

REPORT TO THE CLAY COUNTY BOARD OF COUNTY
COMMISSIONERS

JULY 25, 2006

from

2005-2006 CLAY COUNTY
CHARTER REVIEW COMMISSION

FINAL



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An Open Letter to the Clay County Board of County Commissioners and the citizens of Clay County:

Having discussed with Allen Watts and Karen Lake the proposed amendment by the Clay County CRC to add two at-large seats to the county commission (one of whom would serve as the permanent chair), I encourage the adoption of the plan as a means of accomplishing the value of both single-member and at-large representation.

Clearly single-member districts are needed as a means of lowering the costs of campaigns and attracting more diverse representation. Including at-large members also will encourage a more holistic view of the needs of the community and serve as a check and balance to local, parochial interests.

During the coming decade county governments will encounter increasing regional responsibilities, and a representation model that includes such a balance will best serve the citizens of Clay County.

I might add that the 5-2 plan has survived legal scrutiny in federal court cases raising the "voter dilution" issue.

Respectfully,

T. Wayne Bailey, Phd.
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EXECUTIVE SUMMARY

CODE OF ETHICS

Shall the Charter of Clay County be revised to require the Board of County Commissioners to enact a Code of Ethics supplementing existing codes, for all elected and appointed County officers, including the Superintendent of Schools and members of the School Board, and their employees?

The CRC recommends adoption of this proposal for the following reasons:

- The majority of Florida counties and municipalities has adopted or are considering adopting a code of ethics for their elected officials and employees.
- While the State Code of Ethics applies to county officers and employees, it is a minimum standard and can only be enforced through the procedures mandated within State law.
- Clay County Officers and Employees should have a clearly defined ethics standard, by which the public can then measure the conduct of those Officers and Employees.
- The ethics code would apply to ALL county officials and employees, including the County Commissioners, the School Board, the County Attorney and Auditor and the Constitutional Officers.
- The Charter Review recognizes the County has a practice in place where every newly hired employee signs a Code of Ethics which is then placed in the employee personnel file. The adoption of an Ethics Code by ordinance reinforces the focus on appropriate employee behavioral standards and consequences of the violations of such standards.

FIVE SINGLE-MEMBER DISTRICTS ADDING TWO AT-LARGE MEMBERS, ONE BEING AN ELECTED CHAIR

Shall Section 2.2.A and 2.2.C of the Clay County Charter be amended to provide for a legislative body of seven rather than five county commissioners, consisting of a County Chair and one Commissioner, each elected at large, and five Commission-

ers elected from districts; to specify duties of the Chair; to provide for selection of Vice Chair; continuation of term limits; and to reduce salaries of Commissioners to offset the salaries of two additional Commissioners?

The CRC recommends adoption of this proposal for the following reasons:

- Each citizen can vote for three of the seven Commissioners instead of only voting for one of five Commissioners.
- Each citizen will have a specific Commissioner responsible for his or her district while also providing for two Commissioners to help focus on countywide issues.
- Multiple Florida Charter Counties have combined single and at-large Commissions.
- Two at-large Commissioners provides for a natural “regional” approach to County challenges such as traffic flow, environmental matters, development and economic issues.
- Single and at-large districts provide citizens with the benefits of both single-member and at-large systems of representation.
- Term limits continue to apply to ALL County Commissioners. Therefore, a current Commissioner that has reached term limits CANNOT run for one of the at-large seats including the elected Chair. Whether it is a single-member district or an at-large position, term limits apply.
- An elected County Commission Chairman provides more accountability for County government.
- An elected County Commission Chairman provides for stronger leadership on all County matters, including traffic flow, development, and economic issues.
- Currently the Chair of the County Commission is elected by the other Commissioners and only serves for one year – making the current Chair a merely ceremonial post.

- An elected County Commission Chair allows the citizens to choose the Chair of the Commission and not the other Commissioners.
- An elected County Commission Chair has the bully pulpit but continues to have just one vote on the County Commission.
- This ballot amendment proposal will REDUCE each Commission salary to 70 percent of the salary determined by the salary formula in Chapter 145 of the Florida Statutes. The elected Chair will be paid 80 percent of the current salary. Therefore, the current salary of \$58,000 would be reduced to \$40,600 and the Chair would be paid \$46,400. It should be noted that these salaries would continue to be based on the salary formula in Chapter 145 and so reasonable increases based on population and budget growth would continue. The amendment proposal calls for the compensation change to take place with the first term in which a Commissioner is elected following the effective date of this amendment.

The proposed reduction in salaries was done, in large part, because of the clear policy-making duties of the Commissioners. It is clear that the Home Rule Charter is most effective with a strong, professional County Manager within the Executive branch. The Charter Review Commission determined the Home Rule Charter government has not been adhered to since its inception in 1991. There has not been a clear separation of the executive and legislative branches along with the necessary checks and balances required within the Charter. For the County's new, strong, professional County Manager to be most effective, the legislative body (the Board of County Commissioners) must stay out of the day-to-day business and focus on policy decisions.

Consultant Larry Arrington spoke to the Charter Review Commission in agreement with the proposed salary reduction because, in his words, the salary formula in Chapter 145 of the Florida Statutes was derived for Commissioners that also shared executive and legislative duties.

Therefore, the Charter Review Commission feels that the salary reduction is justified based on reasonable compensation for the duties of

the position. Any further reduction of salaries—other than what is being proposed—would be unreasonable.

- Should this proposal be supported on the November 2006 ballot, it is strongly suggested that a workshop be held to review the roles and responsibilities of the BCC and staff, including the elected Chairman, so that it is clearly understood how the new system is meant to work.

MODIFICATION OF EXISTING NON-INTERFERENCE CLAUSE

Shall the existing provisions of the Clay County Charter, restricting County Commissioners from directing or interfering with the employees of the Manager and Attorney, be amended to include employees of the Auditor, to remove certain exceptions, to provide that such interference is malfeasance, to recognize the right of Commissioners to report citizens concerns or to seek information, and the right of the Board to conduct official investigations of any County department or office?

The CRC recommends adoption of this proposal for the following reasons:

- The language of the revised noninterference clause is stronger than the existing clause in that it clarifies that COUNTY COMMISSIONERS SHALL NOT give directions to or interfere with any employee, officer or agent under the supervision of the County Manager, the County Attorney and the County Auditor.
- Commissioners have failed to fully understand or abide by the existing noninterference clause, either out of ignorance or neglect.
- The revised non-interference clause clearly prevents a Commissioner from giving direction to department heads.
- Any violation of the revised noninterference clause is defined to be “malfeasance” within the meaning of the State Constitution – and subjecting a Commissioner who violates the clause to all the consequences of malfeasance.
- The BCC investigatory power is clearly outlined, including powers to conduct investigations of County officers (including all constitutional officers) and county employees.

NON-CHARTER AMENDMENT RECOMMENDATIONS TO THE BOARD OF COUNTY COMMISSIONERS

The 2005-2006 Clay County Charter Review Commission (“Charter Review”) has fulfilled its mission in terms of examining the charter and providing amendments to be placed on the November ballot. During the course of our review, the Charter Review identified several weak areas that need to be addressed and strengthened for greater accountability and more effective oversight by the Board of County Commissioners (“Commission”).

In conjunction with the results of an audit report from Commission Auditor Mike Price and the recent Grand Jury report, these recommendations are intended to improve the mechanics of how our county government operates. The Charter Review strongly urges the Commission to consider implementing these non-charter changes.

RECOMMENDATIONS:

- As part of the county’s hiring practices, Charter Review recommends all current employees and future new hires undergo an orientation regarding the Clay County charter – paying specific attention to the non-interference clause¹ of the charter. Employee awareness of and managerial reinforcement of the non-interference clause is crucial in terms of abiding by the charter provision as directed by the electors of Clay County.

This training has been successful in Columbia County where County Manager Dale Williams gave expert testimony to Charter Review. He stated that a standard response from a Columbia County employee to a request from a County Commissioner is, “Boss, that is fine. Have Dale call me and tell me to do it.”²

Columbia County employees understand the non-interference clause provision and how to handle a Commissioner if he/she makes an inquiry that could be interpreted as interference. Clay County must implement this recommendation in order to continue to change the culture that has existed for many years within the County government.

- The Charter Review read with great interest, the results of an internal audit performed by Commission Auditor Mike Price. Mr. Price indicated in his report that the circumstances of the Public Works illegal dumping scandal was not a failure of the system but a failure of having the right people in the system.

Subsequent to our conversations with Mr. Price, the Charter Review recommends permanently placing the Commission Auditor on the agenda of the Board of County Commission meetings. If the Commission Auditor has anything to report, it will be read into the public record.

The reason the Charter Review Commission makes this recommendation is because the Grand Jury report stated when the Public Works audit was published in 2003, no one knew what to do with it. It was forwarded to the Commission from the Budget, Finance and Personnel Committee via the Consent Agenda. It was adopted from the Consent Agenda and never discussed publicly.

The 2003 Public Works report should have been read into the public record regardless of the fact that all of the Commissioners had a copy of it (which, Mr. Price gave testimony, was the case).

The Commission Auditor is the third of three charter officers of the Commission and is the only charter officer excluded from the bi-monthly meetings. The Commission and the County Manager have a unique opportunity to utilize the Commission Auditor to ensure this charter position is performing relevant tasks and upon completion, the County Manager is implementing its reasonable recommendations.

The practice of having the Commission Auditor present any findings to the Budget, Finance and Personnel Committee needs to cease. The citizens of Clay County need to hear directly from their Commission its desires of investigation by their Commission Auditor and upon completion, the electors deserve a chance to listen to the results of that audit report.

- The External Auditor Selection Committee is comprised of the Constitutional Officers (or designees of these offices) and one member of the

Commission. This practice has been in place since the county was chartered and is based upon Florida Statute 218.391 which defines the process for non-chartered counties. As a chartered county, the Commission has the ability to set up its External Auditor Selection Committee any way the county needs it to function.

It is the opinion of the Charter Review that current members of this committee have too much invested in the outcome of an annual audit to be part of the selection process.

Consequently, it is the 2005-2006 Charter Review Commission's recommendation the Commission hire/appoint external Clay County professionals (i.e. a certified professional accountant) to perform this function along with one member of the County Commission and one Constitutional Officer. The independent status of this professional selection group will hold all Charter Officers and employees accountable, as well as establish credibility with the public.

In addition, Columbia County Manager Dale Williams recommended the County Manager conduct an entrance and exit interview with the selected external auditor to review any internal weaknesses prior to the audit and to listen to the Management Report once the audit was completed. "It is good business to present it publicly," said Williams.³

The 2005-2006 Clay County Charter Review Commission agrees this recommendation supports good government in the sunshine and strongly advises modeling this practice.

- If the electors of Clay County pass the proposed model of government of five single-member districts and two at-large Commissioners presented by this Charter Review Commission, we recommend the county invest in the future success of this model by conducting a series of informative sessions geared toward identifying roles and relationships between elected and appointed officials and help them learn to work as an effective team.

The Charter Review Commission believes the County must proactively plan for a transition in roles and relationships in a positive and effective way.

Former Volusia County Manager Larry Arrington gave testimony to the Charter Review Commission that such an educational process helped resolve similar awkwardness and confusion that resulted when Volusia County adopted a similar charter amendment.

- The proposed amended non-interference clause states specifically the Commission has the ability to exercise investigatory powers. While this is an inherent legislative power (it is provided to every legislative body under the United States Constitution), the Charter Review sees this statement as important language to include in the amendment to remind the Commission of this power, because through this power, the Commission may ask questions of *any* Charter or Constitutional officer.⁴

The County Manager's office reports that 40 to 50 percent of the county's total budget (approximately \$205 million) belongs to the Constitutional Officers (approximately \$102.5 million). The Charter Review Commission did not have enough data to perform the necessary due diligence to discover whether the county would benefit from bringing one, some, or all of the Constitutional officers under the charter for greater financial synergies, efficiencies and increased public accountability.

The issue was too complicated to discuss in the time provided to deliver quantified results. If, during the next four years, the Commission used its lawful investigative powers to ask questions of the Constitutional Officers and compiled a report of its findings, this information could be forwarded to the next Charter Review Commission for review and/or action.

- The Commission needs to remember its ability to place referendums on the ballot. The Board of County Commissioners, as a legislative body, may initiate its own reform as needed.⁵

RECOMMENDATIONS TO THE 2009-2010 CLAY COUNTY
CHARTER REVIEW COMMISSION

RECOMMENDATIONS:

- Midway through the 2005-2006 Charter Review process, the CRC contracted with an independent attorney, Allen Watts, to advise the Commission. Mr. Watts afforded the Charter Review an independent status *which* the Charter Review must have whether the county is in crisis or not. The charter allows for such expenses and Mr. Watts' legal advice and consultation was detailed and objective. Having represented many counties, his experience saved the Charter Review valuable time. Furthermore, his position was not in conflict with protecting the assets of the Commission. The 2005-2006 Charter Review recommends continuing this practice.⁶
- In addition, future Charter Review Commissions may want to consider hiring its own recording secretary to further separate itself from County government and setting its independent status.

Ann Mitchell, executive secretary, did a phenomenal job and was extremely reliable. The Charter Review would not have made it without her. The minutes were very detailed and complete. However, the County Manager and Commission should evaluate these additional duties assigned to a County staff member every four years as it is a long, tireless process in which one's "main" job function may suffer during the review process.

If accepted, both recommendations would need to be funded in the fiscal year in which each Charter Review Commission convenes.

- One of the issues that made it on the initial list for discussion but was not recommended for amendment during this session was bringing one or more of the Constitutional Officers under the charter. The 2005-2006 Charter Review Commission deems this issue worthy of extensive discussion and strongly urges the next session to review it in its entirety.
- The 2005-2006 Charter Review Commission struggled with the citizen's initiative process. After much discussion, the Charter Review

Commission proposed modifying the Citizens' Initiative to require the signatures of seven percent of the electors (registered voters) with at least two percent of the required signatures coming from each of the five commission districts. The current signature requirement is ten percent of the voter turnout in the last general election. After much debate the Charter Review reconsidered the issue and chose not to forward the recommendation to the Commission for inclusion on the ballot. The Charter Review felt that although there was merit to this proposal it caused an emotional reaction that clouded the importance of the other proposals. *(It should be noted that the 1997-1998 Charter Review Commission submitted a successful ballot amendment that took effect January 1, 1999. It eliminated any district requirements regarding signature collection and also lengthened the signature petition drive from 120-180 days.)* The Charter Review's intent was to make the signature requirements linear thereby eliminating the cyclical nature associated with the turnout for the previous general election.

Respectfully submitted,

The 2005-2006 Clay County Charter Review Commission,

Travis Cummings, Chairman, Michael Rogers, Vice Chairman, Rob Bradley, Mary Cooperman, Una Cornelius, George Espada, Jim Gann, Bill Garrison, Gordon Jespersen, Karen Lake, Roy Lyons, Glenn Oliver, Ralph Puckhaber, Brenda Rau, Taunya Reese

Footnotes:

¹ Clay County Charter, Article II, Section 2.2(i)

² 2005-06 Clay County Charter Review Meeting Minutes dated January 23, 2006, page 16

³ Clay County Charter Review Meeting Minutes dated January 23, 2006, page 22

⁴ Florida Statute 125.01(1)(s)

⁵ Clay County Charter, Article IV, Section 4.2(c)

⁶ Florida Times Union editorial published February 25, 2006