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March 15, 2010

ITEM V. A. 2

The Honorable Louie Davis  
Mayor, City of Waldo  
President, Alachua County League of Cities  
P.O. Box 222  
Waldo, Florida 32694-0222

Dear Mayor Davis:

It has recently come to my attention that the Alachua County Charter Review Commission is giving consideration to certain modifications in the Alachua County Charter. Among the matters under consideration is whether or not Alachua Charter can require a dual vote referendum on future charter amendments regarding municipal regulatory powers.

Attorney Sarah M. Bleakley has advised the Commission in her February 16, 2010 memorandum (page 18) that it is her opinion that: "Therefore, a charter amendment need only be approved by voters on a countywide basis and not in any individual municipality. A charter amendment may not change a constitutional voting requirement for future charter amendments." In that same portion of Ms. Bleakley's opinion, she also states that: "The issue of limiting future charter amendments in this manner has not been directly addressed by any appellate court."

Her conclusion is based on two cases cited in the opinion. The most recent is Citizens For Term Limits & Accountability, Inc. v. Lyons, 995So.2d 1051 (Fla. 1<sup>st</sup> DCA 2008).

I have the highest regard for Ms. Blakely's legal capabilities and I am sure that this portion of her opinion was analyzed and drafted in a manner to give the most neutral and straight-forward advice that she could give to her client, the Alachua County Charter Review Commission. Nevertheless, I must conclude that the question remains subject to different analysis and that foreclosing any further discussion on this matter is premature.

I have represented Florida municipalities for over thirty-five (35) years at this point in my career and I readily admit I come to this question with a professional inclination to give cities the broadest possible alternatives and discretion to act in the self interest of their citizens to the greatest of possible degree. To conclude based upon one legal opinion without further

and careful analysis that the possibility of requiring a dual vote on future charter amendments that affect municipal regulatory powers needlessly limits the rights of the citizens of Alachua County is premature and, ultimately, denies the voters of Alachua County an important choice as to how they will be governed.

Ultimately, this type of question should and can be resolved by the judicial process. The question is not truly settled until that judicial process has been exhausted. The benefit of the judicial process is that more than one opinion will be considered by the court and that all the players with an interest in the outcome of this type of issue will be allowed by the court to provide a variety of arguments, case law and analysis of the issue.

There are important fundamental principals in this question that should not be lightly disregarded. Florida case law is replete with concepts and decisions that protect the right of the people to govern themselves without interference from the judiciary unless some important constitutional principal is being violated or some portion of the people so governed are being denied critical democratic rights, such as the right to vote on an issue. The charter form of government derives its power from the people. The non-charter form of government derives its power from the state. *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4<sup>th</sup> DCA 1983).

If the dual vote on future charter amendments affecting municipal regulatory powers is of importance to the citizens of the cities within Alachua County and important to all residents of Alachua County, is there an extraordinarily important reason to dismiss this possible Charter amendment based solely on the legal advisor's opinion to the Alachua County Charter Review Commission?

I fully recognize the Lyons case as presumptively having some legal precedential value in the First District on the dual referendum question. However, I conclude from a careful reading of that case that it is certainly possible that a more careful analysis of the court holding that the Clay County Charter requiring a vote of sixty percent (60%) for future amendments "runs afoul" of Article VIII, Section 1(c) of the Florida Constitution. It is certainly very possible that the appellate court's consideration of this particular issue was overly conclusionary. There is no analysis in the case other than to refer to a definition provided in the Constitution for the term "vote of the electors". The court rejected the appellant's contention that the word "only" should be inserted into the constitutional language; it refused to do so and concluded, without further analysis that the sixty percent (60%) requirement was unconstitutional. Interestingly, the court states "the Florida Constitution specifies a simple majority vote as both necessary and sufficient to amend County Charters". (*emphasis supplied*) In fact, the Constitution does not use the word "simple" as a modifier of the term "majority vote". A review of common dictionary definitions leads only to the conclusion that the "majority" means some number in excess of one-half of the vote cast. The term "majority", in and of itself does not mean fifty percent (50%) plus one; it can also mean a greater number, such as sixty percent (60%). If the framers of the Constitution had meant a "simple majority", they could have specified this precise calculation. They did not

do so. Therefore, why should the judicial branch of government take away from the people of Florida their right to choose what type of "majority" they prefer to have? It is their determination through an elective process that will determine the level of preference which must be expressed by the voters to change their charter.

What are commonly referred to "super majorities" are common throughout municipal charters in the State of Florida; usually for the retention of City Managers and other Charter Officials or amendments to Comprehensive Plans. It is the will of the people, expressed through the ballot box and not by judicial review, that should determine what type of "majority" they prefer to have in their County Charter.

For the above reasons, it is my advice to you that only a very limited amount of precedential value should be assigned to the Lyons case in this context. It is also my advice to you that the Alachua League's proposal to require a dual vote on future charter amendments affecting municipal regulatory powers should be tested by the courts of Florida, if that is perceived to be a valid recommendation which achieves a proper balance acceptable to the voters in Alachua County as to the relationship between county and municipal powers within Alachua County.

Is there any reason why the democratic process should not prevail in this type of situation? Is there any reason why the opinion of the Commission's attorney should forever preclude consideration by voters of this question and, probably inevitably, a careful review and analysis within the judicial system? This is particularly the case when both Ms. Bleakley and I agree that "The issue of limiting future charter amendments in this manner has not been directly addressed by any appellate court." If this is the right thing to do --- do it. If the Supreme Court of Florida wants to take away the right of the people of Alachua County to govern themselves as they see fit, it may be that the Supreme Court will do just that. A decision to place this question before the voters of Alachua County may involve both hard work and expense, but is it not the duty of the Alachua County Charter Review Commission to give the people of Alachua County the right to make this decision themselves? There is no need for the Commission to voluntarily bind its hands or to limit the questions presented to the voters of Alachua County unless there is absolute judicial precedent from the highest court in Florida that unqualifiedly states that the people of Alachua County are not allowed to govern themselves in this matter.

I hope that these unsolicited thoughts are not unwelcome. In a close question, it is certainly possible that the Florida Supreme Court will give judicial deference to an electoral process allowing the people of Alachua County to govern themselves as they see fit. Unlike some of the other cases cited by Ms. Bleakley, no critical civil rights are being taken away from them such as was the situation in the City of St. Augustine case. I remain hopeful that the Florida Supreme Court would honor democratic principles over a debatable constitutional analysis.

Charter government is the people's government and, should the people adopt an amendment to their charter, the courts will presume its validity. The proposed amendment requiring a dual referendum for the transfer of regulatory functions governs the relationship between the county and the people of Alachua County. Article VIII, Section 4 of the Florida Constitution, on the other hand, governs the relationships between the county and the cities of Alachua County in the absence of an amendment to the Charter. It is an elementary concept of democratic government in the State of Florida that all governmental power is reserved to the people save those powers delegated to government. Florida's Supreme Court has stated the principle thusly:

[W]e do not undertake to evaluate the ultimate effect of the adoption of the proposed amendment upon the continued existence or efficiency of metropolitan government in Dade County. This is so because Home Rule government means exactly what the term suggests. If the people in the affected area desire Home Rule in its broadest and most completely unrestricted sense, it is theirs to adopt so long as they comply with the provisions of the organic law. On the other hand, and subject only to the same limitation, they can have limited Home Rule. Finally, by the same token if they desire no Home Rule at all, it is for them to decide. Consequently, it would be inappropriate for this court to undertake to discuss in any measure either the wisdom or the lack of wisdom reflected by the proposed amendment.

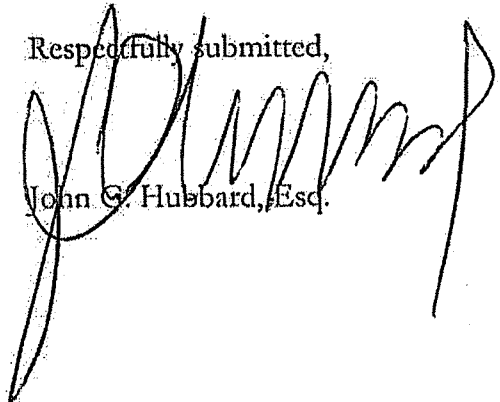
*Dade County v. Dade County League of Municipalities*, 104 So. 2d 512, 515 (Fla. 1958).

See Article I, Section 1 of the Florida Constitution which states: "All political power is inherit in the people"

I would encourage your organization to honor that concept.

Thank you for considering my thoughts.

Respectfully submitted,

  
John G. Hubbard, Esq.