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Charter Review Commission
The Casements
Ormond Beach, FL 32176

Dear Members of the Commission:

In dealing with voting issues, both as a citizen and in my capacity as the director of legal affairs for Florida Fair Elections, I have come across a number of disturbing incidents that have colored this commentary. First, when campaigning for early voting in the last presidential election I attended a County Council meeting. At that meeting, the County Manager said she had taken an informal poll of the Council on early voting and hadn't seen the need to put the matter on the agenda. Besides violating the Sunshine Act, the Manager had made a decision not to allow the public into the discussion on a matter that is central to their interests, voting. I applaud her courage in admitting this, but I also say it is time she was properly supervised.

The administrative branch of government again overstepped its bounds in hiring an outside counsel without consulting the County Council. The law firm has done a fine job, but that doesn't get us past the fact that an attorney required to recuse himself ended up hiring attorneys whom he had hired before. The Charter doesn't provide a method for dealing with ethics problems of its attorneys, and we must assume these problems will come up. Attorneys are required to avoid even the appearance of impropriety.

My comments are meant to address the specific issues I mentioned above, but I believe that many problems can be resolved by making these changes. The current language defining the role of the County Manager reads:

Sec. 403. Powers.

The county manager shall be head of the administrative branch of county government, serve as clerk to the council and shall be responsible to the council for the proper administration of all affairs of the county

This section is both broad and vague. The County Manager is not an elected official yet has more powers than many who are duly elected. She is supposed to be responsible to the County Council but nowhere is that fully defined and nowhere is that limited. It is like having an unelected President of the county with no Congressional oversight or ability to override a veto. This is not what most individuals envision when they elect their Council. I doubt many people understand the role of the County Manager or know that this office is defined by their Charter. They expect their elected officials to govern

with her help and advice, not the other way around. The language can be amended simply to state that the County Manager shall report to the County Chair who will provide reports on her activities as requested. The County Chair shall submit evaluations of her performance annually.

Although there are many ways of defining the responsibilities of the county manager, the most practical way is to have her report to the Chair of the County Council who should have the power to bring disputes the Council as a whole. You could also give the Council specific override or veto powers. You could also take the time to define her responsibility to the Council more clearly. There are many disputes for which firing is not an appropriate remedy, but the County Council is given no other options. I realize the idea is to have an expert manager run the County without too much hindrance from the Council, but I believe the Charter has gone too far and protects the Manager at the expense of democracy.

Sec. 307.1. The county chair

The office of the county chair shall have all jurisdiction and powers which are now and which hereafter may be granted to it by the Constitution and laws of Florida provided that such powers shall be exercised in a manner consistent with this charter. The county chair, in addition to the powers and duties provided by this charter, shall have the specific powers and duties to:

- 1. Serve as the official and ceremonial representative of the government.*
- 2. Issue proclamations on behalf of the government, which shall be reported to the county council upon issuance.*
- 3. Preside as chair of and in all other respects participate in the meetings of the county council and have an equal vote on all questions coming before it.*
- 4. Execute ordinances, resolutions and other authorized documents of the government.*
- 5. Serve ex-officio as the county government's representative, and appoint others to serve in the county chair's stead, on other bodies external to county government.*
- 6. Serve as the county council representative, and appoint county council members to serve in the county chair's stead, on other bodies internal to county government.*

The county council shall elect at its first meeting in January a council member to serve at its pleasure for a one-year term as vice chair of the county council to preside in the temporary absence, disqualification or disability of the county chair at county council meetings and perform other duties assigned by the county chair. (Res. No. 2002-149, § 1, 9-5-02)

The County Chair should also have the power to set, amend and control the Council's agenda. His listed duties should include supervising the County Manager, evaluating her performance, and presenting regular reports on her activities. He should also be able to direct the Manager to provide reports from all departments. In addition, this section should make it clear that he may bring up matters on his own motion.

Sec. 601.2. Department of legal services

The county attorney shall be the director of the department of legal services and may hire licensed attorney assistants to perform the duties of the department. All such attorneys shall devote their entire practice to the representation of the county charter government. They shall represent the county charter government, the county council, the county manager and the elected and appointed department heads as county officers, all other departments and divisions of county government and all adjustment, regulatory and advisory boards in all legal matters affecting the county government. Special attorneys and experts shall be employed only when required in specific matters upon the recommendation of the county attorney and approved as a budgetary expenditure in the best interests of the county.

This provision seems to have been misinterpreted to allow the County Attorney or County Manager to hire outside counsel without prior input from the County Council. Pursuant to statute, it is the County Council that is in charge of hiring outside counsel. It is inappropriate for an individual who is precluded from representing the Council by ethical rule to claim not only the exclusive right to hire counsel but to appear in court. The provision needs to be amended to provide that when the County Attorney is arguably required to recuse himself pursuant to a Rule Regulating the Florida Bar, the County Counsel may hire an attorney of its own choosing to either render an opinion as to whether the legal department as a whole is precluded from appearing or to represent it or any department of the county government in said matter.

Thank you for your service to the County and consideration of my comments.

Sincerely,

Anita L. Lapidus
Director of Legal Affairs
Florida Fair Elections Coalition