

Elections, placement of contingent issues on ballot

Number: INFORMAL

Date: April 16, 1997

Mr. Burt Aaronson
Palm Beach County Attorney
301 North Olive Avenue
West Palm Beach, Florida 33401

RE: COUNTIES--ELECTIONS--CHARTERS--amendment of county charter; placement of contingent propositions on ballot. s. 212.055, Fla. Stat. (1996 Supplement).

Dear Mr. Aaronson:

You ask whether a proposition to amend the county charter may be placed on the ballot which is contingent upon passage of a second proposition imposing an infrastructure surtax.

Based upon the discussion below, I am of the opinion that the county may place a question on the ballot whether the county charter should be amended to provide that county ordinances relating to school concurrency will prevail over municipal ordinances upon funding being provided by an infrastructure surtax imposed pursuant to section 212.055, Florida Statutes (1996 Supplement).

You state that schools in Palm Beach County are overcrowded with approximately 22,000 more students than there are permanent student stations. To address this problem, the county, the school district, and the Municipal League of Palm Beach County have considered a solution. Voter approval of a one-cent infrastructure surtax authorized by section 212.055, Florida Statutes (1996 Supplement), would be placed on the ballot. Funds generated from the surtax would be used to eliminate the existing student station shortfall and provide enough additional capacity to accommodate future needs during the seven years the surtax would be imposed. Also on the ballot would be a proposal to amend the county charter, which currently provides that municipal ordinances prevail over county ordinances, to provide that in matters of public school concurrency, county ordinances would prevail.

Both questions would be presented separately on the ballot. However, since the county wishes to make the charter amendment contingent upon approval of a funding mechanism, the county is contemplating ballot language which would accomplish this.[1]

The question has been raised whether the ballot may violate the county charter which provides that "[e]ach amendment to its Home Rule Charter shall be limited to a single and independent subject."[2]

In considering the requirement of single subject under the Florida Constitution, The Supreme Court of Florida has stated that it is necessary to ascertain whether a "oneness of purpose" exists.[3] Thus, an amendment must have "a natural relation and connection as component parts

or aspects of a single dominant plan or scheme."[4]

As you note, there are not two unrelated amendments to the county charter combined into a single amendment that must be approved by one vote. The proposition seeking approval to impose an infrastructure surtax is not an amendment to the county charter. Rather there is only one amendment to the charter proposed, to make county ordinances relating to concurrency control over municipal ordinances. Thus, the single subject requirement in the county charter would not appear to be violated by the ballot language.

However, the courts have recognized a single purpose requirement for ballot propositions. This single purpose rule was first recognized by the Supreme Court of Florida in *Antuono v. City of Tampa*,[5] where the Court stated:

"If there are two or more separate and distinct propositions to be voted on, each proposition should be stated separately and distinctly, so that a voter may declare his opinion as to each matter separately, since several propositions cannot be united in one submission to the voters so as to call for one assenting or dissenting vote upon all of the propositions; and elections are invalid where held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be obtained."

This single purpose rule has been recognized as requiring invalidation of a proposition when voters are placed in the position of approving more than one purpose with a single vote.[6] The underlying rationale for the rule is to prevent the electoral equivalent of logrolling, whereby, "one measure, by its popularity or its apparent necessity, carries other measures not so popular or necessary and which the people, if granted the opportunity of separate ballots, might defeat."[7]

Thus, the proposition in the instant inquiry should be placed on the ballot as separate questions. The voters must be allowed to independently express their choice for passage of the amendment to the charter and the imposition of the surtax to fund school concurrency provisions that may be implemented as a result of the amendment of the county charter. However, the linking of the two questions such that the approval of the one amending the county charter would be of no effect if the second question imposing a surtax or providing for a funding source is not approved, presents a closer question as to whether it constitutes a form of logrolling depriving the electorate of an independent choice when voting on the two questions.

For example, the posing of two separate questions, one for the approval of purchasing a city utility plant and the second for the issuance of bonds to pay the purchase price, would not violate the single purpose rule.[8] It, therefore, appears that clearly distinguishing between approval of the amendment to the charter in one question and providing for the funding of school concurrency projects implemented as a result of the amendment to the charter in the other question would not violate the single purpose rule.

Accordingly, I am of the opinion that the county may place on the ballot a question whether the county charter should be amended to provide that county ordinances relating to school concurrency will prevail over municipal ordinances when funding is provided by an infrastructure surtax imposed pursuant to section 212.055, Florida Statutes (1996 Supplement). A second question may appear on the ballot authorizing for the imposition of such a surtax. Under such

language, the proposition for the amendment of the charter merely specifies a funding source and operates independently regardless of approval of the second proposition.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/gk

[1] You discuss several alternative methods to accomplish this. In the first the charter amendment would be expressly contingent upon the electorate simultaneously approving the infrastructure surtax. A second alternative would not specifically identify a funding source but would make the charter amendment contingent upon approval of sufficient funding. Under the third option, the charter amendment would provide that its implementation is dependent upon the availability of a funding source.

[2] Article VI, s. 6.3, Palm Beach County Charter.

[3] See, e.g., *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994).

[4] *Advisory Opinion to the Attorney General--Limited Casinos*, 644 So. 2d 71, 73 (Fla. 1994).

[5] 99 So. 324, 326 (Fla. 1924).

[6] See *Winterfield v. Town of Palm Beach*, 455 So. 2d 359 (Fla. 1984).

[7] 99 So. at 326.

[8] 15 J. Latta & E. McQuillin, *The Law of Municipal Corporation*, s. 40.09 (3d ed. 1970).