

BROWARD COUNTY CHARTER REVIEW COMMISSION

MEMORANDUM NO. 2017-023

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*
Michael D. Cirullo, Jr., Assistant General Counsel *MDC*
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DATE: November 22, 2017

RE: Broward County Charter Review Commission (“CRC”) / Ability to Appoint Three Judge Panel to Review Redistricting Maps

Pursuant to your request, we have researched the issue of whether the Broward County Charter can provide for the empaneling of a three judge panel to review and approve redistricting proposals for County Commission Districts. County Commissioner Steve Geller presented this proposal to the CRC as part of the County Commission redistricting discussion. Following a review of applicable Florida Constitution provisions, Florida Statutes, and case law, it is our opinion that there is no constitutional or statutory basis for the Broward County Charter to provide for the empaneling of a three judge panel to review County Commission redistricting proposals for the County Commission Districts.

The circuit and county courts in the State of Florida have jurisdiction pursuant to the relevant provisions in the Florida Constitution and Florida Statutes. Article V, Section 5, Florida Constitution provides for the establishment and jurisdiction of the circuit courts as follows:

SECTION 5. Circuit courts.—

(a) ORGANIZATION.—There shall be a circuit court serving each judicial circuit.

(b) JURISDICTION.—The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Article V, Section 6, Florida Constitution provides for the establishment and jurisdiction of county courts as follows:

SECTION 6. County courts.—

(a) ORGANIZATION.—There shall be a county court in each county. There shall be one or more judges for each county court as prescribed by general law.

(b) JURISDICTION.—The county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

As provided for in the Florida Constitution the jurisdiction of circuit courts shall be uniform throughout the state. Any amendment to the County Charter that would provide for the circuit court to have jurisdiction of additional matters would be inconsistent with the language in Article V, Section 5, and therefore likely be found to be unconstitutional.

Similarly with respect to county courts, the county court only has jurisdiction as prescribed by general law. Section 34.01, Fla.Stat., provides as follows:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts;

(b) Of all violations of municipal and county ordinances;

(c) Of all actions at law in which the matter in controversy does not exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts; and

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

(2) The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012, except that county court judges may hear matters involving dissolution of marriage under the simplified dissolution procedure pursuant to the Florida Family Law Rules of Procedure or may issue a final order for dissolution in cases where the matter is uncontested, and the jurisdiction previously exercised by county courts, the claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but not limited to the counties referred to in ss. 9, 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. (6)(e), Art. VIII of the State Constitution of 1968 [*Miami-Dade, Duval, Monroe, Hillsborough*].

(3) Judges of county courts shall also be committing trial court judges. Judges of county courts shall be coroners unless otherwise provided by law or by rule of the Supreme Court.

(4) Judges of county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida.

(5) A county court is a trial court.

In Attorney General Opinion 85-41 (May 24, 1985) Florida Attorney General Jim Smith reviewed the authority of a Charter County to amend a special act passed by the Florida Legislature. In finding that the County lacked that authority, the Attorney General stated as follows:

The power to amend or repeal the statutory law is a legislative power belonging to the state which, by the terms of s. 1, Art. III, State Const., is vested in the state Legislature. Therefore, "[i]n the absence of some express constitutional authority therefore, it would seem axiomatic that existing statutes may be amended or repealed or repealed only by another statute enacted by the State Legislature."

In addition, Attorney General Smith stated:

As provided in s. 1(g), Art. VIII, State Const., charter counties possess "all powers of local self-governmental not inconsistent with general law, or with special law approved by the vote of the electors." This language is a limitation on the power of the Legislature to enact special laws (subsequent to the adoption of the charter) regulating the county; however, the language in s. 1(g), Art. VIII, State Const. does not constitute a grant of power to the county to provide by charter for nullification or supersedure of the existing laws of the state. The power to amend or repeal the statutory law is a legislative power belonging to the state which by the terms of s. 1, Art. III, State Const., is vested in the state Legislature.

Based upon principals of statutory construction, and our legal review and research contained herein, we conclude that the jurisdiction of both circuit courts and county courts is delineated in the relevant state statutes. Consequently, the County could not legally provide by Charter what is otherwise reserved to the state Legislature. As the Florida Constitution specifically provides for the jurisdiction of county courts to be as prescribed by general law, and the relevant statutes do not permit the County to grant additional jurisdictional responsibilities, a proposed charter amendment to create a three judge panel in the county court to review the redistricting proposals **would be inconsistent** with the Florida Constitution and the relevant statutes.

Commissioner Geller's proposal for a three judge panel to review the redistricting proposal was a conceptual option intended to insure that the drawing of County Commission districts was fair and impartial. By having a three judge panel review the proposed redistricting plan, the goal was to have an impartial decision maker conduct a final review of the proposed redistricting plan. As there is no specific statutory process for appointing a three judge panel, Commissioner Geller based his proposal on adopting a Charter amendment that would require the County Commission to adopt an ordinance to provide for the guidelines and standards for redistricting of County Commission Districts.

Commissioner Geller's proposal would rely on the jurisdiction of County Courts pursuant to Section 34.01(1)(b), *Fla.Stat.*, to review violations of County Ordinances. Once the County

Commission adopted an ordinance to approve the redistricting proposal, the Board of County Commissioners would then be required to file a declaratory judgement action, or a petition with the County Court, in order to have the court determine if the redistricting proposals “violated” the County standards, as provided in the County Ordinance. While in theory this process may have merit, as County Courts do have jurisdiction over violations of county ordinances, there are several issues which would need to be addressed including, but not limited to who the parties would be in such a lawsuit, how to mandate that the County Court appoint or assign a three judge panel to consider the declaratory relief action to review the redistricting proposals, and whether the County Commission could provide for such jurisdiction to the County Court.¹

While the three-judge panel is not a legal option to evaluate county commission districts, there is precedent for such a process at the federal level. 28 U.S.C. §2284 requires a district court of three judges be convened when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body. This process was used in 2002 when a three-judge panel of a federal district court examined Florida decennial redistricting plan.

More recently, the Florida Supreme Court referenced this federal process when examining a challenge to the Fair District Amendment of the Florida Constitution. In 2012, the League of Women Voters filed a lawsuit alleging that the 2012 congressional redistricting process and resulting map was tainted by an unconstitutional intent to favor the Republican Party and incumbent lawmakers in violation of the Fair District Amendment. The Supreme Court ultimately held that two (2) of the challenged districts were drawn in contravention of the constitution and would need to be redrawn. In reaching this conclusion, the Florida Supreme Court repeatedly referenced the three-judge panel process applicable to federal congressional districts. *League of Women’s Voters v. Detzner*, 172 So. 3d 363 (Fla. 2015).

As noted, even though this three-judge panel was referenced in a state supreme court decision, it relates to a federal process limited to congressional districts and statewide legislative bodies.

In conclusion, it is the opinion of this office that the County Charter could not provide for the establishment of a three judge panel process to review County Commission redistricting proposals.

If you have any further questions, please contact our office.

¹ Further, an action for declaratory relief requires an actual case or controversy. A court does not have jurisdiction to consider an action for declaratory relief to answer a question propounded for mere curiosity. *May v. Holley*, 59 So.2d 636 (Fla. 1952).