

BREVARD COUNTY CHARTER REVIEW COMMISSION**MEMORANDUM NO. 2009-001**

TO: Kendall T. Moore, Chair
Members of the Brevard County Charter Review Commission

CC: Maria Scruggs, Administrative Assistant

FROM: Samuel S. Goren, Office of the General Counsel *SSG*
David N. Tolces, Office of the General Counsel *DNT*

DATE: October 28, 2009

RE: Brevard County Charter Review Commission ("Commission") / Proposal #2 – Oath of Office

At the October 15, 2009 Charter Review Commission ("Commission") meeting, the Commission authorized our office to research and draft an amendment to the Brevard County Charter (the "Charter") that would provide for an addition to the current oath of office required to be taken pursuant to Article II, Section 5(b) of the Florida Constitution in order to include a reference to the "laws and Charter of Brevard County."

Following a review of the Florida Constitution, Florida Statutes, other county charters, and Florida case law, it is our opinion that the Brevard County Charter **may not be amended** to provide for the inclusion of additional language in the oath of office required pursuant to Article II, Section 5(b) of the Florida Constitution. As Florida courts have held, where the Florida constitution prescribes the manner in which something may be accomplished, the means **are exclusive**. Consequently, the Brevard County Charter cannot provide for an alternate oath of office which would include the phrase "laws and Charter of Brevard County."

The oath of office is expressly contained in Article II, Section 5(b), of the Florida Constitution, and provides as follows:

Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of _____ (title of office) on which I am now about to enter. So help me God."

As indicated in the constitutional provision, the “oath of office” is to be taken by state and county officers. As the Florida Supreme Court held in *Advisory Opinion to the Governor-School Board Member-Suspension Authority*, 626 So.2d 684, 690, (Fla. 1993), the term “county officer” includes county commissioners. Following the Florida Supreme Court’s holding, the term county officers, as used in Article II, Section 5(b) of the Florida Constitution includes county commissioners. Therefore, an individual elected to the Brevard County Commission must take the oath as provided in Article II, Section 5(b), prior to entering the office of county commissioner.

Due to the fact that the specific requirement to take the oath, and the specific language of the oath is stated in the Florida Constitution, the Brevard County Charter cannot amend the language of the oath. As the Florida Supreme Court stated in the case of *The Florida Bar v. Sibley*, 995 So.2d 346 (Fla. 2008):

It is well established in the law that where the Constitution prescribes the manner in which something may be accomplished, the means are exclusive. *State v. Andrews*, 113 So.2d 701, 702 (Fla. 1959). Further, express or implied provisions of the Constitution cannot be altered, contracted, or enlarged by legislative enactment. *Sparkman v. State ex rel Scott*, 58 So.2d 431, 431 (Fla. 1952).

By adding the phrase “the Charter and laws of Brevard County” to the oath, and including the oath in the county charter, the proposal would alter the requirements of the Florida Constitution. Following the Florida Supreme Court’s holding in the *Sibley* case, due to the fact that the specific oath is contained in the Florida Constitution, the electors of Brevard County cannot alter the oath through a charter amendment. Therefore, if challenged, a proposal to add an oath of office to the county charter would likely be found to be unconstitutional.

In addition to the legal research, we also reviewed the other twenty (20) county charters in the state of Florida, and did not find another county charter which included a separate oath of office similar to the one asked for in this instance. The lack of any separate oath for a county commissioner would be an indicator that other counties have found that the oath of office contained in the Florida Constitution is the specific oath that must be taken by county commissioners in the state.

SSG:DNT:dnt

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