

**MINUTES
CHARTER REVIEW COMMISSION
SEPTEMBER 19, 2005**

The Charter Review Commission met on Monday, September 19, 2005, 7:00 p.m., Meeting Room 1, Tax Collector's Office, County Administration Building. Those in attendance are listed on the attached sign-in sheet. Armondo Pineda, Brenda Rau, and James Gann were absent.

County Attorney Mark Scruby introduced himself to the Charter Review Commission (CRC) and welcomed everyone on behalf of the Board of County Commissioners.

Mr. Scruby referred to a memo, which he had provided in the packet mailed to each CRC member, pointing out the following: The Charter Review Commission is required to have an organizational meeting within 30 days of appointment and at that meeting the CRC is obliged to select a chairperson and a vice-chairperson to conduct the meetings. He stressed that the chairperson and vice-chairperson would have to be selected before this meeting could adjourn tonight. He proceeded to explain that the CRC is charged with making recommendations to the Board of County Commissioners as to charter amendments which it deems necessary or appropriate to be placed on the ballot for the voters to decide.

Mr. Scruby had this to say about amendments: Any amendments will have to be completed by the end of June '06 because they have to be received and placed on the ballot, and that process takes a number of steps to complete. Anything that the CRC decides to present to the voters would go on the general election ballot for November of '06. Because of the requirements to send out absentee ballots and the fact that it is a general election, it will take more time to get a referendum item placed on the ballot. Work backward in time for all the steps that have to be followed, the CRC would certainly have to be finished by the end of June '06.

County Attorney Scruby recommended that the CRC sit down and sketch out a plan for how to attack the business at hand, to get educated on issues of county government and then sort out which issues to investigate, who to invite in to speak about those issues, and which other resources to utilize in investigating those issues. He said consensus must be reached on which issues the CRC intends to study at some length and then at that time schedule the public hearings.

Minutes from the past CRC's are available and will be provided. It was the consensus of the CRC to ask staff to provide those minutes from last year at the earliest possible date. Mr. Scruby recommended that the members read those minutes to get a sense of how business was conducted in the past Charter Review Commission meetings.

Mr. Scruby provided some history of charter government saying: The updated Charter, also available on the web site, was provided to each CRC member prior to tonight's meeting. This document shows the last voter driven initiative campaign to place the matter of single member districts on the ballot, which was approved at the general election in '04 and became effective January 1, 2005. There is a small history section in the back of the document showing the original provisions of the charter and the changes to the original document.

The charter form of government is very very similar to a municipal form of government. One of this year's CRC members, Rob Bradley, Town Attorney for the Town of Orange Park, works under this municipal form of government. The only difference being that a county is a political subdivision of the State of Florida and that is the nature of its status as an entity. A city or a municipality is a corporate entity, actually functioning like a corporation. And, like a corporation, has articles of incorporation that define its powers and authority, as cities also do. Cities can be formed in a variety of ways, two of which are: (1) by special acts of the legislature (2) a grass roots process through the statute covering municipal incorporation. They are characterized by a charter document and every city has one.

Mr. Scruby went on to provide the history of charter government saying: In Florida prior to 1968 Florida operated under the short form 1845 Constitution, an enduring document, and well conceived for its time. Some states have very lengthy constitutions that are full of regulatory provisions that are better left to the governing body. In the beginning the Commissioners were called road Commissioners because that was their main function, to create reliable transportation routes for commerce, because that was what was needed. In the pre-1968 Constitution the Article 8, which covers counties, only contemplated one kind of county. There were some amendments to the constitution that authorized the creation of special county governments that were referred to as constitutional charter counties and that included Dade, Hillsboro, and possibly Brevard Counties. The only one that survives to this day, deriving its powers directly from the constitution is Dade County. Duval County is a consolidated form of government, with the city and county merged so it is hard to compare them to either a city or a county because they take a little from both. Prior to 1968 counties were all one flavor other than those exceptions which I mentioned and there was no such thing as charter or non charter. Counties had no powers of government that were not expressly given to them by the legislature. So in a slower, less complex time, the legislature would convene in Tallahassee and they wouldn't need more than a month really to do all of their business and a lot of their business was local issues that would create powers for entities to exercise, for example, the power to engage in zoning. Local governments could not regulate zoning, signs, buildings, etc. As we moved forward in time the legislature could not spend its time on local issues, therefore, the constitution was amended in 1968 and in that process Article 8 was modified to create two forms of county government, charter and non-charter. Non-charter counties are still burdened with a limitation: unless power is granted to them by the legislature, it cannot be exercised. Charter counties have all powers of self government that are not expressly denied to them by Florida Statutes or the Constitution.

The legislature was still burdened with all the counties that were non-charter counties, so in the early '70s they adopted Chapter 125 of the Florida Statutes, which is the County Powers Act. It essentially said counties will be granted all powers of self government, home rule powers, except as limited herein. Consequently every county in the State now has home rule powers either by grant of the legislature through this general law or by their charters. Mr. Scruby explained the difference, saying that one of the key and unique differences is that the Florida Supreme Court has said that a county can be considered the same as cities when it comes to the power to tax. The controversial Public Service Tax or Utility Tax was derived from Chapter 166, which is the Municipal Powers Act and it is very clear that charter counties have the authority to levy that tax because they are regarded as having all the attributes of being a city. They have their constitution, and that is really what the charter is.

The forms of charter government are limited. Clay County is in the form of an appointed County Manager, under which the Board of County Commissioners serves as the legislative body, which has the authority and responsibility to adopt a budget, raise the revenues to fund that budget, and set policy by ordinance or resolution. Under our charter they also have the responsibility for hiring and employing three employees, the County Manager as the CEO, the County Attorney, and the Commission Auditor. Everyone else who works for the county either works for the County Manager, the Attorney, or the Auditor. At this time we have two people working for the attorney, and no one working for the auditor, so all other county employees work under the manager.

The other aspect of charter government is that changes can be as to where powers are being exercised. Mr. Scruby discussed two prior grand jury investigations and the changes made as a result of those investigations. Mr. Scruby explained that prior to those changes, the Clerk of the Court was very powerful because of his position as Budget Officer, with the ability to have influence over monies to be spent in the coming year and which projects would be done. This meant he would influence how the county would look in the coming year.

The Clerk of the Circuit Court in a non-charter county has five functions: (1) as Clerk of the Courts (keeping all the court records, case files and manages those on a criminal and civil side); (2) recording officer for public records (deeds, mortgages, liens, etc.); (3) as the Ex-officio Clerk of the Board of County Commissioners (serving like the secretary of a corporation, keeping books, minutes, etc.); (4) Custodian of Funds (Budget Officer); and, (5) the Clerk of Courts serves as the pre-auditor, determining before making a payment that expenditures are for a public purpose, that the expenditure was made in accordance with any procurement rules that may apply, and that there are adequate funds on hand to make that payment.

In approximately 1981 questions were asked regarding the acquisition of a property where the Bear Run Tax Office is located. As a result, the Clerk of the Court was scrutinized (there was no

county administrator or county manager at that time in Clay County government) and a grand jury investigation was conducted, which concluded that the Clerk of the Circuit Court at that time had too much power. That investigation was the origin of the Clay County Charter because the grand jury recommended that the county either create a Chief Executive Officer or a charter form of government. Clay County then adopted an ordinance, which was allowed under Chapter 125, to create the county administrator position in the early 1980's. In the late 1980's the Board of County Commissioners appointed a Government Study Commission who met and decided that a Charter Commission needed to be appointed, which the Board did. They put together a starter charter, which brought about subtle changes in the beginning. Purchasing, which had always been a Clerk of Court function, became a function under the County Manager. Six or seven amendments followed over time, one being a change to the initiative process which made it easier to put a petition out for amendment to the charter or ordinances. The big change came about when there was an investigation into the clerk's office regarding alleged misuse of funds. This led to a recommendation from the Charter Review Commission to place an amendment on the ballot that would remove from the Clerk of the Circuit Court the following functions: (1) Clerk of the Board, (2) the custodian of funds, and, (3) the pre auditor function. Those functions would be brought over to the County Manager, such as would be the case under a business environment. Another important power was transferred when the Board invoked the power under the Florida Statutes (not by charter) to remove from the Clerk the creation of the budget. That necessitated the setting up of a budget department, with a Budget Director who manages and puts together the budget. The second change on the ballot was to create the Commission Auditor position, which the City of Jacksonville has had for many years. This person is a direct employee of the Board and they are responsible for examining the internal controls and conducting investigations and audits as are appropriate to insure that the county is complying with its obligations under the law and that the controls in place are suitable and appropriate.

There was a successful citizen's initiative that created term limits for County Commissioners and those term limits were set at two consecutive terms for any one Commissioner. One other change from voting at large to single member districts happened during the last election and took effect January 1, 2005. As a result, the Commissioners have to reside in their district and only the citizens who live in that district are eligible to vote for that Commissioner. There were also some minor amendments to the initiate process. One significant change that was not mentioned was one that clarified that the department heads have a status that places them under the exclusive control of the County Manager. The Board of County Commissioners has nothing to do with them or any other employee, other than the three previously mentioned. The County Manager has the sole power to hire and fire department heads but they have a right of appeal to the board within a certain period of time and the charter doesn't distinguish what the standards are there.

Mr. Scruby recommended that the CRC invite the Tax Collector, Property Appraiser, Sheriff, Clerk of the Courts, etc., to attend a meeting and explain their role in county government. He said the responsibility of the CRC is to examine the status of the county at the present time and

determine if there are areas that need to be studied and considered. The CRC would adopt some kind of resolution reflecting those recommendations to place issues before the voters, or, recommend that no changes be made and adjourn sine die, which the last CRC did.

Mr. Scruby briefly discussed one issue that the last CRC considered after lengthy debate, term limits for Constitutional Officers. He said that issue has been resolved because the Florida Supreme Court since then has ruled that a qualification such as that cannot be placed on the Constitutional Officers. If you read Article 8 of the Constitution, one of the things that charter government can do is create a whole new position and abolish an existing office, moving those functions to the newly created position. He pointed out that Ann Mitchell, CRC Recording Secretary, has provided a web site that has a link to other charters and it would be helpful to the CRC members to visit that site and study those. Mr. Scruby brought up another issue which the prior CRC discussed at some length, minimum qualifications.

Mr. Scruby stated that the CRC is a sunshine body, which means that all meetings must be held with prior public notice and that notice has to be published in a meaningful way in advance. He said it is very, very important to understand the boundaries of the Sunshine Law, explaining the following: With regard to sunshine, if you see each other, talk about the weather, sports, or whatever, but **do not** talk about business that is pending or likely to be pending before the Charter Review Commission. The consequence of doing so is not only subjecting you to both potential civil and criminal penalties, but also compromise the entire effort being made by the Charter Commission because the courts have ruled that the remedy for violation of the Sunshine Law is to void the action taken and require that the whole process be repeated. He explained that if it is necessary to form committees or sub-committees, notify the recording secretary making sure that there is enough time (at least a week in advance) for a notice of the meeting to be published in *The Leader* and *Clay Today*. He said it is also important to provide an opportunity for the public to attend; and minutes have to be taken. Minutes will be provided from this meeting and an opportunity will be given for you to review them in advance so that when you come to the next meeting you can make any necessary corrections.

Mr. Puckhaber asked if the Sunshine Law prevented him from talking to the citizens, such as friends or business acquaintances about issues. Mr. Scruby answered that it is permissible to talk to anyone except the other members of the CRC.

Robert's Rules were discussed and Mr. Scruby recommended that formal rules not be adopted, but just observe due process (fairness to everyone, don't allow anyone to be shouted down, allow a fair opportunity for comments without intimidation, and provide a meaningful way for public participation). He said if those rules are followed then the law has been complied with. As far as procedure is concerned, if there is disagreement with a ruling of the chair, the only thing that needs to be done is request a point of order, which will take precedence over all other business at that time. A point of order is handled like a motion: "I make a point of order," the member is

recognized and responds, "I don't think the chair's ruling was correct and I make a motion that we set that ruling aside and substitute in its place the following ruling." Look for a second, etc. and if there is not second the motion dies and you move on. If the motion is seconded, debated, and ruled on, then the meeting continues. Mr. Scruby said that is the only formality that he would recommend.

Mr. Lyons questioned Mr. Scruby about what would be considered a quorum and a majority in the meetings. Mr. Scruby discussed that and stated that there are no rules in the Charter Review Commission that state what a quorum is, but it is conventional to select a quorum to be a majority of the membership and to carry any matter would require a majority of the quorum. He said abstaining is prohibited by Florida Law unless there is a direct conflict of interest. He pointed out that there is a Code of Ethics document in the packet and recommended that each member read that and call his office if there are questions.

Mr. Scruby explained that a copy of the Administrative Code has been provided as required by the Charter. This is an internal handbook adopted by resolution, which means that things contained therein are policy not law. Ordinances are law and as such, are binding. The Administrative Code contains information about the responsibilities and duties of the various departments and positions in county government.

Mr. Scruby said that constant change is not always warranted and time is needed to see how any change will work. He said the meetings will be attended by citizens who have very specific issues that they want the CRC to consider and he encouraged the membership to analyze issues on the basis that change for the sake of change is not always needed.

RECESS 8:03 P.M. THROUGH 8:07 P.M.

At this point, the members all introduced themselves and commented briefly on their background. Mary Cooperman talked about how helpful Mr. Scruby has been to the Charter Review Commission in the past and thanked him for his help. Rob Bradley commented on Mr. Scruby's professional abilities and encouraged the members to take advantage of his knowledge when they need guidance.

Mr. Scruby discussed the functions of the Chairman and Vice-Chairman and recommended that the first task for the Chairman would be to develop an agenda as a basis for going forward, with some elements of a schedule and some elements of tasks, so the group can act on those. Secondly, he said a meeting schedule that will work for everyone needs to be considered.

Nominations were received for Chairman: Bill Garrison nominated William Roy Lyons and Ralph Puckhaber seconded the nomination. Mr. Puckhaber asked if anyone else was interested in being chairman besides Mr. Lyons and Mr. Travis Cummings stated that he would also be

interested. Mr. Puckhaber nominated Mr. Cummings. After it was determined that no one else was seeking the position, Mr. Puckhaber asked Mr. Lyons and Mr. Cummings to talk briefly about why they would like to be Chairman. Both nominees were asked if they had the time to devote to this and both answered affirmatively.

After discussion, vote was held and Travis Cummings was elected Chairman with 7 votes and Mr. Lyons receiving 5 votes.

County Attorney Scruby turned the meeting over to the newly elected Chairman.

Nominations were received for Vice-Chairman: Mr. Rob Bradley nominated Mr. Roy Lyons, who stated that he was not interested in the position. Mr. Travis Cummings nominated Rob Bradley. Mr. Bill Garrison nominated Mr. Michael Rogers, after which Mr. Rob Bradley withdrew his name from the nominations, stating that he thought Mr. Rogers would do an excellent job as Vice-Chairman.

After determination that there were no other nominations, Chairman Cummings called for a vote and Mr. Rogers was elected unanimously.

Chairman Cummings asked the members to take up the issue of what time the future meetings would be held. It was consensus that the future meetings would be at 7:00 p.m. and would start promptly at that time.

Mr. Puckhaber asked County Attorney Scruby to provide some background on the flavor of the first few meetings.

Mr. Scruby said first there is a general education process where the members look at resources to understand how powers and responsibilities are organized. The second step would be to think about issues somewhere along the way that may need to be discussed or investigated. A public hearing may be called to get input on ideas to be discussed and put on the table. After a fair amount of time has gone by and everyone has had a chance to study the proposed issues, there is a process of narrowing down.

Mr. Rob Bradley asked Mr. Scruby if there were any issues that are obvious in the charter, that is, there is consensus among the staff or citizens in the county, that need to be tackled that maybe aren't controversial, but just need to be looked at.

Mr. Scruby replied that if he is going to be the best servant he can be for the CRC, he needs to remain dispassionate from giving input on issues and not try to advocate any issue or change. Mr. Scruby said that county staff can answer questions such as that.

Mr. Bradley asked Mr. Scruby if there are any benign issues in the charter that can be addressed to get those out of the way and then go to the controversial issues.

Mr. Scruby replied no. He said there have been a lot of changes in the recent past such as term limits and single member districts, and we haven't seen how those are going to play out.

Mrs. Cooperman stated that she believed there are more issues to be considered this time and the early part needs to be a learning process. She asked that a day be picked for future meetings and stick to that day.

It was consensus to hold two meetings in October, the first on Monday, October 3, 2005, 7:00 p.m. to 9:00 p.m. and another meeting on the third Monday, October 17, 2005, 7:00 p.m. to 9:00 p.m. At that time the dates for a future schedule will be looked at.

The agenda for the next meeting was discussed and it was suggested that Chairman Cummings put together an agenda and email it out and suggestions could be made at that time for additions or deletions. Mr. Scruby requested that the Chairman get the agenda to Ann Mitchell by Wednesday of the prior week for distribution to the members. Lengthy discussion followed regarding the amount of time to be allotted to public participation in the meetings and where to place that item on the agenda.

After further discussion, Rob Bradley moved that when eight members are present that is a quorum. Mr. Jespersen seconded the motion, which carried 12-0.

Rob Bradley moved that a simple majority of the quorum qualifies as an action being accepted. Mr. Garrison seconded the motion, which carried 12-0.

Mr. Scruby suggested that at the next meeting a consensus be reached about the direction the CRC will go in future meetings, then the Chairman should be relied upon to shape the form of those ideas and conduct the meetings.

Mr. Rogers questioned the turn around time for the minutes and a brief discussion followed, with Mr. Scruby suggesting that the Chairman follow up with Ann Mitchell to decide the amount of detail wanted in the minutes, that determining the time needed for preparation.

With no further business to discuss, Chairman Cummings adjourned the meeting at 9:27 p.m.

Brenda Johns, Recording Secretary

Travis Cummings, Chairman