

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB
DIVISION: AO

Plaintiffs,

v.

PALM BEACH COUNTY, a political
subdivision of the State of Florida,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

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

Defendant, PALM BEACH COUNTY (County), states as follows for its Answer, Affirmative Defenses, and Counterclaims 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.

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Exhibit
D

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.

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 the 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 cost apportionment 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 is not inconsistent with general law, but is consistent with general law including Section 166.221, Florida Statutes (2010), and any fees imposed by the ordinance are consistent with such general law(s).

4. To the extent any fees are imposed on Municipalities by the subject ordinance, 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 taxpayers in unincorporated parts of the County or to taxpayers in another Municipality.

5. Further, the residents of the Municipalities are not being taxed at all, as the OIG is funded through regulatory fees which can be passed on by each Municipality to the vendors providing specified goods or services to each Municipality. Specifically, the Municipalities may require its vendors to pay up to one quarter of one percent (0.25%) of the dollar value of its contracts to defray the costs of OIG operations. This percentage paid by the vendors may vary as set forth in the ordinance based on a variety of factors including the precise amount of the fee, contract types used to determine the total value of the contract activity, the exact budget requested and approved for the OIG operations and similar factors. Therefore, the Municipalities are able to pass these regulatory fees on to the vendors so neither the citizens, nor the Municipalities directly fund the operation of the OIG. There is no unfunded mandate or similar forced budget allocation.

6. The Municipalities have a contract implied in law or quasi contract to pay for the services of the OIG because: 1) they are receiving a benefit from such services, being the ferreting out and elimination of fraud, waste and mismanagement of municipal funds by municipal officials; 2) the Municipalities have knowledge of the benefits from OIG oversight and the approval of a majority of the voters in each; 3) the Municipalities have repeatedly expressed a desire to accept and retain the benefits of OIG oversight; and 4) given these circumstances it would be inequitable and unjust for the Municipalities to have received, and to continue to receive such benefits without paying a fair dollar value for it.

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

COUNTERCLAIMS

COUNT I

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. Bock, 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 2011 and the first quarter of Fiscal Year 2012.

4. In violation of this County Ordinance, each of the Municipalities has failed and refused to pay the amounts invoiced pursuant to this Ordinance and has refused to make any future payments thereunder.

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. On behalf of the Municipalities the County has expended \$687,864 to fund the operation of the OIG through Fiscal Year 2012 to date.

9. Based on the existing budget, the County will expend a cumulative total of \$2,512,276 on behalf of the Municipalities through Fiscal Year 2013.

10. 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.

11. Further, Art. XII, Sec. 2-429 of this Ordinance expressly gives the County or any Municipality in compliance with this section the authority to enforce payment from the Municipalities.

WHEREFORE, the County respectfully requests that the Court enter a judgment awarding damages to the County as set forth herein for breach of the Ordinance, costs as allowed by law, and such other relief as the Court deems just and proper.

COUNT II

12. 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.

13. This is a claim to recover based on a contract implied in law or quasi contract.

14. The Municipalities have expressed the desire to continue to receive the benefit of OIG oversight in the future and have received such benefit since the inception of the Countywide OIG program on June 1, 2011.

15. The Municipalities have knowledge of the benefits being conferred by OIG oversight and are also aware of the approval of such oversight by a majority of voters in each Municipality.

16. The Municipalities have accepted such benefits and choose to continue to do so.

17. It would be inequitable for the Municipalities to accept these benefits and not pay the fair cost or value for the benefit of OIG oversight.

18. The value of the benefit conferred on the Municipalities is \$687,864 through Fiscal Year 2012 and \$2,512,276 through Fiscal Year 2013.

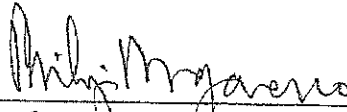
19. Art. XII, Sec. 2-431, provides that Ordinance No. 2011-009 is enforceable by all means provided by law, including injunctive relief.

WHEREFORE, the County respectfully requests that the Court enter a judgment awarding damages to the County for the value or cost of the benefit conferred by the OIG oversight of the Municipalities as set forth herein, awarding costs allowed by law, and such other 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

26 day of July, 2012, to those on the attached service list.



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