

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR PALM BEACH
COUNTY

TOWN OF GULF STREAM, et al.,

CASE NO. 50 2011 CA 017953 AN

Plaintiffs,

v.

PALM BEACH COUNTY,

Defendant.

**DEFENDANT PALM BEACH COUNTY'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant PALM BEACH COUNTY (County) states as follows for its Answer, Affirmative Defenses, and Counterclaim to Plaintiffs' Complaint for Declaratory Relief (the paragraph numbers of the Answer correspond to those of the Complaint):

ANSWER

1. Admitted.
2. Admitted that this action arises out of the establishment of a Countywide Office of Inspector General; otherwise, denied.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

7. Upon information and belief, a motion to abate has been prepared but has not yet been filed. (Hence, this pleading.)

8. Admitted, and the Charter speaks for itself.

9. Admitted.

10. Admitted.

11. Admitted, although none of those amendments are related in any way to the subject of this action.

12. Admitted, except denied that Protection of Wells and Wellfields, and Countywide Impact Fees are entirely funded by the County.

13. Admitted.

14. Admitted.

15. Denied that what are described as Ethics Regulations were solely the result of Commissioner crimes; otherwise, admitted.

16. Admitted, except denied to the extent the descriptions are intended to be complete.

17. Admitted.

18. The ordinance speaks for itself, and without emphasis.

19. Admitted.

20. Admitted; the ordinance speaks for itself.

21. Admitted; except denied that the funding described was for the entire fiscal year.

22. Admitted.

23. The ordinance speaks for itself, and without emphasis.

24. Admitted.

25. Admitted.
26. Admitted; except denied that the funding described was for the entire fiscal year.
27. Admitted that the County adopted what is described as the Ballot Ordinance;
otherwise denied.
28. Admitted.
29. The ordinance speaks for itself, and without emphasis.
30. Admitted.
31. The ordinance speaks for itself, and without emphasis.
32. Admitted.
33. Admitted.
34. Admitted.
35. Denied.
36. Admitted; except denied that the Municipalities were or are powerless to determine
funding.
37. Admitted.
38. The ballot amendment speaks for itself.
39. The ballot amendment speaks for itself.
40. The ballot amendment speaks for itself.
41. Denied that the Ballot Ordinance directed that the voters rely on either the Original
Ordinance or the Amended Ordinance as to estimated costs, included or excluded contracts, or in
any respect; second sentence denied.
42. Admitted.

43. Admitted.

44. Admitted that the Implementing Ordinance is not identical to the Original Ordinance and/or the Amended Ordinance. Denied that any funding mechanism was utilized in the Ballot Ordinance.

45. The ordinance speaks for itself, and without emphasis.

46. The ordinance speaks for itself, and is not contradictory.

47. The ordinance speaks for itself. Denied that the proportionate share calculation is not based on contract amounts.

48. Admitted.

49. Admitted.

50. Denied.

51. Denied. The Clerk & Comptroller invoiced the Municipalities.

COUNT I – ALLEGEDLY UNLAWFUL TAX

52. The County restates and incorporates by reference paragraphs 1-51 of this Answer.

53. Admitted.


54. Denied.

55. Admitted; the municipal shares are a means of apportioning the cost of the program, and are not themselves a fee.

56. Denied.

57. Admitted; the municipal shares are a means of apportioning the cost of the program, and are not themselves a special assessment.

58. Denied.

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59. Denied.
60. Admitted.
61. Admitted.
62. Denied to the extent this would be the only alternative.
63. Admitted that they could be similar. Denied to the extent this would be the only alternative.
64. Admitted; the ordinance speaks for itself.
65. Denied.
66. Denied.
67. Denied.
68. Denied there is any unlawful tax involved.
69. Denied.
70. Denied.
71. Denied.

COUNT II – ALLEGED DOUBLE PAYMENT

72. The County restates and incorporates by reference paragraphs 1-51 of this Answer.
73. Admitted as to the Implementing Ordinance; otherwise, denied.
74. Denied.
75. Admitted.
76. Admitted.
77. Denied.

78. Admitted that they pay municipal taxes; denied that such taxes are necessary for funding the Office of Inspector General (OIG, or the program).

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

COUNT III – ALLEGED LACK OF CHARTER AUTHORITY

86. The County restates and incorporates by reference paragraphs 1-51 of this Answer.

87. LOGER is a method of cost apportionment and not a funding requirement; otherwise, admitted.

88. Denied; the Ballot Ordinance provided that the program would be funded at a minimum of 0.25% of contracts, as determined by the Implementing Ordinance.

89. Admitted.

90. Admitted.

91. Denied.

92. Denied they are quite different.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

COUNT IV– ALLEGED CONFLICT WITH GENERAL LAW

98. The County restates and incorporates by reference paragraphs 1-51 of this Answer.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. Denied.

104. Denied.

105. Denied.

106. First sentence admitted; second sentence denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied appropriation is necessary.

111. Admitted.

112. Denied.

113. Denied that appropriation is required.

114. Denied.

115. Denied.

116. Denied.

AFFIRMATIVE DEFENSES

1. Any fees imposed on the Municipalities are regulatory fees lawfully imposed pursuant to the County's police power and do not exceed to cost of the regulatory activity or are reasonably commensurate with the cost of the regulatory activity—i.e., the proper and efficient funding of the OIG.

2. The County Charter, as amended, is valid and provides authority for the subject fees pursuant to the LOGER funding methodology, even though a precise funding methodology was not specifically identified in the ballot ordinance. The ballot title and summary fairly informed the voters of the chief purpose of the amendment (funding of the OIG), and the language of the title and summary did not mislead the public in that they specifically informed the public that the OIG will be funded, in part, by each municipality. Greater specificity is not contemplated or required by Section 101.161(1), Florida Statutes (2010), nor is it legally required to exhaustively explain every ramification of the proposed amendment.

3. The subject ordinance(s) are not inconsistent with general law, but are consistent with general law, specifically, Section 166.221, Florida Statutes (2010), and any fees imposed by the ordinance(s) are consistent therewith.

4. To the extent any fees are imposed on Municipalities by the subject ordinance(s), they are imposed by the expression of a majority of the voting public in the County and in each municipality for funding the OIG. Such fees are not an illegal double tax, as municipal residents already pay both city and County ad valorem taxes, for different purposes; similarly, the benefits of OIG oversight accrue to the benefit of taxpayers in any municipality in different and additional ways than such benefits accrue to voters in unincorporated parts of the County or to voters in

another municipality.

WHEREFORE, the County respectfully requests that this Court enter judgment on Plaintiffs' Complaint in the County's favor, and against Plaintiffs, at Plaintiffs' cost.

COUNTERCLAIM

1. This is an action for breach of County Ordinance No. 2011-009 (codified at Art. XII, sec. 2-429, Palm Beach County Code), a copy of which was attached to Plaintiffs' Complaint as Exhibit 4, and is incorporated herein by reference.

2. The County incorporates by reference paragraphs 2-6 of Plaintiffs' Complaint, and the definition of Municipalities set forth on the first page of the Complaint—i.e., all of the Plaintiffs.

3. Intervenor Sharon R. Block, in her capacity as Clerk & Comptroller of Palm Beach County (Clerk & Comptroller), as alleged in her Motion to Intervene, at paragraph 10, has invoiced the Municipalities for operation of the OIG for Fiscal Year (FY) 2011 and the first quarter of FY 2012.

4. Each of the Municipalities has failed and refused to pay the amounts invoiced.

5. The Inspector General has indicated her intention to fulfill her duties as set forth in Art XII, Sec. 2-423 with respect to the Municipalities, as well as all other governmental entities participating in the OIG program.

6. In the absence of funding from the Municipalities, the oversight by the OIG will be substantially less comprehensive than it would be with full funding of the OIG.

7. The County has been damaged by the OIG's diminished oversight of its vendors and other activities the OIG conducts. The OIG's diminished ability to oversee County vendors and

County operations will continue as long as the Municipalities refuse to properly fund the OIG.

8. Art. XII, Sec. 2-431, provides that Ordinance No. 2011-009 is enforceable by all means provided by law, including injunctive relief, in this Court.

WHEREFORE, the County requests that the Court enter a judgment awarding damages to the County for the diminished OIG oversight caused by the Municipalities' refusal to pay to support the OIG, and awarding the County its costs and such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 5th day of December , 2011, to those on the attached service list.



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