

**MINUTES  
CLAY COUNTY  
CHARTER REVIEW COMMISSION  
NOVEMBER 3, 2005**

The Clay County Charter Review Commission (CRC) met on Thursday, November 3, 2005, 7:00 p.m., Meeting Room 1, Tax Collector's Office, Clay County Administration Building. Those in attendance are listed on the attached sign-in sheet. Jim Gann, Michael Rogers and Karen Lake were absent.

**Ralph Puckhaber made a motion to approve the minutes, as amended, for the October 17, 2005 CRC minutes. Gordon Jespersion seconded the motion, which carried 12-0.**

**Ralph Puckhaber made a motion to accept Armando Pineda's resignation from the CRC. Roy Lyons seconded the motion, which carried 12-0.**

George Espada is replacing Armando Pineda and was introduced by Chairman Cummings.

Chairman Cummings informed the CRC that their request for travel expenses to attend the Charter Government and Home Rule Charter Seminar, in Stuart, Florida on November 20, 2005 was denied by the Board of County Commissioners (BCC). At the Board meeting of October 25, 2005, Chairman Commissioner George Bush explained that he had received an overwhelming interest in this seminar not only from the CRC but from our local government staff. He contacted the speaker for this seminar, Sara Blakely, who is an attorney for the Florida Association of Counties to see if she would be available to give this seminar in Clay County. Ms. Blakely has informed Mr. Bush that she was available Wednesday, January 18, 2005, and is tentatively holding that date until further notice, location and time to be announced. The CRC will report back to BCC Chairman Commissioner George Bush after this meeting to let him know if they are interested in attending the seminar on that date. Elected officials, government staff and the CRC are all invited to attend this seminar at no charge.

Chairman Cummings stated that eight of the CRC members were interested in attending the Charter Government Seminar in Stuart, Florida. He praised them for their interest and willingness to attend. He informed the group that their regular meeting for the third Monday in January is a county holiday (Martin Luther King), and all government offices will be closed. He suggested the CRC attend the Charter Government and Home Rule Charter Seminar tentatively scheduled for Wednesday, January 18, 2006 instead of having their regular meeting on another day in January. The seminar, while its date is in January, would still be beneficial to all of them.

**Rob Bradley made a motion to move the regular CRC meeting of Monday, January 16, 2006 to the Charter Government and Home Rule Charter Seminar on Wednesday, January 18, 2006; the meeting to be held from 6:00 p.m. to 9:00 p.m. Roy Lyons seconded the motion, which carried 12-0.**

Referring to Clay County's Home Rule Charter, Rob Bradley informed the CRC that it is clearly indicated in the charter that any expense the CRC deem necessary to accomplish their task; and has the majority vote of the group, should forward that expense for payment and not for approval. The BCC should not be vetoing their expense requests and should understand the terms of the charter. The BCC and the CRC should be partners and have a good working relationship for the duration of this study. The CRC should not feel chilled each time they have a need for an expense.

Ralph Puckhaber commented that the CRC should not be asking for payment of their expenses, but should be forwarding them for payment. The Charter reads: "Amendments and Revisions by Charter Review Commission, (3) Expenses of the Charter Review Commission shall be verified by a majority vote of the Charter Review Commission and forwarded to the Board of County Commissioners for payment from the general fund of the County. The Charter Review Commission may employ a staff, consultant and retain experts, and purchase, lease, or otherwise provide for such supplies, materials, equipment and facilities as it deems necessary to accomplish its assigned task."

**Rob Bradley made a motion to invite Sarah Blakely as a guest speaker at ~~their next~~ the meeting on Wednesday, January 18, 2006 from 6:00 p.m. to 9:00 p.m.; and that all of Ms. Blakely's expenses be reimbursed. Ralph Puckhaber seconded the motion, which carried 12-0.**

Chairman Cummings will meet with Interim County Manager Rich O'Connell to discuss a budget for the CRC, and will bring up the issue of submitting the CRC's expenses directly to the County Manager instead of the Board. He will notify BCC Chairman Commissioner George Bush that they unanimously voted to have the Charter Government Seminar on Wednesday, January 18, 2006 from 6:00 p.m. to 9:00 p.m. He will also find out what the travel reimbursement and arrangements are for the guest speaker.

Agenda item six, (Discussion of CRC advertisements/notices for future meetings) was discussed previously and it was decided that the CRC would hold some of their meetings in various locations of the county. Rob Bradley commented that he thought it was important that the advertising for their meetings be more prominently advertised to encourage attendance and participation from the public. Legal advertisements conform to the law, but are not placed in areas of the newspaper where readers will notice them. Larger print and/or different locations of the paper may help to catch the attention of readers. Advertisements may be placed anywhere in the paper that you want them to be; you just have to pay more for the size and location.

Ann Williamson, staff writer from the Leader Newspaper, informed the CRC that their meeting notices are located in the legal section, and front page under News Brief; at no cost to the county. She recommended that the CRC look at using Channel 29 for advertising their meetings, as well as the Orange Park Town Hall message board.

Bob Henderson, staff writer from the Clay Today informed the CRC that the notice of their meetings is located in their calendar section and in their coverage of each meeting.

Deborah Cearnal, staff writer from the Clay County Line (Florida Times Union) informed the CRC that if they want to include the date and time of their meeting in the calendar section of their paper, they will have to make contact with that particular office separately. The CRC is required to place a legal notice in the paper about their meetings.

Chairman Cummings commended all of the staff writers for the local papers on the excellent job they are doing reporting the CRC's progress and will be working towards having their meeting notices advertised more prominently so the readers can find them. He informed the group that this meeting was advertised with larger print, and did cost more to do so. Further, Chairman Cummings stated that he concurred with Mr. Bradley that it was important to get the notice of their meetings out to the public in all areas of the county.

Rob Bradley pulled agenda item number six. Later, if it is apparent that there is not enough media exposure they would bring the matter up for discussion.

Bill Martin, a staff writer for the Fleming Island Messenger recently wrote a very informative article about the CRC in their paper. In the same paper another, less informative and more critical article was also written. Chairman Cummings responded to Bill Martin about his positive article and that he appreciated him taking the time to do so.

Regarding agenda item seven, it was the general consensus to accept the revised nine (9) item issue list.

Chairman Cummings stated that he has contacted the county administrator and county attorney in Leon County and both have expressed their willingness to visit a future meeting to inform them about their local government functions. They will be contacting him in the near future to arrange the date and location and travel reimbursements. Chairman Cummings has not been able to contact the staff in Columbia County; they have not responded to his calls.

Mr. Scruby informed the CRC that he sent an email to Bob Nabors a few weeks ago requesting that he attend one of their meetings when he was in this area. He has not heard from Mr. Nabors' as of today.

Regarding agenda item number ten, Chairman Cummings informed the CRC that he contacted Commission Auditor Mike Price and invited him to visit one of their meetings. Mr. Price is in the process of completing the internal county investigation and will be tentatively attending the meeting of Thursday, December 1, 2005 at the Middleburg Library. The entire meeting will be focused on the Commission Auditor's report, his duties and responsibilities.

Under public comments of the October 17, 2005 CRC meeting, Tom Platt suggested that the CRC consider an amendment in the charter that a lobbyist must register so the interests they represent are explicit.

**After a brief discussion regarding Mr. Platt's request, Una Cornelius made a motion that they add to their issue list, "Discussion of registration of lobbyist in Clay County." Bill Garrison seconded the motion, which carried 8-4**

Chairman Cummings opened the floor to discuss agenda item number eight, (issue number 3 - Review the citizens' initiatives articles of the Home Rule Charter).

Gordon Jespersen asked Ralph Puckhaber to elaborate on his previous comment regarding the provisions in the charter on the percentage of the electorates for citizen's initiatives.

Ralph Puckhaber provided a data analysis of past election statistics he obtained from the Supervisor of Elections Office. The analysis presented scenarios of what the requirement for the percentage of signatures would be for citizen's to place an amendment on the ballot at the time of an election, based on what the charter was at that time.

Mr. Puckhaber explained that the original charter refers to ordinances and amendments although citizen's initiatives have only been used for amendments to date. The original charter required that signatures of ten percent of the electors in Clay County (registered voters) to place an amendment by petition on the ballot. The 1998 CRC thought that the ten percent of the registered voters may be too high and proposed to change the language to ten percent of the electors who voted in the last general election. It passed and lowered the number of signatures required. Mr. Puckhaber expressed his concern there would always be a higher percentage of voters voting in presidential cycles than there would be in the off-presidential cycles. Citizens can choose the year they want to do an initiative when the signature requirement is lower. He would like to see a change that would level out this requirement without a real increase in the signatures from what they are today.

Column D of the spreadsheet shows that only 46 percent of the citizens registered in the county voted in the 1998 election. The Presidential Election of 2004 was a very contentious election and 76 percent of the citizens voted. Essentially, if a citizen wanted to do a petition between the elections of 1998 and 2000, it would have been easier at that time than it would be now because there was a big turnout for the voters. The initiative would require more signatures.

The percentage in Column H of the spreadsheet is ten percent of the people who voted in the last presidential election. If that were the case, then in column I, in the 1998 election the requirement for signatures would have been almost 37 percent more signatures to place an item on the ballot if that language had been in place at that time. Referring to Column M, if the language required seven percent of the registered voters instead of ten percent of the registered voters it appears that the result would be very close to the average of the current language within a few hundred signatures and eliminates some of the up and down cycling of the number of signatures required.

Mr. Puckhaber commented that he provided this data so that they could discuss this issue thoroughly. It is his opinion that the cycling is unfair to the citizens who want to get signatures to place an amendment on the ballot. It would be hard for them to do so now because of the high turnout in the 2004 election. The election in 2006 will have fewer voters so if a citizen waits until that election they will be required to have fewer signatures for their initiative. This is not representative of the sum of the consistent percentage of the voters in the county. Looking at the situation in two ways; what if the ten percent remained, but was tied to a presidential cycle; or with a seven percent against the registered voters. Mr. Puckhaber stated that he would personally like to see the percentage tied to the number of registered voters and not to the number of voters

who voted. Periodically the registered voter's rolls are purged by the Supervisor of Elections if they have not voted for a while. Because of that purging, it can't be said that there are a lot of registered voters who don't vote.

Roy Lyons said that a change at any level of government should be difficult for anyone to do. He believes that ten percent of the registered voters to place an amendment on the ballot are reasonable. It is his opinion that they should make it very evident to the citizens in our county that a change in the county is necessary due to its continued growth.

Rob Bradley inquired if there had been a situation where citizens utilized a petition process in an off-year cycle and the initiative passed because it was an easy process.

Roy Lyons responded that term limits would be a good example. Term limits was placed on the ballot through a citizens initiative in an off-election year and it was not hard for them to do. He would like to see ten percent of registered voters as the requirement.

Rob Bradley asked Mr. Scruby why the citizen initiative was changed to its current form.

Mr. Scruby responded that the 1997/98 CRC at that time perceived that there had not been any action in this area and perhaps the bar was set too high, so they lowered it. There were only two amendments by initiative that went the distance and were placed on the ballot; both done during a presidential election. One was 2000 and one the other was 2004. The signature requirements would have been based upon the gubernatorial general election - an easier cycle.

Regarding the initiative proposals for the 1997/1998 CRC, Mr. Scruby read from their minutes from their "public hearing" in Keystone Heights on May 4, 1998:

3) Initiative petitions, a proposal to revise the initiative process for both Charter amendments and ordinances so as to (1) change the signature requirements from ten percent of the electors qualified to voter in the last general election to ten percent of the electors who cast ballots in the last general election; (2) delete the requirement that the qualified elector signatures must be gathered ins such a manner so that not less than three (3) of the five County Commission election districts contribute at least ten percent (10%) of their qualified electors to the ten percent (10%) countywide total; and (3) increase the period of time for the initiative petition drive from 120 days to 180 days. There were three changes for citizen's initiatives at this public hearing. This change occurred in 1998; amended, and affective January 1999.

Ralph Puckhaber stated that he believed the general consensus of the group was to level out the cycling nature of the citizen's initiatives. He did not think it should be at ten percent if it is based on the current numbers required and thought that it should be seven percent.

Chairman Cummings said they have discussed and debated the citizen's initiative issue thoroughly and it appears to be a single-subject matter. He asked Mr. Scruby if he was correct to assume that this was a single-subject matter and if it could be placed on the ballot without having a number of other issues attached to it.

County Attorney Mark Scruby explained that the citizen initiative proposal was a single-subject matter. Mr. Scruby read from page two of his hand-out regarding the single-subject matter rule: “This Court utilizes a “oneness of purpose” standard in applying the single-subject rule. Fine, 448 So.2d at 990 (“the one-subject limitation deal[s] with a logical and natural oneness of purpose”). This standard in turn incorporates a functional test: [T]he test should include a determination of whether the proposal affects a function of government as opposed to whether the proposal affects a section of the constitution.” The amendment the CRC did eight years ago satisfied the single-subject matter rule even though there were three separate changes. The one amendment this CRC is proposing would be single-subject matter easily.

After a brief discussion regarding the citizen’s initiative proposal, it was the consensus of the CRC that the percentage should be at ten percent.

**Ralph Puckhaber made a motion requesting that Mr. Scruby prepare a draft ballot summary in language that would 1) revise the initiative process for proposing ordinances so as to change the signature requirements from ten percent of the electors who cast ballots in the last preceding general election to ten percent of the electors qualified to vote in the last preceding general election; and 2) to revise the initiative process for proposing charter amendments so as to change the signature requirements from ten percent of the electors who cast ballots in the last general election to ten percent of the electors qualified to vote in the last general election. Roy Lyons seconded the motion, which carried 11-1.**

Mr. Scruby told the CRC that he would put the entire provision on one sheet using strikeout for deletions and underline for additions.

Gordon Jespersen asked if Clay County had experienced any problems from paid signature gatherers for citizen’s initiatives. He informed them that he had lived in other states where there had been huge controversy, in that those who had the most funds were able to gather the most signatures.

After a brief discussion, it was determined that Clay County did not have a problem with paid signature gatherers for citizen’s initiatives.

RECESS from 8:10 p.m. to 8:25 p.m.

Returning from recess, Chairman Cummings moved on to agenda item number nine and asked what the pleasure of the CRC was regarding the review the commission auditor’s responsibilities and if this position can have multiple assistants. He again informed them that Commission Auditor Mike Price has tentatively scheduled to attend their first meeting in December and will present his report of the internal investigation. They would be able to question him about his scope of work and job duties at that time.

**Rob Bradley made a motion to place issue number four (Review the commission auditor’s responsibilities and if this position can have multiple assistants) on the agenda of the CRC’s meeting Thursday, December 1, 2005. Ralph Puckhaber seconded the motion, which carried, 12-0.**

Mr. Scruby's provided information on two separate advisory opinions issued by the Florida Supreme Court that voided proposed ballot initiatives on grounds that included the single-subject matter rule applicable to such initiatives under the State Constitution which was emailed to them prior to this meeting. The information provided consisted of excerpts from the court's opinions. There were a number of issues examined with two ballot questions that were the subject of the advisory opinions. Portions of each opinion are directly related to the single-subject matter rule, and are a verbatim of the cases. It is used as a basis for evaluating what the law would be in relation to our own single-subject matter rule in our charter. It is important to recognize how the court views the single-subject matter rule, which is a rule of restraint. Its purpose is to avoid precipitous and cataclysmic change to the Florida organic law in the constitution. The point is that the stability in government is the most important thing in limiting large-scale changes. Those things can be done by the Constitutional Revision Commission which convenes every ten years. The text mentions guarding against log-rolling. Log-rolling is when several issues are gathered into one initiative. It may be that there is a very popular measure that is being advocated and a lot of momentum in the community; but at the same time there may be other issues that people are indifferent to, or mildly opposed to. All of them combined are called log-rolling. This is done with Congress all of the time and they are not restricted in that regard. They will attach riders on bills that have a lot of unsavory consequences. Leadership can get them on if they are necessary; and they have a tendency to get approved. The court is basically pointing out that there is a rule to prevent log-rolling. We have discussed the purpose and in his opinion, this is the one with an unsatisfactory description. Typically when lawyers read these facts they may prejudge the cases; and when they are finished, are often surprised. He commented that he could not tell them that there is a bright line of authority of interpreting the single-subject rule. It really depends on who is sitting on the court and the moment. It is his opinion from the content of the single-subject rule that there can't be an amendment which crosses several branches of government. No proposal can substantially alter or perform the functions of multiple branches.

The 1997/98 CRC discussed a single amendment providing for the transfer of certain of the clerk's duties to the county manager; and at the same time creating an auditor's position. The argument for them was that the Clerk of the Circuit Court was the pre-auditor in a non-charter conventional set-up. The Clerk of the Circuit Court performs the pre-audit function for the County, and by law the County must engage external auditors to audit the financial position of the county. Their concern was that if the comptroller and the custodian of the county's funds duties of the Clerk were transferred to the county manager; how would there be checks and balances for the county manager's use of funds. They proposed the creation of a Commission Auditor position to provide those checks and balances, and they wanted those two items to be together in the same amendment. Mr. Scruby advised the 1997/98 CRC of his opinion that it would cross over into two distinct branches of government and that it could not be done; in that they were proposing two measures, addressing more than one single-subject matter. Both of those measures were placed on the ballot as single-subject amendments, and they were not linked. The CRC believed it was more important to separate the clerk's duties; and if the citizens voted to not have a commission auditor, it was an issue that could be addressed later. Both measures were approved.

Mr. Scruby stated that adding two at-large commissioners was a single-subject matter. If they decided to make one of them a chairman or mayor, they would have to do another measure; he

was not sure that they could do that. They may be able to if the chairman is not exercising executive powers. The current Board meeting arrangement allows them to choose their own chairman and they may remove them in instances where they deem appropriate. This did occur once in the past. A Board chairman was indicted and for the duration of that period, the Board thought it was appropriate to have him removed from the chairmanship until after the indictment was resolved. He was acquitted and was restored to his chairmanship.

Clay County's Board meetings are conducted by the chairman who is the first to make decisions. Over the years, Mr. Scruby recommended that the Board not adopt a lot of rules. The Board governs their informal rules of order, how motions are made, and how business is brought before them. The chairman has been asked to always be restrained by due process, observing it all times. If there is a dispute by a commissioner on a ruling that the chairman has made on any matter that member can simply say, "I bring a point of order." The meeting will stop and if there is a second to the "point of order", the member will have to state their grounds and challenge the chairman's ruling. The second takes precedence and the Board discusses the issue, votes on it, and then moves on with their agenda. If there is a situation where a member feels like the chairman is unwilling to observe the rules, which has never happened, then the Board could remove the chairmanship from the member.

A lengthy discussion ensued regarding issue number five (a mayoral form of government – strong leadership). The CRC debated this issue at a prior meeting and it remains on the issue list for discussion at a future meeting. There will be several guest speakers attending up-coming CRC meetings and the information that they provide will be beneficial in making informative decisions on this issue. The verbatim discussion regarding issue number five is not included in these minutes because it will be discussed further at a later date.

**Public Comments:**

Fred Birkholz  
277 Lake Asbury Drive  
Green Cove Springs, Florida, 32043  
(904) 282-3710

Referring to agenda item number eight of today's meeting (signatures required for citizen initiatives), Mr. Birkholz explained that he agreed that it should be difficult for citizens to change their government. He requested that they consider the number of people who are really interested in their government if they were to make changes with the citizen's initiative amendment. It was his opinion that using the registered voters rule would not really be an accurate measure. He understands they have a concern about the variance in the voter rolls from one election to the other, and suggested that they consider using an average of the actual number of voters in the last two elections. He believes that percentage would even out the variances from one election to another. He commented that just because citizens are registered voters does not mean they have an interest in their county government.

Chairman Cummings stated that number one, four, six and seven of their issue list will be on the agenda of their next meeting scheduled for Monday, November 21, 2005, Orange Park Town Hall. Issue number four (review the commission auditor's responsibilities and if this position can

have multiple assistants) is on the next agenda so they can review Mr. Bradley's questionnaire before the December 1, 2005 CRC meeting when Commission Auditor Mike Price will be their guest speaker.

Regarding the citizen's initiative process and its presentation from a previous CRC session, Mr. Scruby explained that the minutes of the CRC meeting of December 8, 1997 introduced the idea of amending the citizen's initiative process. While there was not a lot of discussion at this meeting, the Chairman of the original CRC, Larry Kirkman, addressed several articles of the charter and expressed his opinion that they should consider changing the citizen's initiatives because it was overly difficult.

Further, the minutes of March 2, 1998, the CRC Chairman advised the CRC that he had discussed the same issue with the Supervisor of Elections and believed that the percentage of qualified voters for a citizen's initiative was difficult.

Meeting adjourned at 9:15 p.m.

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**Chairman Travis Cummings**

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**Recording Secretary, Ann Mitchell**