ethics for Public Officers and Employees. Additionally, in 2013, the Florida Legislature enacted Section 112.3142, F.S., requiring specified constitutional officers to complete four (4) hours of ethics training annually on Ch. 112, F.S., public records and the Sunshine Law. This occurred subsequent to the county commission's enactment of the Code of Ethics and the adoption of Section 11.10 of the Charter.

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however, in accordance with the Court's decision in *Demings*, there is no legal basis to compel compliance.

Therefore, it is our opinion that Section 11.10 of the County Charter is legally unenforceable, and the County's constitutional officers are not legally subject to the Code of Ethics. Please contact our office if there is any additional information that we can provide.