

**MINUTES
CLAY COUNTY
CHARTER REVIEW COMMISSION
December 1, 2005**

The Clay County Charter Review Commission (CRC) met on Thursday, December 1, 2005, 7:00 p.m., Middleburg Library, 2245 Aster Street, Middleburg, Florida, 32068. Those in Attendance are listed on the attached sign-in sheet.

Michael Q. Rogers made a motion to approve the November 21, 2005 minutes. Jim Gann seconded the motion, which carried 14-0.

Chairman Travis Cummings informed the public that Commission Auditor Mike Price would not be attending the meeting this evening. This was solely Mr. Price's personal decision to not attend; he felt that the environment would be such that the exposure from the media and discussion would be focused solely on the audit report. He felt that he did a complete and thorough job with the report and it is now in the hands of the state attorney office and grand jury. He has been receiving enormous media pressures and struggled greatly to decline after he had committed over four weeks ago. He takes full responsibility for his decision and at that time was very excited to have the opportunity and privilege to attend this meeting and wished now, that he had attended a meeting before the report was presented. Mr. Cummings thanked the media for the coverage they have been doing for the CRC and informed them that the decline from Mr. Price was only received within the last 48 hours. Chairman Cummings explained that he spoke with Mr. Price several times to encourage his attendance explaining the purpose of his presence was to explain to the CRC the functions of his job and receive input about how our government works and its checks and balances. A few of the CRC members created a questionnaire for Mr. Price and he received and has answered all of their questions and forwarded them early this week for their review before this meeting. Those questions are available to the public as a hand-out and are very insightful. Mr. Price has offered to answer any follow-up questions that the CRC may have and they can feel free to contact him at any time with any concerns. He commended the work of the CRC and has been following our progress.

Una Cornelius expressed her disappointment that Mr. Price did not attend as was scheduled.

A brief discussion ensued regarding the written answers provided by Mr. Price, to attach them to the official minutes for the records and not address each question individually. The public has been provided with those questions and answers and if anyone has a concern, they may attend a future meeting and address it. The CRC is always ready to listen to the concerns of the citizens.

Rob Bradley made a motion to submit the question/answers from Commission Auditor Mike Price with the official minutes and that they do not address each question at this time. Roy Lyons seconded the motion, which carried 15-0.

Roy Lyons requested that it be noted for the record that today's public participation at the Middleburg Library location is larger than any CRC meeting thus far.

Travis informed the public and CRC that several political candidates for the next general election were present and he suggested that they introduced themselves.

Charles Randolph Taylor Jr. (Scotty) explained that he served on the first CRC as their vice-chairman in the early 90's. He appreciates the CRC's understanding and commitment for this group and in the future, a lot of what this CRC brings to the forefront will be the same issues that candidates will use for campaigning. He is very interested in their issues. Mr. Taylor is running for County Commissioner District 4, currently held by Commissioner Glenn Lassiter.

Douglas Phillips explained that he has lived in the Orange Park area since 1985 and is a recent retired Navy aviator. He is running for District 2, currently held by Commissioner Patrick D. McGovern. Mr. Phillips is looking forward to going around the county to meet everyone and watching the great things that the Commissioners have been doing in the county. He would like to incorporate those good things to help make this a better county through internally improving the processes. He would like to take a global approach to make Clay County a model for the Northeast, and for the State of Florida. He has been married for 20 years, has two daughters both enrolled in the Clay County school system and is interested in the processes of this county so our children and citizens have a great place to grow up. He would like to tap into the resources of the people in this county to give him ideas of how they could make the county better.

Michael Q. Rogers suggested they consider Interim County Manager/Human Resource Director Rich O'Connell to visit their next meeting.

Chairman Cummings explained that Mr. O'Connell will be returning to his duties as the Human Resources Director upon the arrival of County Manager Fritz A. Behring. Mr. Behring will be attending our next meeting, Thursday, January 5, 2006 in Keystone Heights.

A brief discussion ensued regarding the invitation of Mr. Behring to one of their meetings.

Michael Q. Rogers explained that he was having a disconnect – the fact that this CRC is charged with a very complex task and it seems as though they can't get the resources of the county's internal staff beyond the report that has been published to do their job effectively. He does not know if he is the only one feeling that way; but wishes that these individuals would step up to the plate to help them do their jobs for the betterment of this community.

Roy Lyons commented that he thought Mr. Behring would provide them with first hand knowledge from his experience as a manager.

Chairman Cummings explained that Mr. Behring accepted the invitation as a guest at one of their upcoming meetings and he would announce the date soon. Further, the county's staff has been lacking leadership for a while and the morale has been low. I don't think that anyone who works for the county would mind me saying that. Employees are not jumping to come to our meetings to talk about the county to us. It is the CRC's wish for individuals to visit our meetings to provide nothing more than information based on their experience and the structure of their government.

Referring back to the audit report, Ralph Puckhaber explained that the CRC was not interested in the illegal dumping issues of that report. What they are interested in is whether or not the responsibilities and functions of the county auditor's position needed to be modified in the charter. One of the questions that Mr. Price responded to on the CRC's questionnaire is, "Are there any barriers currently presently in existence that prevent him from doing his job effectively". Mr. Price's response was that there were no organizational charter barriers. It is Mr. Puckhaber's opinion that something prevented him from doing his job effectively. Another area the CRC wanted to discuss is if the county auditor is responsible for maintaining internal controls regarding financial performance efficiency and compliance matters for all programs in the county. How is the charter set up to prevent the alleged issue for the auditor's finding of the 2003 audit that was minimized and his position was essentially threatened. Should something be included in the charter that would give the commission auditor some protection of law (a whistle-blower act)? This is what the CRC should be talking about; I don't care about the illegal dumping. We can't do anything about that and it has nothing to do with the CRC's charge.

Roy Lyons responded that was why they needed to invite the new county manager. He is experienced and will be able to let us know what he needs to do the job.

Ralph Puckhaber: The auditor works for the BCC and not for the county manager. He should be under the BCC. The auditor's position is different from the county manager, in that there would likely be some toes stepped on from time to time. Something should be included in the charter that will help him do his job.

Rob Bradley: This issue was presented well before the audit report came out. The CRC was concerned with the auditor's position and if something needed to be done to improve that position in the charter; the report just happened to be presented at the same time we were asking those questions. Let's not lose site of that. I could not agree with Ralph more – let's start discussing other issues based on the answers of the questions from Mr. Price. Is there something that we should do to improve that position to make it more effective?

Chairman Cummings responded that he explained this to Mr. Price as well. Mr. Price informed him that he was told what to audit unless he saw something that needed to be performed. Then he would do an inquiry on it. The complex nature of his report showed that there were some checks and balances. What I saw in the report is that the commission auditor was told that votes could be obtained that could get him fired based on the 2003 audit. The second thing that disturbed him was the report clearly stated that there was evidence of interference from BCC with staff (department heads), violating the non-interference clause in the charter.

Referring to question #17 of the auditor's questionnaire," Would you recommend any changes to that portion of the Charter dealing with the Commission Auditor"? Answer: No. Mr. Price gave a simple one word answer, (NO). So we have his answer and how he feels about it. We have to think back to the environment that he was working in. This would also explain why county staff may be reluctant to visit our meetings. The county has been audited and questioned for months and they probably feel that our meetings would just be another forum to be drilled. He answered the question no and did not recommend any changes. Question #18: "Who would I recommend that the CRC speak to regarding the position of Commission Auditor"? Answer: Two people.

The first is Mr. Bob Johnson, former Council Auditor of the City of Jacksonville. There is probably no one more qualified or experienced about this type of legislative auditor position in the State of Florida. He is retired and could be contacted through the City Council Auditor's Office. The second individual is Mr. Richard Wallace, current Council Auditor of the City of Jacksonville.

Chairman Cummings explained that during him and Mr. Price's conversations, he mentioned that the City of Jacksonville had nearly 30 years experience with the Legislative auditing body on their city council and is probably the premiere bench-mark within the state. I asked him how this individual was terminated and he explained that they are hired by a committee and the only way that they can lose their job is not by votes, but by mal-practice. It is all about getting the right person in that position.

Roy Lyons stated that this is what they are seeking – allowing the commission auditor to do his job without worrying about being fired; but still not having absolute authority. There has to be a way to protect that position.

Jim Gann stated that he thought they were starting to beat a dead horse here! Number 13 of the questionnaire, "Should the Commission Auditor have the power to audit constitutional officers?" Answer: I have no opinion on this issue. The Charter strictly precludes this.

Rob Bradley responded that he thought this was an excellent issue to discuss under the umbrella of the commission auditor. Is it a legitimate issue to discuss the idea of whether there should be some sort of audit function for the constitutional officers?

Rob Bradley made a motion to add to their issue list question #13 of the Commission Auditor's questionnaire, "Should the Commission Auditor have the power to audit constitutional officers?" Mary Cooperman seconded the motion, which carried 15-0.

Ralph Puckhaber: Referring to the issue about trying to protect the commission auditor; the political winds that blow! We have a five-member county commission and the way that termination is set up now for the commission auditor requires three votes of those commissioners to remove him from his job. Perhaps the CRC would want to consider something in the charter that would require a super-majority vote to fire the auditor. Maybe there needs to be four votes instead of three; something that would make it more difficult to easily remove the auditor from his position just because he may be stepping on toes.

Michael Q. Rogers thought that it should be more objective instead of more difficult. Chairman Cummings reminded the CRC that the county manager and county attorney were also under the same termination clause as the commission auditor.

Bill Garrison stated that there are other charters that provide for that sort of majority with a four or five of seven commissioners to appoint or terminate.

Chairman Cummings stated that Mr. Garrison has done a lot of valuable charter research and there are two legal sheets that have been provided that hit on this same issue.

Rob Bradley explained that he was intrigued by the idea Karen Lake presented and also from the data that Mr. Garrison provided to them; the idea of an audit committee to oversee the auditor. I am not saying that Mr. Garrison supports this only that this information was in one of the charter counties that he had discussed. There was what is called an audit committee that performed an oversight function and they were not the BCC. Karen's idea was rather than changing the charter; make a recommendation to the BCC to establish an audit committee to provide some independence to that position. This may not need to be done in our charter, but implemented in our government. If this committee does not work, it would be harder to change the charter than it would be to change an ordinance or administrative policy. This could be a potential approach to achieve some independence. A brief discussion ensued.

County Attorney Mark Scruby informed the CRC that there was already an audit committee established by the Board. It includes the Chairman of the Board and two constitutional officers and is rotated so that there is outside views that have their own external auditors and even internal auditors like the sheriff and the clerk of the court. It is structured. There is an existing audit committee and they meet quarterly. The Finance Director Don Moore and Commission Auditor Mike Price helped to establish this committee both agreeing that our organization needs to have standards for accountability in our government. The committee gives the auditor the opportunity to say that this is what he is finding and take a look at what is going on.

Rob Bradley commented that this committee is what he would like to see and requested more information on the audit committee for the next meeting.

Roy Lyons stated that they were looking into if the auditor has the power to audit the constitutional officers.

Mr. Scruby informed them that they could not do that. They could not do anything with the constitutional officers unless their position was essentially abolished and replaced that function with another position.

Rob Bradley withdrew his previous motion to add to their issue list question #13 of the commission auditor's questionnaire, "Should the Commission Auditor have the power to audit constitutional officers?" Jim Gann seconded the motion, which carried 15-0.

Mr. Scruby will be providing a copy of the decision of the Florida Supreme Court in Alachua County v. Powers, 351 So.2d 32 (Fla. 1977) for the CRC's review.

Chairman Cummings asked if there were any further discussion regarding the methodology to terminate the commission auditor.

Mary Cooperman responded that that she thought the commission auditor, county manager and county attorney's termination clause in the charter should be added to the issue list for further discussion.

Chairman Cummings asked Mr. Scruby how he could be terminated.

Mr. Scruby explained that three votes from the Board are all that was necessary to terminate him and he would have it no other way.

Rob Bradley commented that he too represented local government entities and would not have it any other way either way as well.

Mr. Scruby explained that the contract for the county manager, county attorney and commission auditor does not provide anything other than acknowledging that they are at-will employees. Their rights are not the same as other county employees as far as job security is concerned, in that there is more cause involved with dismissing any other county employee.

Rob Bradley commented that the BCC has been experiencing difficult times and citizens have lost faith in their ability to lead. We elect the BCC; they reflect the people and the county commissioners need to be able to act effectively as a majority. If they don't like their county manager, auditor, or attorney, then they should be able to fire them. That being said, the CRC should do their best to make sure that the commission auditor can act in an environment where there is a measure of independence; as well as a measure of the ability to perform objectively. There are other things that the CRC can do other than make it impossible for the BCC to fire them. To achieve that goal, let's not neuter our BCC.

Roy Lyons responded that they were not after the BCC. The county manager, commission auditor, and attorney all should have the autonomy to do their job without having one incident coming along that the BCC may not like and fire them. Otherwise, what has happened in the past will continue.

Rob Bradley stated that the commission auditor's report indicated that individuals were the cause of the government's failure, not of the institution. The non-interference clause in our charter was not honored and caused a breakdown.

Roy Lyons feels that the county manager should be able to say something to the BCC about directing employees without having them turning on him.

Rob Bradley commented that what he read loud and clear from the audit report was that the non-interference clause in our charter was not followed and should have been.

Mr. Scruby explained that their new County Manager Fritz Behring arranged to meet with his staff before he took office December 5, 2005. He made it very clear to staff that he understood the control issue; has experienced it in the past in another county, and would take the necessary steps to deal with it. He was very emphatic to staff that he could not get his mission accomplished if they couldn't get their mission accomplished.

Roy Lyons responded that was what he was talking about – the county manager has to be able to do his job and be able to say no to the commissioners. He can't have absolute control because he does have to answer to them.

Rob Bradley stated that the county manager should have to answer to the Board because it is part of the checks and balances. This is a golden opportunity for the county manager to be what he was intended to be when the charter was established. The new county manager is coming in with the audit report that says the non-interference clause was not used. The county will be honoring the non-interference clause and working with the charter. So let's let him do his job.

Chairman Cummings asked Mr. Scruby what the ramifications would be if the non-interference clause is violated.

Mr. Scruby explained that he has not explored this area and was not sure if this would be an Ethics Commission issue. Currently, there is nothing in the charter that says that a violation of this provision is a crime. Likewise, the Florida Constitution doesn't say that either. You may subject yourself to scrutiny as we have seen. There are people who are talking about making changes immediately in leadership through whatever mechanisms may be available. Beyond that, I don't think that there is a specific penalty provision, certainly not one in the charter.

Rob Bradley stated that in one of the non-interference clauses from another charter county he saw that a violation by a commissioner is by definition, "malfeasance." It is of his opinion that this statement clarifies what the charter considers the importance of that particular provision and how it needs to be honored. He suggested that the CRC beef up the non-interference clause if violated becomes an act of malfeasance.

Bill Garrison read the first sentence of the non-interference clause for Clay County's Charter: "County Commissioners may communicate with employees, officers, or agents under the direct or indirect supervision of the county manager or county attorney for the purpose of inquiry or information." He read the same sentence from Brevard County's Charter: "Except for the purpose of inquiry and information, the Board of County Commissioners and committees of commissioners are expressly prohibited from interfering with the performance of the duties of any employee of the government; such action should be malfeasance, within the meaning of Article IV of Section Seven of the State Constitution."

Rob Bradley made a motion that they ask the county attorney to prepare proposed language that modifies the non-interference clause of the county's charter to include language that a violation of set clause is an act of "malfeasance." Roy Lyons seconded the motion.

Ralph Puckhaber suggested that the entire clause be re-written instead of modified in that the verbiage from Brevard County's Charter was more preferable than what we currently have in ours.

Rob Bradley withdrew his previous motion.

Rob Bradley made a motion directing County Attorney Mark Scruby to prepare the proposed language for our charter's non-interference clause for the CRC's review at their next meeting reflecting the language of Brevard County's Charter as follows: "Section 3.4 Noninterference by Board of County Commissioners: Except for the purpose of inquiry and information, the Board of County Commissioners, and committees of Commissioners,

are expressly prohibited from interfering with the performance of the duties of any employee of the County Government who is under the direct or indirect supervision of the County Manager. Such action shall be malfeasance within the meaning of Article IV, Section 7(a) of the State Constitution.” Roy Lyons seconded the motion, which carried 15-0.

Chairman Cummings gave kudos to Bill Garrison for providing the CRC with valuable information.

A monthly calendar of meetings was passed out to the CRC that was provided by Commissioner George Bush. He wanted the CRC to know that the BCC attend several functions after hours and the date and time was available if any of them wanted was interested in attending them.

Human Resources Director Rich O’Connell proved the CRC with a cost analysis they requested at the previous meeting for the two proposed at-large positions they have been discussing (copy attached).

Commission Auditor Mike Price’s resume was passed out to the CRC for their review, at their request.

A brief discussion ensued regarding the county auditor’s functions, the county’s audit committee and its purpose and function as well as standard auditing standards.

Rob Bradley made a motion to invite Finance Director Don Moore to their next meeting, Thursday, January 5, 2006 at the City of Keystone Heights City Hall, to explain the purpose and function of the county’s audit committee. George Espada seconded the motion, which carried 15-0.

Chairman Cummings will confirm with County Manager Fritz A. Behring and Finance Director Don Moore of their attendance to the next CRC meeting Thursday, January 5, 2006.

Sarah Blakely would be the guest speaker at the Charter Home Rule Seminar on Wednesday, January 18, 2006 from 6:00 p.m. to 9:00 p.m. at the Fleming Island High School Teacher In-Service Center. All interested parties are invited to attend at no cost.

The CRC meeting location for Monday, January 23, 2006 will be announced at a later date. Scheduled to attend this meeting will be Allan Watts who is an attorney and has consulted with approximately six to eight charter counties, helping them to create and develop their charters. The youngest Charter County in the state is Columbia County and he was instrumental in its creation. Currently, Columbia County is convening as is Clay County, so Mr. Watts will have a multitude of knowledge to provide the CRC at this meeting. Chairman Cummings will arrange for travel reimbursement through the County Manager Fritz Behring. Mr. Watts informed Chairman Cummings that he knew Fritz Behring well and spoke very highly of him.

Rob Bradley commented that after the visit by Mr. Watts the CRC may be ready to wrap up their issue discussions in February. He recommended that they make a goal to have a plan of action by the first meeting of February.

Issue number eight (8) was added the CRC issue list: “Modification of existing non-interference clause in the county’s charter.”

A brief discussion ensued regarding issue number three, “Discuss a mayoral form of government: a) discuss an elected mayor (a strong leadership figure) who would be one of the two at-large seats should the expansion to seven members be one of the revisions.” Mr. Scruby recommended that the CRC reserve their questions regarding a mayoral form of government for the January 18, 2006 Charter Home Rule Seminar, hosted by Sara Blakely who is a partner with Bob Nabors’. Both very knowledgeable about this subject and would be able to elaborate on this type of government better than he at this time.

Gordon Jespersen asked Mr. Scruby if Sara Blakely took the position that there could be a strong-mayor so-to-speak, form of government in Clay County, and if that recommendation was made to the Board; would he be give his legal opinion to the matter.

Mr. Scruby explained that they would not be making any recommendations to the Board; they will be placing measures on the ballot. It is the Board’s administrative duties to place them on the ballot. He explained that if he and Sara discussed this issue and Sara provided a really compelling case, then he would give the CRC his opinion on it. At this time he could not predispose himself about the issue.

Rob Bradley stated that there seemed to be a general consensus that if they were to have one of the two at-large seats as an elected chairman for four years they were not contemplating that this individual would have any executive functions; rather legislative functions. Issue number three does not express that sentiment clearly and it should be revised.

Rob Bradley made a motion to change issue number three to say: “Discuss an elected chairman who would be one of the two at-large seats should the expansion to seven members be one of the revisions; this elected chairman would only perform legislative functions.” Roy Lyons seconded the motion, which carried, 15-0.

At the meeting of November 21, 2005, the CRC requested that Mr. Scruby provide them with information where a different arrangement for the composition and election of the BCC members in terms of numbers and status (at-large versus single-member) than is set forth in Chapter 124, Florida Statutes. Said chapter provides in general terms for two separate arrangements without reference to the statutes of the county as charter or non-charter. The first option contemplates a five member BCC elected at-large (Sec. 124.01, FS). The second option is set forth in Sec. 124.011, FS, as follows:

124.011 Alternate procedure for the election of county commissioners to provide for single-member representation. –

(1) County commissioners shall be nominated and elected to office in accordance with the provisions of s. 124.01, or as otherwise provided by law, unless a proposition calling for single-member representation within the county commission districts is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in this section. Such proposition shall provide that:

(a) Five county commissioners shall reside one in each of five county commission districts, the districts together covering the entire county and as nearly equal in population as practicable; and each commissioner shall be nominated and elected only by the qualified electors who reside in the same county commission district as the commissioner; or

(b) The board of county commissioners shall be increased from five commissioners to seven commissioners, with five of the seven commissioners residing one in each of five county commission districts, the districts together covering the entire county and as nearly equal in population as practicable, and each commissioner being nominated and elected only by the qualified electors who reside in the same county commission district as the commissioner, and with two of the seven commissioners being nominated and elected at large.

So, under Chapter 124,FS, there appear to be only three general law options available: (1) five commissioners elected at large; (2) five “single-member” commissioners elected only within their residency districts; and (3) seven commissioners, with five “single-member” commissioners elected only within their residency districts, and the other two elected at large.

The general rule, as has been emphasized to the Charter Review Commission, is that the Florida Constitution prohibits a charter from being in conflict with general law. But in this specific instance, Article VIII, Sec. (1)(e) of the Florida Constitution appears to allow charters to supersede the general law pertaining to the numbers and types of commission seats:

SECTION 1. Counties. -

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Attached to these minutes as backup documentation are the questions/answers provided by Commission Auditor Mike Price complied by the CRC.

Public Comments:

Regarding County Manager Fritz Behring attending one of the CRC’s meetings, Douglas Phillips stated that Mr. Behring is a municipal expert with many years of experience who could provide the CRC with his experiences working with local government.

Next meeting is Thursday, January 5, 2006, Keystone Heights City Hall at 7:00 p.m.

There being no further business the meeting adjourned at 9:10 p.m.

Chairman Travis Cummings

Recording Secretary, Ann Mitchell