

LEE COUNTY ORDINANCE NO. 08-15

AN ORDINANCE OF LEE COUNTY REPEALING AND REPLACING IN ITS ENTIRETY LEE COUNTY ORDINANCE NO. 96-01, AS AMENDED BY LEE COUNTY ORDINANCE NOS. 00-09, AND 04-10, RELATING TO THE PROVISIONS OF SECTION 125.80, FLORIDA STATUTES, ET SEQ., "THE OPTIONAL COUNTY CHARTER LAW"; PROVIDING FOR THE ADOPTION OF A CONCISE ORDINANCE INCORPORATING LEE COUNTY ORDINANCE NOS. 96-01, 00-09, and 04-10 RELATING TO THE LEE COUNTY CHARTER AND THE PROVISIONS THEREOF, PROVIDING FOR REPEAL AND REPLACEMENT, AND SHORT TITLE; PROVIDING FOR CLARIFICATION OF THE LEE COUNTY HOME RULE CHARTER INCLUDING PREAMBLE, COUNTY POWERS AND DUTIES, ORGANIZATION, FORM AND STRUCTURE OF COUNTY GOVERNMENT, ELECTIVE AND APPOINTED OFFICERS, EXECUTIVE AND APPOINTED OFFICERS, EXECUTIVE AND LEGISLATIVE RESPONSIBILITIES, ELECTED COUNTY CONSTITUTIONAL OFFICES, INITIATIVE, REFERENDUM AND RECALL, CHARTER REVIEW AND AMENDMENT; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND EFFECTIVE DATE.

WHEREAS, Article VIII, Section 1.(c) & (g), Florida Constitution, provides that a county government may, pursuant to general law be established by charter, as adopted by vote of the electors of the county; and,

WHEREAS, Florida Statutes Section 125.80, et al., provides a statutory method whereby a county not having a charter form of government may locally initiate a county Home Rule Charter; and,

WHEREAS, the Board of County Commissioners, on January 3, 1996, duly passed and adopted Ordinance No. 96-01, which called for an election referendum to determine

whether the Charter should be adopted; and,

WHEREAS, on November 5, 1996, the Proposed Charter of Lee County, Florida was presented to the qualified Lee County electorate by placing the question of whether to adopt same on the Ballot at a Special Referendum Election held on November 5, 1996; and,

WHEREAS, the Proposed Charter was voted for adoption by Ballot at the Special Referendum Election and became effective on January 1, 1997; and,

WHEREAS, Article IV, Section 4.1 B. provides for a Charter Review Commission method of amending the Lee County Charter whereby proposed Amendments are submitted by a Charter Review Commission for Board of County Commissioners' approval; and,

WHEREAS, Lee County Ordinance No. 96-01, was amended by Lee County Ordinance Nos. 00-09 and 04-10; and,

WHEREAS, Lee County desires to establish one Ordinance that incorporates Lee County Ordinance Nos. 96-01, 00-09, and 04-10, for easy reference for the citizens of Lee County.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

SECTION ONE: REPEAL AND REPLACEMENT

It is the intent of this Ordinance to repeal and replace in its entirety Lee County Ordinance No. 96-01, as amended by Ordinance Nos. 00-09 and 04-10.

Lee County Ordinance Nos. 97-23 regarding the adoption of an Administrative Code and 97-14 which reference Lee County Ordinance 96-01 regarding petition format shall remain in full effect.

Lee County Ordinance Nos. 96-01, 00-09, and 04-10 are hereby duly repealed and amended to read as follows:

SECTION TWO: **SHORT TITLE**

This Ordinance shall be known and may be cited as the "Lee County Charter".

SECTION THREE: **LEE COUNTY HOME RULE CHARTER**

The Lee County, Florida, Home Rule Charter as effective on January 1, 1997, stated and incorporated herein, reads as follows:

LEE COUNTY HOME RULE CHARTER

PREAMBLE

We, the people of Lee County, in order to attain greater local self-determination, to exercise more control over our own destiny, to create a more responsible and effective County government, and to guarantee equal civil and political rights to all, do avail ourselves of the opportunity afforded by the Florida Constitution to become a chartered County and do hereby ordain and establish by this Home Rule Charter, a new form of government of and for Lee County.

ARTICLE I
CREATION, POWERS AND ORDINANCES OF
HOME RULE CHARTER GOVERNMENT

Section 1.1: Creation and General Powers of Home Rule Charter Government

Lee County shall be a Home Rule Charter county, and, except as may be limited by this Home Rule Charter, shall have all county and municipal powers of self-government granted now or in the future by the Constitution and laws of the State of Florida.

Section 1.2: Body Corporate, Name and Boundaries

Lee County shall be a body corporate and politic. The corporate name shall be Lee County. The county seat and boundaries shall be those presently designated by law.

Section 1.3: Relation to State Law

The provisions of this Home Rule Charter are not intended, and shall not be construed, to conflict with the Constitution of the State of Florida, a general law, or special law approved by vote of the electorate.

Section 1.4: Relation to Municipal Ordinances

Municipal ordinances shall prevail over County ordinances to the extent of any conflict.

ARTICLE II

ORGANIZATION OF COUNTY GOVERNMENT

Section 2.1: Elected Commission and Appointed County Manager Form of Government

Lee County shall operate under an appointed County Manager form of government with cooperation of legislative and executive functions in accordance with the provisions of this Home Rule Charter. The legislative responsibilities and powers of the County shall be assigned to, and vested in, the Board of County Commissioners. The executive responsibilities and power of the County shall be assigned to and vested in the County Manager, who shall carry out the directives and policies of the Board of County Commissioners and enforce all orders, resolutions, ordinances, and regulations of the Board of County Commissioners, the County Charter, and all applicable general law, to ensure that they are faithfully executed.

Section 2.2: Legislative Branch

A. The County Commission. The governing body of the County shall be a Board of County Commissioners composed of five (5) members serving staggered terms of four (4) years. There shall be one Commissioner for each of the five (5) County Commission districts established pursuant to general law and they shall be elected in a partisan election on a county-wide basis by the electors of the County. Each County Commissioner during the term of office shall reside in the district from which such County Commissioner ran for office, provided that any County Commissioner who is removed from a district by redistricting may continue to serve during the balance of the term of office.

B. Redistricting. County Commission district boundaries shall be changed only after notice and a public hearing as provided by general law.

C. Salaries and Other Compensation. Salaries and other compensation of the County Commissioners shall be set the same as those set by general law for the County Commissioners of non-charter counties and shall not be lowered during the term of office.

D. Authority. The Board of County Commissioners shall exercise all legislative authority provided by this Home Rule Charter in addition to any other powers and duties authorized by general law or special law.

E. Administrative Code. The Board of County Commissioners shall adopt an Administrative Code by ordinance and in accordance with general law within twelve (12) months of the effective date of this Charter.

(1) The Administrative Code shall organize the administration of County government and set forth the duties and responsibilities and powers of all County officials and agencies.

(2) The Administrative Code shall not apply to the elected Constitutional Officers.

F. Vacancies. A vacancy in the office of County Commissioner shall be defined and filled as provided by general law.

G. Recall. The members of the Board of County Commissioners shall be subject to recall as provided by general law.

H. Initiative.

(1) The electors of Lee County shall have the right to initiate County ordinances in order to establish new ordinances and to amend or repeal existing ordinances upon petition of qualified electors in the County. Each such proposed ordinance shall embrace but one subject and matter directly connected therewith. The number of qualified elector signatures for a valid petition must equal at least five percent (5%) of the electors qualified to vote in the last preceding general election. No more than thirty percent (30%) of the total number of signature required will be allowed in any single Board of County Commission District.

(2) The sponsor of an initiative ordinance shall, prior to obtaining any signatures, submit the text of the proposed ordinance to the Supervisor of Elections, with the form on which, signatures will be affixed, and shall obtain the approval of the Supervisor of Elections of such form. The style and requirements of such form shall be specified by County ordinance. The beginning date of any petition drive shall commence upon the date of approval by the Supervisor of Elections of the form on which signatures will be affixed, and said drive shall terminate one hundred and eighty (180) days after that date. In the event sufficient signatures are not acquired during that one hundred eighty (180) day period, the petition initiative shall be rendered null and void and none of the signatures may be carried over into another identical or similar petition. The sponsor shall submit signed and dated forms to the Supervisor of Elections and upon submission shall pay all fees as required by general law. The Supervisor of Elections shall within forty-five (45) days verify the signatures thereon.

(3) Within forty-five (45) days after the requisite number of names have been verified by the Supervisor of Elections and reported to the Board of County Commissioners, the Board of County Commissioners shall notice and hold according to general law a public hearing on the proposed ordinance and vote on it. If the Board of County Commissioners fails to enact the proposed ordinance at the public hearing, it shall, at the public hearing, by resolution, call for a referendum on the question of the adoption of the proposed ordinance to be held at the next general election occurring at least ninety (90) days after the adoption of such resolution. If the question of the adoption of the proposed ordinance is approved by a majority of those registered electors voting on the question, the proposed ordinance shall be declared by resolution of the Board of County Commissioners to be enacted and shall become effective on the date specified in the ordinance, or, if not so specified, on January 1 of the succeeding year. The Board of County Commissioners shall not amend or repeal an ordinance adopted by this initiative procedure for a period of one year after the effective date of such ordinance and thereafter may amend or repeal such ordinance only by an affirmative vote of at least a majority plus one of its membership.

(4) The power to enact, amend or repeal an ordinance by initiative shall not include ordinances relating to the County budget, debt obligations, capital improvement programs, salaries of County officers and employees, the levy and collection of taxes, and the rezoning of an individual parcel of land.

I. Non-Interference.

(1) County Commissioners may communicate, directly or indirectly, with

employees, officers or agents under the direct or indirect supervision of the County Manager or County Attorney only for the purpose of inquiry or information.

(2) Except for the purpose of inquiry or information, a County Commissioner shall not, directly or indirectly, give directions to or interfere with the performance of the duties of any employee, officer, or agent under the direct or indirect supervision of the County Manager or County Attorney.

(3) Violations of the Section of the Charter shall constitute malfeasance within the meaning of Section 100.361(l)(b), Florida Statutes.

(4) Nothing contained herein shall prevent a County Commissioner from referring a citizen complaint or request to the County Manager or County Attorney.

Section 2.3: Executive Branch

A. The County Manager.

(1) The County Manager shall be appointed by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. The County Manager may be terminated with or without cause by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. The County Manager may be employed by means of a contract with the Board of County Commissioners. The County Manager shall be the chief executive officer of the County and all executive responsibilities and power shall be assigned to and vested in the County Manager, which shall consist of the following powers and duties, with the specific exception of the Office of the Lee County Hearing Examiner, which notwithstanding any provision of this Charter to the contrary, may continue by existing Ordinance, or be re-established by new

Ordinance, consistent with the other provisions of this Charter:

(a) Report annually to the Board of County Commissioners and to the citizens on the state of the County, the work of the previous year, recommendations for action or programs for improvement of the County, and the well-being of its residents.

(b) Prepare and submit the annual budget and capital programs to the Board of County Commissioners and execute the budget and capital programs in accordance with appropriations and ordinances enacted by the Commission.

(c) Ensure that all ordinances resolutions and orders of the Board of County Commissioners and all laws of the State which are subject to enforcement by the County Manager, or by officers who are subject under this Charter to the County Manager's direction and supervision, are faithfully executed.

(d) Carry into execution such other powers or duties, as are required by this Charter or may be prescribed by the Board of County Commissioners.

(e) The County Manager shall exercise all executive authority provided by this Home Rule Charter in addition to all other powers and duties authorized by general or special law.

(2) The County Manager shall be qualified by administrative and executive experience and ability to serve as the chief executive officer of the County. Minimum qualifications including educational and administrative requirements for the County Manager shall be established by County ordinance. The County Manager need not be a resident of the County at the time of appointment, but during the term of appointment shall reside within the County.

(3) The compensation of the County Manager shall be fixed by the Board of County Commissioners.

(4) The office of County Manager shall be deemed vacant if the incumbent moves his residence from the County or is, by death, illness, or other casualty, unable to continue in office. A vacancy in the office shall be filled in the same manner as the original appointment. The Board of County Commissioners may appoint an acting County Manager in the case of vacancy, temporary absence or disability until a successor has been appointed and qualified or the County Manager returns.

B. County Department Heads.

(1) The County department heads shall be appointed by and shall be responsible to the County Manager.

(2) The County Manager shall have the sole authority to suspend or terminate any department head with or without cause.

C. County Attorney.

(1) The County Attorney shall be appointed by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. The County Attorney may be terminated with or without cause by an affirmative vote of a simple majority of the membership of the Board of County Commissioners.

(2) The County Attorney may be employed by means of a contract with the Board of County Commissioners.

(3) The County Attorney shall be a member in good standing of the Florida Bar and shall reside within the County during the term of appointment.

(4) The County Attorney shall be the legal advisor and provide legal services to the Board of County Commissioners, the County Manager and departments and divisions under the supervision of the County Manager, and all County regulatory and advisory boards and agencies in all matters relating to their official duties and responsibilities.

(5) The County Attorney shall appoint and terminate Assistant County Attorneys with or without cause.

(6) In the event there is an actual or potential conflict of interest between parties represented by the County Attorney as specified in Section 2.3.C.(4), the County Attorney shall promptly submit such conflict to the Board of County Commissioners who shall resolve such conflict by hiring special legal counsel or other lawfully available method to resolve the conflict.

ARTICLE III

ELECTED COUNTY CONSTITUTIONAL OFFICES

Section 3.1: Elected County Constitutional Offices

The offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as independent, elected constitutional officers and the powers, duties and functions shall not be altered by this Home Rule Charter, except as provided in Section 3.2: Non-Partisan Elections (below). The Constitutional officers shall perform their executive and administrative functions as specified by general law.

Section 3.2: Non-Partisan Elections

The Supervisor of Elections shall be non-partisan.

A. Non-Partisan Election Procedures

If three (3) or more candidates, none of whom is a write-in candidate, qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first primary election. If no candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the general election ballot.

B. Qualification by Petition

A candidate for non-partisan office may qualify for election to such office by means of the petitioning process as provided by general law.

C. Legislative Intent

It is the intent of the people of Lee County that the provisions of this section with respect to the election of the Supervisor of Elections on a non-partisan basis is an exercise of their constitutional prerogative to choose this county officer in another manner as provided in Article VIII, section 1(d) of the Constitution of Florida. This section will not otherwise be construed to alter, transfer, diminish or abolish any of the powers, duties or responsibilities of said office now or hereafter existing under the Constitution and general laws of Florida.

ARTICLE IV
HOME RULE CHARTER AMENDMENTS, CHARTER REVIEW,
TRANSITION, SEVERANCE, EFFECTIVE DATE

Section 4.1: Home Rule Charter Amendments

A. Amendments Proposed by Petition.

(1) The electors of Lee County shall have the right to initiate proposed amendments to this Home Rule Charter upon petition of the qualified electors in the County. The number of qualified elector signatures for a valid petition must equal at least seven percent (7%) of the electors qualified to vote in the last preceding general election.

(2) Each such proposed amendment shall embrace but one subject and matter directly connected therewith. Each Charter amendment proposed by petition shall be placed on the ballot by resolution of the Board of County Commissioners for the next general election occurring in excess of ninety (90) days from the certification by the Supervisor of Elections that the requisite number of signatures has been verified.

(3) The sponsor of a petition amendment shall, prior to obtaining any signatures, submit the text of the proposed amendment to the Supervisor of Elections, with the form on which the signatures will be affixed, and shall obtain the approval of the Supervisor of Elections of such form. The style and requirements of such form shall be specified by County ordinance. The beginning date of any petition drive shall commence upon the date of approval by the Supervisor of Elections of the form on which signatures will be affixed, and said drive shall terminate one hundred and eighty (180) days after that

date. In the event sufficient signatures are not acquired during that one hundred and eighty (180) day period, the petition initiative shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition. The sponsor shall submit signed and dated forms to the Supervisor of Elections and upon submission pay all fees as required by general law. The Supervisor of Elections shall within forty-five (45) days verify the signatures thereon.

(4) If approved by a majority of those electors voting on the amendment at the general election; the amendment shall become effective on the date specified in the amendment, or, if not so specified, on January 1 of the succeeding year.

Section 4.1: Home Rule Charter Amendments

B. Amendments and Revisions by Charter Review Commission.

(1) A Charter Review Commission consisting of fifteen (15) electors of the County shall be appointed by the Board of County Commissioners at least eighteen (18) months prior to the general election held every eight (8) years after the general election occurring in 2008. The Charter Review Commission shall review the Home Rule Charter and propose any amendments or revisions which may be advisable for placement on the general election ballot. No member of the State Legislature, the Board of County Commissioners, any County Constitutional Officer, any elected officer of a municipality nor any Contract employees of the Board of County Commissioners nor persons employed as aides to individual County Commissioners shall be a member of the Charter Review Commission. Vacancies shall be filled within thirty (30) days in the same manner as the original appointments.

(2) The Charter Review Commission shall meet for the purpose of organization within thirty (30) days after the appointments have been made. The Charter Review Commission shall elect a chairman and vice chairman from among its membership. Further meetings of the Charter Review Commission shall be held upon the call of the chairman or a majority of the members of the Charter Review Commission. All meetings shall be open to the public. A majority of the members of the Charter Review Commission shall constitute a quorum. The Charter Review Commission may adopt such other rules for its operations and proceedings as it deems desirable. Members of the Charter Review Commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to general law.

(3) A budget for the Charter Review Commission shall be set by the Board of County Commissioners. Within the budget limits set by the County Commission, the Charter Review Commission may employ a staff, consult with and retain experts, and purchase, lease, or otherwise provide for such supplies, materials, equipment and facilities as it deems necessary and desirable.

(4) The Charter Review Commission shall hold at least three (3) public hearings at intervals of not less than ten (10) days nor more than twenty (20) days on any proposed Charter amendment or revision. Any proposed Charter amendment or revision that receives an affirmative vote of three-fifths (3/5) approval of the entire membership of the Charter Review Commission shall be submitted to the County Commission for its consideration. Any proposed Charter amendment or revision that receives four-fifths (4/5) approval of the entire membership of the Charter Review Commission shall be placed

directly on to the next general election ballot by the County Commission. If a majority of the electors voting on the proposed amendments or revisions to the Charter placed on the ballot favor adoption, such amendments or revisions shall become effective on January 1 of the succeeding year or such other time as the amendment or revision shall provide.

(5) No later than one hundred and twenty (120) days prior to the general election, the Charter Review Commission shall deliver to the Board of County Commissioners, those revisions or amendments to the Charter approved by the Charter Review Commission by three-fifths (3/5) vote, if any. The Board of County Commissioners shall promptly review the proposals as approved by the Charter Review Commission. If approved by a majority of the membership of the Commission, the County Commission shall place the proposals on the next general election ballot. If a majority of the electors voting on the amendments or revisions to the Charter favor adoption, such amendments or revisions shall become effective on January 1 of the succeeding year or such other time as the amendment or revision shall provide.

(6) If the Charter Review Commission does not submit any proposed Charter amendments or revisions to the Board of County Commissioners at least one hundred and twenty (120) days prior to the general election or place any amendments or revisions directly onto the ballot, the Charter Review Commission shall be automatically dissolved. Otherwise, upon acceptance or rejection of the proposed amendments or revisions by the County Commission, the Charter Review Commission shall be automatically dissolved. Upon dissolution of the Charter Review Commission, all property of the Charter Review Commission shall thereupon become the property of the County.

C. Amendments Proposed by the Board of County Commissioners.

(1) Amendments to this Home Rule Charter may be proposed by ordinance enacted by the Board of County Commissioners by an affirmative vote of a simple majority of the membership of the Board of County Commissioners. Each proposed amendment shall embrace but one subject and matter directly connected therewith. Each proposed amendment shall become effective upon approval by a majority of the electors of Lee County voting in a referendum at a general election. The Board of County Commissioners shall give public-notice of such referendum election as required by general law.

(2) If approved by a majority of those electors voting on amendment at the general election, the amendment shall become effective on the date specified in the amendment, or, if not so specified, on January 1 of the succeeding year.

Section 4.2: Home Rule Charter Transition

A. General Provisions.

Unless expressly provided otherwise in this Home Rule Charter, the adoption of this Charter shall not affect any existing contracts or obligations of Lee County; the validity of any of its laws, ordinances, regulations, and resolutions; or the term of office of any elected County officer, whose term shall continue as if this Charter had not been adopted.

B. Initial County Commissioners.

The persons comprising the Lee County Board of County Commissioners on the effective date of this Charter shall become the initial members of the Board of County Commissioners of the Charter Government and shall perform the functions thereof until

the normal expiration of their terms or until the election and qualification of their successors as provided by law.

C. Outstanding Bonds.

All outstanding bonds, revenue certificates, and other financial obligations of the County outstanding on the effective date of this Charter shall be obligations of the Charter Government. All actions taken by the former government relating to the issuance of such obligations are hereby ratified and confirmed. Payment of such obligations and the interest thereon shall be made solely from and charged solely against funds derived from the same sources from which such payment would have been made had this Charter not taken effect.

D. Employee Continuation.

All employees of the former county government shall on the effective date on this Charter become employees of the County government created by this Charter. All existing wages, benefits, collective bargaining certifications and agreements, and conditions of employment shall continue uninterrupted, until modified by lawful action of the Board of County Commissioners or joint agreement of the Board and any appropriate bargaining agent, if a collective bargaining agreement exists and controls.

Section 4.3: Severability

If any provision of this Charter or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the Charter which shall be given effect without the invalid provision or application, and to this end the provisions of this Charter are declared severable.

SECTION FOUR: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive requirements will apply.

SECTION FIVE: SEVERABILITY

It is declared to be the legislative intent that if any section, subsection, sentence, clause or provision of this Ordinance is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected

SECTION SIX: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County code; and that sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or other such appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Manager or his designee, without need of public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

This Ordinance shall be effective upon the receipt of official acknowledgment that it has been duly filed with the Secretary of State of Florida, but the Amendments at Sections 3.2 and 4.1 shall be of no further force or effect if the Proposed Amendments are not duly approved at the November 4, 2008, Special Referendum Election.

Commissioner Hall made a motion to adopt the foregoing Ordinance, seconded by Commissioner Mann. The vote was as follows:

ROBERT P. JANES	<u>AYE</u>
BRIAN BIGELOW	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 24th day of June, 2008.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BY: Marcie Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Frank Mann
Commissioner ~~Ray Judah~~, Chair



APPROVED AS TO FORM:

BY: Andrea S. Fraser
Office of the County Attorney



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

July 1, 2008

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated June 27, 2008 and certified copies of Lee County Ordinance Nos. 08-14 and 08-15, which were filed in this office on June 30, 2008.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

RECEIVED
MINUTES OFFICE

2008 JUL -7 AM 10:03

DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
850.245.6600 • FAX: 850.245.6735 • TDD: 850.922.4085 • <http://dlis.dos.state.fl.us>

COMMUNITY DEVELOPMENT
850.245.6600 • FAX: 850.245.6643

STATE LIBRARY OF FLORIDA
850.245.6600 • FAX: 850.245.6744

STATE ARCHIVES OF FLORIDA
850.245.6700 • FAX: 850.488.4894

LEGISLATIVE LIBRARY SERVICE
850.488.2812 • FAX: 850.488.9879

RECORDS MANAGEMENT SERVICES
850.245.6750 • FAX: 850.245.6795

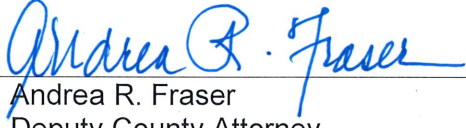
ADMINISTRATIVE CODE AND WEEKLY
850.245.6270 • FAX: 850.245.6282

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: August 6, 2019

TO: Eileen Gabrick
Minutes Office Manager

FROM: 
Andrea R. Fraser
Deputy County Attorney

Minutes Office, please be aware of the Ordinance below when processing!

RE: **Ordinance 08-15, Adopted June 24, 2008
Provide Notation to Comply with Florida Law**

Lee County Charter Ordinance 08-15 contains a Savings Clause that states, "if any section, subsection, sentence, clause or provision of this Ordinance is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected".

The Florida Supreme Court has declared county charters containing provisions requiring election of constitutional officers on a non-partisan basis unconstitutional, the County Charter is notated to reflect the ruling. Upon adoption of the notation, future elections for the Office of Lee County Supervisor of Elections shall be on a partisan basis.

We respectfully request that Lee County Ordinance 08-15, Article III, be notated as follows:

**ARTICLE III
ELECTED COUNTY CONSTITUTIONAL OFFICES**

Section 3.1: Elected County Constitutional Offices

The offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as independent, elected constitutional officers and the powers, duties and functions shall not be altered by this Home Rule Charter, **except as provided in Section 3.2: Non-Partisan Elections (below)*. The Constitutional officers shall perform their executive and administrative functions as specified by general law.

***Section 3.2: Non-Partisan Elections**

The Supervisor of Elections shall be non-partisan.

A. **Non-Partisan Election Procedures**

If three (3) or more candidates, none of whom is a write-in candidate, qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first primary election. If no

candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the general election ballot.

B. Qualification by Petition

A candidate for non-partisan office may qualify for election to such office by means of the petitioning process as provided by general law.

C. Legislative Intent

It is the intent of the people of Lee County that the provisions of this section with respect to the election of the Supervisor of Elections on a non-partisan basis is an exercise of their constitutional prerogative to choose this county officer in another manner as provided in Article VIII, section 1 (d) of the Constitution of Florida. This section will not otherwise be construed to alter, transfer, diminish or abolish any of the powers, duties or responsibilities of said office now or hereafter existing under the Constitution and general laws of Florida.

[*Non-partisan language relating to the Supervisor of Elections in Section 3.1 and all of Section 3.2 are no longer effective based on the ruling in Florida Supreme Court case Orange County v. Singh, 268 So.3d 668 \(Fla. 2019\) finding non-partisan elections for Constitutional Officers unconstitutional.](#)

Consequently, we respectfully request that you replace pages 13 and 14 in Ordinance 08-15 with the attached pages so that it correctly reflects the text adopted by the Lee County Board of County Commissioners on August 6, 2019.

We also request that you transmit the above language to the State to notate the ordinance as well. Please copy my office on the transmittal to the State.

Should you have any questions concerning the above, please do not hesitate to contact me.

ARF:tlb

Attachment

cc via email only: Tommy Doyle, Supervisor of Elections
T. Hart, Esq.

Supreme Court of Florida

No. SC18-79

ORANGE COUNTY, FLORIDA,
Petitioner,

vs.

RICK SINGH, etc., et al.,
Respondents.

April 18, 2019

PER CURIAM.

Respondents' Joint Motion to Recall Mandate is hereby granted. The opinion of this Court dated January 4, 2019, is hereby withdrawn, and this opinion is substituted in its place. *See* § 43.44, Fla. Stat. (2018) ("An appellate court may, as the circumstances and justice of the case may require, reconsider, revise, reform, or modify its own opinions and orders for the purpose of making the same accord with law and justice."); Fla. R. Jud. Admin. 2.205(b)(5). In light of the substituted opinion, we hereby deny Respondents' Joint Motion for Clarification.

We have for review the Fifth District Court of Appeal's decision in *Orange County v. Singh*, 230 So. 3d 639 (Fla. 5th DCA 2017), which affirmed a trial court

judgment invalidating an Orange County ordinance.¹ Because home-rule counties may not enact ordinances on subjects preempted to the State and inconsistent with general law,² we approve the decision of the Fifth District.

I. Background

The underlying background was discussed in the Fifth District’s opinion as follows:

On August 19, 2014, the Orange County Board of Commissioners enacted an ordinance proposing an amendment to the Orange County Charter to provide for term limits and nonpartisan elections for six county constitutional officers—clerk of the circuit court, comptroller, property appraiser, sheriff, supervisor of elections, and tax collector. The ordinance provided for the following ballot question to be presented for further approval:

CHARTER AMENDMENT PROVIDING FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS

For the purpose of establishing term limits and nonpartisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

_____ Yes
_____ No

1. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

2. Article VIII, section 1(g) of the Florida Constitution provides that “[t]he governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.”

The ballot question appeared on the November 4, 2014[,] ballot and was approved by the majority of Orange County voters. As a result, the relevant portions of section 703 of the Orange County Charter were amended (as underlined) to read:

B. Except as may be specifically set forth in the Charter, the county officers referenced under Article VIII, Section 1(d) of the Florida Constitution and Chapter 72–461, Laws of Florida, shall not be governed by the Charter but instead governed by the Constitution and laws of the State of Florida. The establishment of nonpartisan elections and term limits for county constitutional officers shall in no way affect or impugn their status as independent constitutional officers, and shall in no way imply any authority by the board whatsoever over such independent constitutional officers.

C. Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All county constitutional office candidates’ names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two (2) candidates have qualified for any single county constitutional office, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.

D. Any county constitutional officer who has held the same county constitutional office for the preceding four (4) full consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.

Prior to the November 4, 2014 election, three Orange County constitutional officers—the sheriff, property appraiser, and tax collector (collectively “Appellees”)—filed a suit for declaratory and

injunctive relief against Orange County, challenging the underlying county ordinance as well as the ballot title and summary. After the election, in ruling on competing summary judgment motions, the trial court upheld the portion of the charter amendment providing for term limits, but struck down that portion providing for nonpartisan elections. The trial court concluded that Orange County was prohibited from regulating nonpartisan elections for county constitutional officers because that subject matter was preempted to the Legislature.

Singh, 230 So. 3d at 640-41 (footnote omitted).

On appeal, the Fifth District affirmed the trial court’s judgment. *Id.* at 640. The Fifth District held that section 97.0115, Florida Statutes, expressly preempts the Orange County ordinance requiring nonpartisan elections for county constitutional officers. *Id.* at 641-42. The Fifth District reasoned that the Legislature regulates elections generally through the Florida Election Code and “enacted section 97.0115, which expressly provides that all matters set forth in the Florida Election Code were preempted” to the Legislature. *Id.* at 642. The Fifth District further reasoned that chapter 105, Florida Statutes, “set forth provisions and procedures specific to nonpartisan elections,” and “chapter 105 did not authorize counties to hold nonpartisan elections for the county constitutional officers that are the subject of the charter amendment at issue.” *Id.*

II. The Florida Election Code

Article VI, section 1 of the Florida Constitution provides that “[r]egistration and elections shall, and political party functions may, be regulated by law[.]” *See*

Grapeland Heights Civic Ass’n v. City of Miami, 267 So. 2d 321, 324 (Fla. 1972) (“[I]t necessarily follows that ‘law’ *in our constitution* means an enactment by the State Legislature . . .—not by a City Commission or any other political body.”). The Legislature regulates elections through the Florida Election Code, which encompasses chapters 97-106, Florida Statutes (2018).³ Importantly, the Florida Election Code contains express language of preemption as section 97.0115 states that “[a]ll matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law.” The Florida Election Code further explains that the Secretary of State, as “the chief election officer of the state,” is to “[o]btain and maintain uniformity in the interpretation and implementation of the election laws.” § 97.012(1), Fla. Stat. (2018).

The Florida Election Code generally contemplates partisan elections.⁴ In other words, candidates nominated by political parties in the primary election are to appear on the general election ballot for most offices. *See* § 101.151(2)(c), Fla. Stat. (2018) (“Each nominee of a political party chosen in a primary shall appear on the general election ballot in the same numbered group or district as on the

3. Section 97.011, Florida Statutes (2018), provides “[c]hapters 97-106 inclusive shall be known and may be cited as ‘The Florida Election Code.’ ”

4. In construing the Florida Election Code, it is necessary to read all provisions in *pari materia*. *Palm Beach Cty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1290 n.22 (Fla. 2000).

primary election ballot.”). In fact, section 97.021(29) (emphasis added), defines a “[p]rimary election” as “an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, *county*, or district office.”

Specifically, section 100.051 provides that “[t]he supervisor of elections of each county shall print on ballots to be used in the county at the next general election the names of candidates who have been nominated by a political party and the candidates who have otherwise obtained a position on the general election ballot in compliance with the requirements of this code.” In addition to the candidates nominated by political parties, no-party affiliation candidates, minor political party candidates, and spaces for write-in candidates may be listed on the general election ballot and may compete for the same offices as the major political party candidates in compliance with the Florida Election Code. § 99.0955, Fla. Stat. (2018); § 99.096, Fla. Stat. (2018); § 99.061(4)(b), Fla. Stat. (2018).

Regarding qualifying for nomination or election to county offices in particular, section 99.061(2) (emphasis added) provides that “each person seeking to qualify for nomination or election to a county office . . . shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, *and party assessment*, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the petition process

pursuant to s. 99.095.” The same subsection also states that “the supervisor of elections shall remit to the secretary of the state executive committee of *the political party to which the candidate belongs* the amount of the filing fee, two-thirds of which shall be used to promote *the candidacy of candidates for county offices* and the candidacy of members of the Legislature.” *Id.* (emphasis added).

Regarding timing, section 100.031, Florida Statutes (2018), provides that “[a] general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year.” Section 100.061, Florida Statutes (2018), states that “a primary election for nomination of candidates of political parties shall be held on the Tuesday 10 weeks prior to the general election.” Further, section 100.041(1), Florida Statutes (2018) (emphasis added), lists the following offices, including several county constitutional offices, that are to be chosen at the general election after a primary election:

State senators shall be elected for terms of 4 years, those from odd-numbered districts in each year the number of which is a multiple of 4 and those from even-numbered districts in each even-numbered year the number of which is not a multiple of 4. Members of the House of Representatives shall be elected for terms of 2 years in each even-numbered year. *In each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of 4.* The Governor and the administrative officers of the executive branch of the state shall be elected for terms of 4 years in each even-numbered year the number of which is not a multiple of 4. The terms of state offices other than the terms of members of the Legislature shall begin on the first Tuesday after the first Monday in January after said election. The

term of office of each member of the Legislature shall begin upon election.

See also § 98.015(1), Fla. Stat. (2018) (“A supervisor of elections shall be elected in each county at the general election in each year the number of which is a multiple of four for a 4-year term commencing on the first Tuesday after the first Monday in January succeeding his or her election.”).

However, while the Florida Election Code contemplates elections for most offices to include candidates nominated by political parties, it also specifies that elections for certain offices must be nonpartisan. Pursuant to section 97.021(22), Florida Statutes (2018), “ ‘Nonpartisan office’ means an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.” Then, chapter 105, entitled “Nonpartisan Elections,” provides that judicial officers and school board members are nonpartisan offices. Candidates for judicial offices (or those seeking retention) are “prohibited from campaigning or qualifying for such [offices] based on party affiliation.” § 105.011(2), Fla. Stat. (2018). Furthermore, section 105.09(1), Florida Statutes (2018), states that “[n]o political party or partisan political organization shall endorse, support, or assist any candidate in a campaign for election to judicial office.” Section 105.035(1), Florida Statutes (2018), also explains that “[a] person seeking to qualify for election to the office of circuit judge or county court judge or the office of school board member may qualify for

election to such office by means of the petitioning process prescribed in this section.” And section 105.041(3)-(4), Florida Statutes (2018), states that “[n]o reference to political party affiliation shall appear on any ballot with respect to any nonpartisan office or candidate,” while “[s]pace shall be made available on the general election ballot” for write-in candidates for circuit and county court judge as well as school board members.

Regarding timing of the nonpartisan elections, section 105.051(1)(b), Florida Statutes (2018), provides that elections for judicial officers and school board members are to be conducted during the primary election with the possibility of a run-off during the general election:

If two or more candidates, neither of whom is a write-in candidate, qualify for such an office, the names of those candidates shall be placed on the ballot at the primary election. If any candidate for such office receives a majority of the votes cast for such office in the primary election, the name of the candidate who receives such majority shall not appear on any other ballot unless a write-in candidate has qualified for such office. An unopposed candidate shall be deemed to have voted for himself or herself at the general election. If no candidate for such office receives a majority of the votes cast for such office in the primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each candidate receiving an equal and highest number of votes shall be placed on the general election ballot. In any contest in which there is a tie for second place and the candidate placing first did not receive a majority of the votes cast for such office, the name of the candidate placing first and the name of each candidate tying for second shall be placed on the general election ballot.

Additionally, the nonpartisan chapter of the Florida Election Code, chapter 105, specifies that the retention elections of appellate judges are to take place during the general election. § 105.051(2), Fla. Stat. (2018).

Notably, chapter 105 does not include any county constitutional officers as nonpartisan. The specific references to the county constitutional officers in the Florida Election Code are in its more general provisions in which candidates nominated by political parties may appear on the general ballot. Moreover, although the Florida Election Code expressly allows for municipal elections to vary from its requirements pursuant to an ordinance or charter so long as the variance does not conflict with “any provision in the Florida Election Code that expressly applies to municipalities,” § 100.3605(1), Florida Statutes (2018), there is no similar allowance for county elections.

III. The Orange County Ordinance is Expressly Preempted and in Conflict

Orange County contends that the ordinance at issue in this case is not expressly preempted by or in conflict with the Florida Election Code. We disagree.

In *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008), this Court explained the following standards regarding whether a county ordinance is preempted by or in conflict with a statute:

Pursuant to our Constitution, chartered counties have broad powers of self-government. *See* art. VIII, § 1(g), Fla. Const. Indeed,

under article VIII, section 1(g) of the Florida Constitution, chartered counties have the broad authority to “enact county ordinances not inconsistent with general law.” *See also* David G. Tucker, *A Primer on Counties and Municipalities, Part I*, Fla. B.J., Mar. 2007, at 49. However, there are two ways that a county ordinance can be inconsistent with state law and therefore unconstitutional. First, a county cannot legislate in a field if the subject area has been preempted to the State. *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006). “Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature.” *Id.* (quoting *Phantom of Clearwater[, Inc. v. Pinellas County]*, 894 So. 2d [1011], 1018 [(Fla. 2d DCA 2005)]). Second, in a field where both the State and local government can legislate concurrently, a county cannot enact an ordinance that directly conflicts with a state statute. *See Tallahassee Mem’l Reg’l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996). Local “ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute.” *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993); *Hillsborough County v. Fla. Rest. Ass’n*, 603 So. 2d 587, 591 (Fla. 2d DCA 1992) (“If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.”); *see also Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972) (“A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.”).

There is conflict between a local ordinance and a state statute when the local ordinance cannot coexist with the state statute. *See City of Hollywood*, 934 So. 2d at 1246; *see also State ex rel. Dade County v. Brautigam*, 224 So. 2d 688, 692 (Fla. 1969) (explaining that “inconsistent” as used in article VIII, section 6(f) of the Florida Constitution “means contradictory in the sense of legislative provisions which cannot coexist”). Stated otherwise, “[t]he test for conflict is whether ‘in order to comply with one provision, a violation of the other is required.’ ” *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So. 2d 637, 649 (Fla. 2d DCA 2007) (quoting *Phantom of Clearwater*, 894 So. 2d at 1020), *review granted*, No. SC07-2074 (Fla. Nov. 29, 2007).

In this case, the Florida Election Code expressly preempts the Orange County ordinance requiring nonpartisan elections for its county constitutional officers. Section 97.0115 provides that “[a]ll matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law.” As explained above, the Florida Election Code contemplates partisan elections for most offices, and it does not specifically authorize otherwise for county constitutional officers. Furthermore, article VIII, section 1(d) of the Florida Constitution does not expressly label the election of county constitutional officers as “partisan” or “nonpartisan.” Therefore, this constitutional provision is not an exception to the preemption language contained in section 97.0115.

The Florida Election Code contains detailed provisions specific to county constitutional officers and county elections, provisions that are within the portions of the code providing for partisan elections. Section 100.041 states that “[i]n each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of 4.” *See also* § 100.031, Fla. Stat. (“A general election shall be held in each county . . . to choose a successor to each elective . . . county . . . officer”); § 98.015 (1), Fla. Stat. (“A supervisor of elections shall be elected in each county at the general election . . .”). Further, section 100.051 expressly provides that candidates listed

on the general election ballot are “candidates who have been nominated by a political party *and* the candidates who have otherwise obtained a position on the general election ballot in compliance with the requirements of this code.”

(Emphasis added.)

In contrast, the Orange County ordinance provides as follows:

Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All county constitutional offices candidates’ names shall be placed on the ballot without reference to party affiliation.

Singh, 230 So. 3d at 640-41 (quoting amended charter).

The portion of the ordinance that requires elections for county constitutional officers to be held during the primary election conflicts with section 100.041, which requires county constitutional officers to appear on the general election ballot. It also conflicts with section 98.015, Florida Statutes, which separately addresses the election of the supervisor of elections. *See* § 98.015, Fla. Stat. (“A supervisor of elections shall be elected in each county at the general election . . .”).

Even if the portion of the Orange County ordinance that requires such an election to be held during the primary election is severed, a glaring and unconstitutional conflict remains. The Orange County ordinance prohibits a candidate for county constitutional office from being referenced on the ballot by party or seeking nomination by a party during the primary election. However, the

Florida Election Code expressly provides for nomination of candidates for county office by their respective political parties during the primary election. *See* § 99.061(2), Fla. Stat. (candidates for county offices may qualify for nomination or election by filing the qualifying papers and paying “the filing fee and election assessment, and party assessment”); § 97.021(29), Fla. Stat. (defining “[p]rimary election” as “an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office”); § 100.051, Fla. Stat. (explaining that candidates listed on the general election ballot include those “candidates who have been nominated by a political party”); *see also* § 100.031, Fla. Stat. (“A general election shall be held in each county . . . to choose a successor to each elective . . . county . . . officer”); § 100.041(1), Fla. Stat. (“In each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of 4.”); § 98.015(1), Fla. Stat. (“A supervisor of elections shall be elected in each county at the general election”). Therefore, by banning a candidate for county constitutional office from running by party or seeking nomination by party, the ordinance directly conflicts with the Florida Election Code. And this Court has explained that a local

government “cannot forbid what the legislature has expressly licensed, authorized or required.” *Rinzler*, 262 So. 2d at 668.

Accordingly, because the Orange County ordinance prohibits candidates from running based on their party affiliation or seeking the nomination of their party during the primary election, which is expressly provided for in the Florida Election Code, the ordinance directly conflicts with the Florida Election Code. It also conflicts with the Florida Election Code’s requirement that the candidates for county constitutional officers appear on the general election ballot.

IV. Conclusion

As explained above, the Florida Election Code expressly preempts the Orange County ordinance, an ordinance that is in direct conflict with the Florida Election Code regarding whether candidates nominated by major political parties in the primary election may appear on the general election ballot for county constitutional officers. Therefore, we approve the decision of the Fifth District, which held that the Florida Election Code preempts the Orange County ordinance requiring nonpartisan elections for county constitutional officers.⁵

It is so ordered.

5. As we approve the Fifth District’s decision concluding the ordinance is expressly preempted, we also approve the Fifth District’s decision affirming the remaining issues presented by Respondents regarding standing, the single-subject rule, and the ballot title and summary.

CANADY, C.J., and POLSTON, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ.,
concur.

LABARGA, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

LABARGA, J., dissenting.

In *Orange County v. Singh*, 44 Fla. L. Weekly S102 (Fla. Jan. 4, 2019), this Court held that the Florida Election Code does not expressly preempt the home rule authority of Orange County to determine that its constitutional officers be elected in a general election without partisan affiliation.⁶ I concurred in that decision, and I continue to agree with the analysis and conclusion reached by the earlier majority. Accordingly, I dissent from the current majority's holding that the nonpartisan-election portion of the Orange County ordinance is preempted by the Florida Election Code and to the decision of the majority to recall the mandate issued in this case.

Application for Review of the Decision of the District Court of Appeal –
Constitutional Construction/Direct Conflict of Decisions

Fifth District - Case Nos. 5D16-2509 and 5D16-2511

(Orange County)

6. We further determined a portion of the ordinance that was inconsistent with the Florida Election Code law was severable, such that the remainder could stand. *Singh*, 44 Fla. L. Weekly at S104.

Gregory T. Stewart, Carly J. Schrader, and Evan J. Rosenthal of Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida; and Jeffrey J. Newton, County Attorney, and William C. Turner, Jr., Assistant County Attorney, Orange County, Orlando, Florida,

for Petitioner

John H. Pelzer of Greenspoon Marder LLP, Fort Lauderdale, Florida; Michael Marder of Greenspoon Marder LLP, Orlando, Florida; Eric D. Dunlap, Assistant General Counsel, Orange County Sheriff's Office, Orlando, Florida; Scott Randolph, pro se, Orlando, Florida; and Gigi Rollini of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Tallahassee, Florida,

for Respondents Rick Singh, Orange County Property Appraiser, John W. Mina, Sheriff of Orange County, and Scott Randolph, Tax Collector of Orange County

Nicholas A. Shannin of Shannin Law Firm, P.A., Orlando, Florida,

for Respondent Bill Cowles, Orange County Supervisor of Elections

Laura Youmans, Legislative Counsel, Florida Association of Counties, Tallahassee, Florida,

for Amicus Curiae Florida Association of Counties, Inc.

David H. Margolis, Orlando, Florida,

for Amicus Curiae Orange County Clerk of the Circuit Court

From: [Eileen Gabrick](#)
To: ["CountyOrdinances@dos.myflorida.com"](mailto:CountyOrdinances@dos.myflorida.com)
Cc: [Boone, Tina](#)
Subject: Lee County Ordinance 08-15- Notated
Date: Friday, August 09, 2019 11:52:24 AM
Attachments: [Memo to Minutes, Notation to Ord 08-15.pdf](#)
[Lee County Ord-08-15- Notated 8-6-19.pdf](#)

Good Morning

Please find the attached notated Lee County Ordinance 08-15 that was originally accepted by you on 7/1/2008 with our County Attorney's memo.
Please confirm receipt

Thank You,

Eileen Gabrick

Lee County Clerk of Courts
Minutes and Official Records Manager
Phone: (239) 533-2325

Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

August 9, 2019

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Eileen Gabrick

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your amended electronic copy of Ordinance No. 08-15, which was filed in this office on August 9, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb