IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

CASE NO.: 4D12-4325
LOWER TRIBUNAL CASE NO.: 50 2011 CA 017953 AO

SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach County, Florida
Appellant,

v.

TOWN OF GULF STREAM., ET AL.
Appellees.

ON APPEAL FROM THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE SHARON R. BOCK, in her official capacity as the Clerk & Comptroller of Palm Beach County, Florida.

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PRELIMINARY STATEMENT

Appellee Sharon R. Bock, in her official capacity as the Clerk and Comptroller of Palm Beach County, (the "Clerk & Comptroller") files this Answer Brief, respectfully asking this Court to affirm the order of Circuit Judge Catherine M. Brunson (the "Trial Court"). The Trial Court order denied the motion to intervene of Appellant Sheryl Steckler, in her official capacity as Inspector General of Palm Beach County, Florida, who is head of the Office of Inspector General, created by County Ordinance No. 2011-009 (hereinafter referred to as "Appellant" or "OIG"). Appellee Municipalities Town of Gulf Stream, et al. ("Appellee Municipalities") and Appellee Palm Beach County (the "County") join the Clerk & Comptroller in asking this Court to affirm the Trial Court order.

References to the Appendix are designated by "A[volume number]. [any page number(s) ¶ [any paragraph number(s)] or :[line(s)]]".

References to Initial Brief of Appellant, Sheryl Steckler, in her official capacity as Inspector General of Palm Beach County, Florida are designated by "IB. [page number(s)]".

References to County's Answer Brief are designated by "County AB. [page number(s)]".

References to the OIG's Motion to Expedite Appeal are designated by "Motion to Expedite [page number(s)]."

STATEMENT OF CASE AND FACTS

Statement of Case

This appellate proceeding stems from the Trial Court's order denying the motion to intervene of the OIG. The underlying action relates exclusively to whether the funding mechanism for the OIG is legal. There are multiple grounds for the Trial Court's ruling, including: (1) the OIG sought to interject complex, new issues into the pending action, which are outside the scope of these proceedings; (2) the OIG demanded "super-intervenor" status and sought to challenge the propriety of the main proceedings and the sufficiency of the pleadings; and (3) the OIG lacks capacity and standing to intervene in this action.

Statement of Facts

In light of the material omissions and erroneous statements contained in the Initial Brief, the Clerk & Comptroller supplements and summarizes the statement of facts as follows:

The Implementing Ordinance

On May 17, 2011, the Board of County Commissioners for Palm Beach County passed Ordinance No. 2011-009 (hereinafter the "Implementing Ordinance"), which created and implemented the countywide OIG program (the "OIG Program").

Funding Mechanism

All of the parties to this action agree that the underlying lawsuit concerns one issue: the lawfulness of the funding mechanism (the "Funding Mechanism") for the OIG Program. (A5. 6:20-22) ("The subject of this lawsuit is the OIG's funding, pure and simple."); Motion to Expedite at 6. The Funding Mechanism contained within the Implementing Ordinance states in part as follows:

> **Sec. 2-429. - Financial support and budgeting.**
>
> (4) No later than the fifth business day of July of each year, the office of the clerk and comptroller shall prepare an allocation schedule based on the most current LOGER system data. The proportionate share to be paid by the county and each municipality shall be reduced proportionately by the anticipated revenues from sources other than the county and municipalities and the amount of funds estimated to be received but not expended by the inspector general in the current fiscal year.
>
> (5) In the event the county or a municipality does not submit the most recent fiscal year data in the LOGER system, the proportionate share for that municipality shall be based upon its last LOGER system submittal, subject to an escalator for each year the submittal was not made. The escalator shall be based on the Consumer Price Index for All Urban Consumers, U.S. City Average, as set forth in Florida Statutes, § 193.155, as may be amended.
>
> (6) The budget of the inspector general shall be subject to final approval of the board. No later than September 30 of each year, the board shall set the inspector general budget for the coming fiscal year and adjust the proportionate share of the county and each municipality accordingly as described in this section.
>
> (7) The office of the clerk and comptroller shall invoice the county and each municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April 10 and July 10 of each year. Payment shall be submitted to the board and due no later than thirty (30) days from the date of

the invoice. Upon receipt, all funds shall be placed in the *Office of Inspector General*, Palm Beach County, Florida Special Revenue Fund. **In the event payment is not timely received, the county or any municipality in compliance with this section may pursue any available legal remedy.**

(8) The county and each municipality's proportionate share for the period of June 1, 2011 through September 30, 2011 shall be as set forth in Exhibit A which is attached to Ordinance 2011-009 and incorporated herein by reference. The office of the clerk and comptroller shall invoice the county, upon adoption of this article, nine hundred forty-six thousand seven hundred sixty-four dollars ($946,764.00). This amount is based on the estimated expenses through June 1, 2011 of four hundred eighty-three thousand three hundred thirty-three dollars ($483,333.00), plus the county's proportionate share as reflected on Exhibit A. The office of the clerk and comptroller shall invoice each municipality for their proportionate share as set forth in subsection (7) beginning with the first invoice on October 10, 2011.

Ch. 2, Art. XII, § 2-429, Cnty. Code (emphasis added). (A1. 119-120)

Section 2-429(7) set forth above contains the exclusive method by which the Funding Mechanism may be enforced.

Invoices

On or about November 9, 2011, Appellee City of West Palm Beach ("City") notified the Clerk & Comptroller, that it was declining to pay invoices payable to the County that the Clerk & Comptroller sent pursuant to the Funding Mechanism. (Ch. 2, Art. XII, § 2-429(4), Cnty. Code). (A1. 125) The City explained that all of the municipal Appellees (the "Municipal Appellees") considered the Funding Mechanism unlawful, but emphasized that they were not challenging the OIG Program itself. (*Id.*)

The Underlying Lawsuit

On November 14, 2011, the Municipal Appellees filed their complaint seeking declaratory relief that the Funding Mechanism (1) is an unlawful tax (Count I), (2) a form of double taxation of municipal residents who already pay ad valorem county taxes (Count II), (3) unauthorized by the County Charter (Count III), and (4) in conflict with the Municipal Home Rule Powers Act, chapter 166, Florida Statutes (Count IV). (A1. 7-28) The complaint expressly stated that it did not seek "to overturn the Inspector General Program," but only "to contest the funding mechanism for the Program." (A1. 8 ¶ 2)

On December 5, 2011, Appellee Palm Beach County (the "County") answered the Municipal Appellees and counterclaimed against them. (A1. 130-139) The County's amended counterclaims against the Municipal Appellees are for (1) breach of the Funding Mechanism and (2) quasi-contract to recover benefits allegedly conferred upon the Municipal Appellees by the OIG. (A2. 300-02)

On December 1, 2011, the Trial Court approved an agreed order granting the Clerk & Comptroller's motion to intervene. (A1. 126-27) The Clerk & Comptroller's amended complaint, cross-claim and counterclaim takes no position on the merits of the dispute, but seeks to ensure her actions as they relate to the Funding Mechanism are consistent with law. (A1. 145 ¶ 3; 162-63 ¶ 2) To this end, the Clerk & Comptroller sought declaratory relief for the sole purpose of

seeking direction from the Trial Court as to what her Office's obligations were under the Funding Mechanism, given the legal challenge from the Appellee Municipalities. (A1. 145 ¶ 1.) The County answered the Clerk & Comptroller's amended complaint on July 16, 2012 (A2. 268-73), and the Municipal Appellees answered on July 26, 2012. (A2. 279-85)

The underlying lawsuit, therefore, focuses solely on the enforceability of the Funding Mechanism.

Motion to Intervene with Petitions for Mandamus

Although the County through the County Attorney was already defending the Funding Mechanism and seeking reimbursement of County funds, the OIG filed its own motion to intervene on June 7, 2012, asserting that it was entitled to intervene for various reasons hinging upon its claimed functions, authority and powers not at issue in the underlying proceeding. (A2. 180-221) Art. XII, § 2-423, Cnty. Code (OIG's functions, authority, and powers). The OIG even went so far as to allege in the motion to intervene, briefs, and oral argument that it is entitled to "full-party" status, not bound by the subordinated or limited rights of intervenors. (A2. 187; 324-26; A3. 408-12; A5. 11:7-14:13)

In furtherance of this assertion, the OIG asked the Trial Court for permission to file four pleadings attached as exhibits to the OIG's motion to intervene: (1) Motion to Dismiss the Clerk & Comptroller's Amended Complaint; (2) Crossclaim

for Issuance of Writ of Mandamus against Clerk & Comptroller (to compel the Clerk & Comptroller to prepare allocation schedules, invoice, deposit funds received, and disburse funds collected); (3) Motion to Dismiss Municipalities' Complaint; and (4) Crossclaim for Issuance of Writ of Mandamus to Plaintiff Municipalities (to compel the Municipalities to pay their invoices). (A2. 187, 191-221)

On October 24, 2012, a hearing was held on the OIG's Motion to Intervene. The briefs and hearing focused on whether the OIG, which obtained its powers solely from the County Charter and the Implementing Ordinance, was (1) a County department, and therefore, unable to bring suit or intervene in this case; or (2) was a separate and legally "independent" entity from the County and, therefore, had capacity to sue and was able to intervene in this case. (A2. 320-24; A3. 405-08; A5. 9:7-11:6; 30:9-31:22) The hearing and briefs filed on the intervention motion also addressed the scope of the OIG's intervention if that intervention was permitted. (A2. 187; 324-26; A3. 408-12; A5. 11:7-14:13)

On November 16, 2012, the Trial Court entered an Order Denying the OIG's Motion to Intervene.

The OIG's Appeal

The OIG filed its notice of appeal of the order denying intervention on December 5, 2012 (A3. 437-38), and filed its amended notice of appeal on

December 7, 2012. (A3. 442-43) The OIG filed its motion to expedite appeal on December 15, 2012. This Court granted the motion on December 17, 2012.

Petition for Writ of Mandamus

Also on December 15, 2012, the OIG filed its petition for writ of mandamus in this Court, in *Steckler v. Town of Gulf Stream,* Fourth District Court of Appeal, case number 4D12-4421. In this Petition, the OIG seeks the same mandamus relief against the Municipalities and Clerk & Comptroller as it did below, and also seeks new mandamus relief against the County. (A4. 444-68)

SUMMARY OF THE ARGUMENT

The Initial Brief fails to demonstrate that the Trial Court abused its discretion or erred when it denied the OIG's motion to intervene.

Point One: The trial court did "not abuse its discretion when it denies intervention because the would-be intervenor seeks to inject new issues into the pending action." *Allstate Ins. Co. v. Johnson*, 483 So. 2d 524, 525 (Fla. 5th DCA 1986). Whereas the underlying declaratory judgment action exclusively concerns the legality of the Funding Mechanism, the OIG sought to overwhelm and shift the focus from this single issue to the scope of the OIG's power and authority. (A2. 181-82 ¶¶ 5-6, 8) The ruling the OIG requests would upset the balance of municipal power with serious consequences in Palm Beach County and elsewhere.

Point Two: The trial court also did not abuse its discretion because Appellant exclusively sought super-intervenor status not typically available to intervenors. *Williams v. Nussbaum*, 419 So. 2d 715 (Fla. 1st DCA 1982).

Point Three: Although this Court is not required to reach this point, the OIG also is not entitled to participate in this action. The power to defend civil actions against the County belongs to the board of county commissioners. § 125.01(1)(b), Fla. Stat. The County Charter invests the County Attorney with this authority. § 4.3, Charter. Moreover, the Funding Mechanism accords enforcement authority exclusively to the County. Ch. 2, Art. XII, § 2-429(7), Cnty. Code.

Therefore, this Court should affirm the ruling of the trial court denying the Appellant's motion to intervene.

ARGUMENT

Standard of Review

Whether or not to grant a request to intervene in an action is a decision that rests within the sound discretion of the Trial Court and the Trial Court's decision cannot be reversed unless it is shown to have been an abuse of discretion. *Barnhill v. Fla. Microsoft Anti-Trust Litig.*, 905 So. 2d 195, 199 (Fla. 3d DCA 2005), *rev. denied*, 926 So. 2d 1269 (Fla. 2006) (*citing Hausmann ex rel. Doe v. L.M.*, 806 So. 2d 511, 513 (Fla. 4th DCA 2001), *rev. dismissed*, 837 So. 2d 399 (Fla. 2003)); *Kissoon v. Araujo*, 849 So. 2d 426, 429 (Fla. 1st DCA 2003); *Fasig v. Fla. Soc'y of Pathologists*, 769 So. 2d 1151, 1153 (Fla. 5th DCA 2000); *Grimes v. Walton Cnty.*, 591 So. 2d 1091, 1093 (Fla. 1st DCA 1992); *Florida Wildlife Fed'n, Inc. v. Bd. of Tr's of Internal Improvement*, 707 So. 2d 841, 842 (Fla. 5th DCA 1998), *rev. denied*, 718 So. 2d 167 (Fla. 1998); *Idacon, Inc. v. Hawes*, 432 So. 2d 759, 761 (Fla. 1st DCA 1983).

A mountain of authority establishes this standard of review, but the Appellant asks this Court to disregard it all in reliance upon a single case, distinguishable from this one, affirming denial of a motion to intervene: *Adhin v. First Horizon Home Loans*, 44 So. 3d 1245 (Fla. 5th DCA 2010). In *Adhin*, the would-be intervenor challenged the lis pendens statute, pursuant to which his motion to intervene was denied, as in conflict with Florida Rule of Civil Procedure

1.230. Whereas the statute required intervention within 20 days from the recording date of the lis pendens, Rule 1.230 allowed it "at any time." In contrast, in the instant case, the Trial Court did not deny the OIG's motion to intervene on the basis of a statute in conflict with a rule of procedure or, in other words, as a pure question of law. Rather, as argued below, the Trial Court considered the application of the facts to the law including the OIG's desire to interject a plethora of new issues into the litigation, the OIG's request to intervene with full party status, and the County's existing defense of the Funding Mechanism. Then, the Trial Court denied the OIG's motion to intervene. Consequently, this case is closer to *Florida Wildlife Fed'n*, 707 So. 2d at 842, where the court affirmed the lower court's exercise of discretion, ruling that a responsible governmental entity was already fully protecting the appellant's interest just as the County is in this case.

To demonstrate abuse of discretion the Appellant has the heavy burden of showing that the judicial action was "'arbitrary, fanciful or unreasonable,' and '[i]f reasonable [people] could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.'" *N.S.H. v. Fla. Dep't of Children and Family Servs.*, 843 So. 2d 898, n.5 (Fla. 2003), *cert. denied*, 540 U.S. 950 (2003) (*citing Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980)); *accord Ellard v. Godwin*, 77 So. 2d 617, 619 (Fla. 1955); *Treloar v. Smith*, 791 So.2d 1195, 1197 (Fla. 5th DCA 2001); *Vitt v.*

Ryder Truck Rentals, Inc., 340 So. 2d 962, 965 (Fla. 3d DCA 1976).[1] The OIG has failed to meet this burden in this case for the reasons discussed next.

THE TRIAL COURT PROPERLY DETERMINED THAT THE INSPECTOR GENERAL IS NOT ENTITLED TO INTERVENE IN THIS ACTION.

A. The OIG Is Not Entitled to Intervene in the Action Because She Seeks to Interject Complex Additional Issues into the Pending Action.

This case is controlled by the long-standing rule of law that "[a] trial court does not abuse its discretion when it denies intervention because the would-be intervenor seeks to inject new issues into the pending action." *Allstate Ins. Co. v. Johnson*, 483 So. 2d 524, 525 (Fla. 5th DCA 1986) (*citing Riviera Club v. Belle Mead Dev. Corp.*, 141 Fla. 538, 194 So. 783, 784 (1939); *Oster v. Cay Constr. Co.*, 204 So. 2d 539, 541-42 (Fla. 4th DCA 1967)). All the parties to this lawsuit agree that the single issue in the underlying lawsuit concerns the constitutionality of the Funding Mechanism. (A5. 6:20-22 ("The subject of this lawsuit is the OIG's funding, pure and simple."); A1. 161-62 ¶1; Motion to Expedite Appeal, at 6 ("The circuit court case involves a challenge by the 14 municipal Appellees to both the

[1] In measuring the reasonableness of the Trial Court's exercise of discretion, the appellate court must recognize the superior vantage point of the trial judge. *Morgan v. Campbell*, 816 So. 2d 251, 253 (Fla. 2d DCA 2002) (*citing Canakaris*, 382 So. 2d at 1203); *Seven Hills, Inc. v. Bentley*, 848 So. 2d 345, 352 (Fla. 1st DCA 2003); *Girtman v. Girtman*, 693 So. 2d 631, 632 (Fla. 2d DCA 1997); *National Healthcorp Ltd. P'ship v. Close*, 787 So. 2d 22, 25-26 (Fla. 2d DCA 2001), *rev. denied*, 799 So. 2d 216 (Fla. 2001).

requirement that they contribute to the OIG's funding and to the processes for determining the level of Inspector General funding.")).

The Municipal Appellees seek declaratory relief as to whether the Funding Mechanism is an unlawful tax, a form of double taxation, is unauthorized by the County Charter, or infringes on their municipal home rule powers. (A1. 7-28) The County disagrees and has filed counterclaims seeking enforcement of the Funding Mechanism and quasi-contractual reimbursement. (A2. 300-02) Caught in the middle, the Clerk & Comptroller has also requested declaratory relief about the lawfulness of the Funding Mechanism and asked the Trial Court for direction as to how to proceed. (A1. 144-55) The Funding Mechanism is indisputably the subject matter of the lawsuit pending before the Trial Court.

The OIG denies it, but its motion to intervene, attached pleadings, briefs and oral argument have all been focused not on the Funding Mechanism, but the OIG's independence and capacity to sue the Municipal Appellees and Clerk & Comptroller. These subjects are not remotely related to the Funding Mechanism at the heart of the proceedings. Beginning with the motion to intervene, in its first section marked "Independence of the Inspector General," the OIG claims out of the box that it is "independent in all material respects of the defendant County Board of County Commissioners (BOCC)" and "independent of the Plaintiff Municipalities." (A2. 181-82 ¶¶ 5-6) The OIG alleges various powers in support

of this such as the power to hire and fire its own staff and decide which matters it "will investigate, audit, or inquire into without approval from the BOCC or the Municipalities." (A2. 182 ¶¶ 6(d), 8) Attached to the motion to intervene,[2] the OIG's crossclaim for issuance of writ of mandamus against the Clerk & Comptroller and Appellee Municipalities reiterates that the OIG "in all material respects is independent of the Palm Beach County Board of County Commissioners (BOCC)." (A2. 200 ¶ 4; 216 ¶ 4) The OIG claims that it "is the party best situated to defend" the Implementing Ordinance, and authorized to do so in a manner at odds with the County Attorney. (A2. 186 ¶ 29)

In argument and briefing below the OIG adds: (1) it is "not a department of anything," but entirely independent of the Palm Beach County Board of County Commissioners ("BOCC") (A2. 321);[3] (2) it has capacity and standing to sue and to be sued in the inspector general's official or personal capacity, either way on behalf of her office's interests (A3. 406 ¶ 18(a); A5. 10:12-11:17; *accord* Motion to Expedite at 5; (3) it has the right to defend a County ordinance in a manner contrary to the County Attorney (A2. 323 ¶ 25(c)); and (4) it has the right to

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[2] Courts may look to pleadings attached to a motion to intervene to assess the appropriateness of intervention. *See Oster*, 204 So. 2d at 542 (*approving Riviera Club*, 194 So. at 784 (considering proposed answer)).

[3] In fact, the OIG implies that it is the equivalent of a statutory state agency, such as the Florida Office of Financial regulation and Office of Insurance Regulation.(A2. 322-23 ¶ 22) The OIG is dissimilar to these agencies because it was not created by the Florida Legislature.

enforce a subpoena not at issue in this case. (A2. 320-21 ¶ 16; A5. 10:8-11) In short, expressly and (just as concretely) impliedly, the OIG's motion to intervene and related briefs and oral argument raise the question of the OIG's independence, capacity to sue and powers.

None of these issues are raised in the pleadings in the underlying action. No complaint challenged (1) the independence of the OIG, (2) the OIG's capacity or standing to sue or be sued, or (3) the exercise of an enumerated power of the OIG such as the right to enforce a subpoena. Consequently, the Trial Court did not act arbitrarily, fancifully or unreasonably when it denied the OIG's motion to intervene. The holding of *Allstate,* which is controlling in this case, is that when a would-be intervenor seeks to interject new issues into the lawsuit, the court has the discretion to deny intervention. Because the case is on all fours with this one, the OIG has tried to distinguish *Allstate* in the Initial Brief on the grounds that Allstate had exclusively a contingent interest in the outcome of the case. First, the case states no such thing. Second, this is precisely the type of interest the OIG has in this case. If the lower court upholds the constitutionality of the Funding Mechanism, the alleged "underfunding" of the OIG, which it claims is central to the OIG's standing, would vanish.

Naturally, this would be a different appeal entirely if any Appellee had challenged in their complaints, counterclaims, answers, or affirmative defenses a

function, authority or power of the OIG as outlined in a different part of the Implementing Ordinance. Art. XII, s 2-423, Cnty. Code. But this Court does not have to reach the question at all whether the OIG has the powers claimed to affirm the Trial Court's exercise of discretion.[4] As the Trial Court recognized, intervenors are customarily not welcome to expand the scope of litigation as the OIG proposes. In *Williams v. Nussbaum*, 419 So. 2d 715 (Fla. 1st DCA 1982), the court identified two limitations on intervention: (1) intervention ordinarily is in "subordination to and in recognition of the propriety of the main proceeding" and (2) "one who intervenes in a pending action ordinarily must come into the case as it exists and conform to the pleadings as he finds them or that he must take the case as he finds it." *Id.* n.1. *See also Arsali v. Chase Home Finance, LLC*, 79 So. 3d 845, 847 (Fla. 4th DCA 2012); *Omni Nat's Bank v. Georgia Banking Company*, 951 So. 2d 1006, 1007 (Fla. 3d DCA 2007). The OIG proposes the opposite: to take over and fundamentally alter the case to raise complex new legal issues, contest the existing pleadings, and seek additional relief not related to determining the constitutionality

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[4] The record contains no evidence that the Trial Court denied the OIG's motion to intervene based on the powers the OIG claims as opposed to its interjection of new issues. "[B]ecause the trial court did not explain the basis for its denial of the IG's Motion to Intervene," the OIG admits that the latter argument "may have been a factor" in its decision." (A6. 9) Therefore, it was improper for the OIG to claim that the Trial Court order "appears to nullify" the Implementing Ordinance. (Motion to Expedite. 2, 5) The Trial Court order did nothing of the kind and this Court is also not required to rule on the OIG's powers in order to affirm the Trial Court order.

of the Funding Mechanism. The extraneous issues raised by the OIG will do nothing but delay and complicate the lawsuit.

The Florida Supreme Court affirmed a trial court's denial of a petition to intervene in *Riviera Club v. Belle Mead Dev. Corp.*, 141 Fla. 538, 194 So. 783 (1939). There, the appellant and tenant sought to interject into a lawsuit brought by a developer to foreclose tax certificates for the years 1926 to 1927, additional tax certificates for the years 1931 to 1937. *Id.* at 783-84. The Florida Supreme Court held that, while "it is the better practice to adjudicate all unsatisfied tax liens at the same time and clear the title of all tax liens," *id.* 784, the trial court was correct to deny the tenant's motion to intervene inasmuch as it sought to raise new matters or issues not embodied in the original suit. Affirming the trial court, the Florida Supreme Court ruled that "[t]he injection of an independent controversy by intervention is improper." *Id.*

The issues the OIG seeks to interject into this lawsuit are far less related to the constitutionality of the Funding Mechanism than junior tax certificates are to senior tax certificates in a foreclosure proceeding. This case is more like *Oster v. Cay Constr. Co.*, 204 So. 2d 539 (Fla. 4th DCA 1967), where this Court affirmed the trial court's denial of the appellant's motion to intervene in a lawsuit for an accounting and breach of fiduciary duty to raise unrelated issues about whether a voting trust was created, a trustee violated duties under the voting trust and validly

terminated the voting trust, the appellants suffered damages as a result, and the appellants were entitled to equitable relief. This court ruled:

> Because new issues are thus sought to be interjected, the petition for leave to intervene is not in subordination to the main action. For this reason, the granting or denying of the motion for leave to intervene was within the discretion of the trial court.

Id. at 541-42.

The rule of law under which these cases were decided; *i.e.*, that the intervenor must accept the pleadings of a case as he finds them, unless otherwise ordered by the court in its discretion, *Riviera Club*, 141 Fla. 538, 194 So. at 784; *Oster*, 204 So. 2d at 542, is formalized in Florida Civil Procedure Rule 1.230:

> [I]ntervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

Rule 1.230, Fla. R. Civ. P.

This Rule and the case law interpreting it make clear that a trial court does not abuse its discretion by not permitting a would-be intervenor to interject new issues into a lawsuit. *Johnson*, 483 So. 2d at 525. Indeed, courts ordinarily have an obligation to avoid constitutional and other legal questions not critical to the resolution of the dispute before it. *State v. Mozo*, 655 So. 2d 1115, 1117 (Fla. 1995); *State v. Williams*, 584 So. 2d 1119, 1121 (Fla. 5th DCA 1991). The issues raised in the OIG's motion to intervene are unrelated to the constitutionality of the Funding Mechanism and, therefore, are outside the scope of this litigation.

Furthermore, they raise questions of great consequences on their own, the resolution of which could modify the balance of power in municipal government.

The OIG's efforts to intervene in this lawsuit or file a separate lawsuit at some time in the future will have a significant impact on the balance of power in local government. When it declined to make new law upsetting the municipal balance of power the Trial Court declined to address in an action dealing only with the constitutionality of a funding provision in a county ordinance, new and complex issues as to whether Appellant has the legal capacity to sue and be sued, as well as the following complex questions not yet ripe for review: (1) whether the OIG is entitled to sue the County for "insufficient funding" or other reasons as it has now done by filing the Petition for Writ of Mandamus in *Steckler v. Town of Gulfstream, etc.*, Fourth District Court of Appeal, Case No. 4D12-4421 (A4. 444-548; A5. 7:10-17);[5] (2) whether the OIG can file other lawsuits at will or be named in them at the County's expense; (3) whether the OIG can defend other County ordinances in a manner contrary to the County Attorney who is charged with defending civil actions against the County, § 4.3, Charter; and (4) whether other

[5] Funding is typically a political question the courts are leery to address at least without a standard against which to compare the funding appropriated. *See Coalition for Adequacy and Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 402-03 (Fla. 1996) (per curiam); *Simon v. Celebration Co.*, 883 So. 2d 826 (Fla. 5th DCA 2004); *cf. Bush v. Holmes*, 919 So. 2d 392, 404 (Fla. 2006). The record contains no evidence that any threshold of funding for the OIG has not been met.

County departments may also sue or be sued for insufficient funding or other reasons or, if not the departments, the heads of the departments at County expense. Granting the OIG's motion to intervene would have had statewide impact in other counties for the same reasons.

Consequently, the OIG has not met its burden to show that the Trial Court's order denying intervention was an abuse of discretion.

B. The OIG Was Not Entitled to "Super-Intervenor" Status.

The Trial Court also did not abuse its discretion because the OIG sought full party status or "super-intervenor" status equivalent to that of the County and the Appellant Municipalities and exceeding that of the Clerk & Comptroller. [6] (A5. 14:8-10) As part of this request, the OIG sought mandamus relief against the

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[6] Appellee Clerk & Comptroller is a constitutional and statutory officer with long-established legal authority to sue and be sued. *See, e.g., Green v. City of Pensacola*, 108 So. 2d 897, 900-01 (Fla. 1st DCA 1959) (comptroller entitled to question constitutionality of special act which purports to exempt the City of Pensacola from payment of gross receipts tax as required by general law); *accord Kaulakis v. Boyd*, 138 So. 2d 505 (Fla. 1962) (county commissioners had the right and duty to challenge the validity of a portion of their home rule charter, which purported to make the county liable in tort to the same extent as municipalities since a judgment for the plaintiff would have required the commissioners to expended public funds in satisfaction thereof). Due to her potential official and personal civil and criminal liability, the Clerk & Comptroller asked the County if it would indemnify her from potential liability if she disbursed the funds collected under the challenged Funding Mechanism. The County declined, and the Clerk & Comptroller then sought and received unanimous consent to intervene in this action as an ordinary intervenor to ask for a declaration about her legal obligations under the Funding Mechanism. The Clerk & Comptroller took no position on the merits of the litigation and does not presume full party status.

Appellee Municipalities and the Clerk & Comptroller and also sought to dismiss their pleadings that had already been answered by the parties. The court in *Williams v. Nussbaum*, 419 So. 2d 715 (Fla. 1st DCA 1982) ruled that an intervenor is not ordinarily entitled to this type of relief.

The *Williams* Court explained that the secondary limitation on an intervenor; *i.e*, that the intervenor "take the case as [s]he finds it," prevents the OIG from filing its motions to dismiss and mandamus actions. Concerning this limitation, the court explained: "By this it is generally meant that he cannot avail himself or urge mere irregularities in the proceeding which the original parties have expressly or impliedly waived, or of defenses which are personal to them." *Id.* Within these limitations the intervenor may "avail himself of any and all arguments which relate to derivation and extent of his own interests," *id.*, but not to the extent of challenging "the propriety of the main proceedings or the sufficiency of its pleadings," *Florida Gas Co. v. Am. Emp'rs Ins. Co.*, 218 So. 2d 197, 198 (Fla. 3d DCA 1969); or "object[ing] to pleadings or process ... submitted to without objection." *Singletary v. Mann*, 157 Fla. 37, 24 So. 2d 718, 722 (1946); *accord National Wildlife Fed'n, Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1st DCA 1988) ("An intervenor must accept the record and pleadings as he finds them and cannot raise new issues."). *See also Omni Nat'l Bank*, 951 So. 2d 1007 (intervenor is not permitted to contest the plaintiff's claim).

The OIG has no authority to defend the Funding Mechanism at all, but even if she did, the OIG is not entitled to full party status to dismiss the parties' pleadings or otherwise exercise super-intervenor status to seek funds the County is already pursuing. Because this was the exclusive basis for intervention demanded by the OIG, the Trial Court did not act unreasonably when it denied the OIG's motion to intervene; therefore, this Court should affirm the Trial Court's order denying the OIG's motion to intervene.

C. The OIG Is Not Entitled to Intervene in this Action Because She Does Not Have the Capacity to Sue or Be Sued Over Matters Involving the Constitutionality of a County Ordinance.

The Trial Court did not abuse its discretion when it denied the OIG's motion to intervene because it does not have the capacity to sue or be sued over matters involving the constitutionality of a county ordinance, as opposed to other matters not at issue in this case.[7] Under state law the power to defend civil actions against the County belongs exclusively to the board of county commissioners. § 125.01(1)(b), Fla. Stat. Municipal ordinances are inferior to laws of the state and

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[7] In the Trial Court, the OIG claimed taxpayer standing, in addition to official capacity standing. By not raising this in the Initial Brief, the argument is waived. *See Ramos v. Philp Morris Cos., Inc.*, 743 So. 2d 24, 29 (Fla. 3d DCA 1999); *F.M.W. Props. Inc. v. Peoples First Fin. Sav. & Loan Ass'n*, 606 So. 2d 372, 377 (Fla. 1st DCA 1992) ("It is well settled that, in order to obtain appellate review, alleged errors relied upon for reversal must be raised clearly, concisely, and separately as points on appeal.") (*quoting Singer v. Borbua*, 497 So. 2d 279, 281 (Fla. 3d DCA 1986) (contention contained in the argument made under a separate point disregarded)).

may not conflict with any controlling provision of a state statute. *City of Wilton Manors v. Starling*, 121 So. 2d 172, 174 (Fla. 2d DCA 1960). To the extent any local ordinance contradicts section 125.01(1)(b), Florida Statutes, it would be contrary to law and invalid. But there is no conflict. The County Charter invests the authority to defend civil actions exclusively in the County Attorney. § 4.3, Charter ("The office of county attorney shall prosecute and defend all actions for and on behalf of Palm Beach County and the Board of County Commissioners....") Both before and after the Implementing Ordinance was enacted, the Charter provided for the County Attorney to defend Palm Beach County ordinances such as the Funding Mechanism.

The Charter is the constitution of Palm Beach County. This Court's main purpose is to construe the constitution in such a manner as to ascertain the intent of the framers and to effectuate that object. *Metro-Dade Fire Rescue Serv. Dist. v. Metro-Dade Cnty.*, 616 So. 2d 966, 970 (Fla. 1993). Just like the County Charter cannot contradict state law, the Implementing Ordinance cannot contradict the Charter. If it does, the Implementing Ordinance must give way. *Id.* at 970. Once again, there is no conflict here. Section 2-429(7) of the Funding Mechanism contained within the Implementing Ordinance provides:

> (7) The office of the clerk and comptroller shall invoice the county and each municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April 10 and July 10 of each year. Payment shall be submitted to the board and due no later than thirty (30) days from the date of

> the invoice. Upon receipt, all funds shall be placed in the *Office of Inspector General*, Palm Beach County, Florida Special Revenue Fund. **In the event payment is not timely received, the county or any municipality in compliance with this section may pursue any available legal remedy.**

Ch. 2, Art. XII, § 2-429(7), Cnty. Code (emphasis added).

Section 2-429(7) states that if a municipality does not pay the County's charges for the OIG Program, then the County can sue. Missing from this specific provision of the Implementing Ordinance is any reference to the OIG.[8] When an ordinance expressly provides the manner of doing a thing, it cannot be done another way. *See e.g.*, *Bush v. Holmes*, 919 So. 2d 392, 408 (Fla. 2006) (general principle of statutory construction is "expression unius est exclusio alterius" or "the expression of one thing implies the exclusion of another"); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976) (same).

The electors' intent clearly expressed in the Charter and Ordinance is that the County must defend the underlying lawsuit, not the OIG.[9] Before and after adoption of the Implementing Ordinance, it is up to the County Attorney to recover County funds. The people asked for and got an office of inspector general free from interference to investigate what it wants to examine, any way it wants to

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[8] For these same reasons, the OIG does not have the ability to file its own lawsuit against the Municipalities and the Clerk & Comptroller.

[9] The Charter and Ordinance language creating and implementing the OIG was evaluated, analyzed and negotiated by all stakeholders starting in early 2009. The citizens of Palm Beach County voted to create the OIG, but expressly chose not to make it a separate legal entity.

investigate it, and as closely as it wants to inspect it, but not a separate legal entity empowered to undertake the defense of the constitutionality of a county ordinance. This is especially so in this case, where the Implementing Ordinance itself, does not give the OIG the authority to enforce the Funding Mechanism.

Moreover, authority is clear that the OIG may not infringe upon a county commission's choice of counsel. The Florida Supreme Court ruled unconstitutional a less serious infringement upon a county commission's authority to select its own counsel by depriving it of authority to engage counsel residing outside the county. *See State ex rel Hines v. Culbreath*, 128 Fla. 210, 174 So. 422, 425 (1937) (local act regulating the jurisdiction and duties of the board of county commissioners in the matter of their general duty and power to represent the county in the prosecution and defense of all legal causes invalid). *Culbreath* makes plain that the BOCC's discretion to defend civil actions may not be constrained.

The authority upon which the OIG relies to intervene in this action as a legally "independent" entity from the County is distinguishable. All of it turns on a key difference between the OIG and the agencies concerned: the OIG was not enacted by special act of the Legislature. The distinction between a "municipal department" without the authority to sue and a "quasi-municipal agency" is not

always neat,[10] but what is certain is that by special act the Florida Legislature can create a quasi-municipal agency with express powers including the authority to sue and be sued, whereas entities not enacted by the Legislature that have sought to establish this right have ordinarily not prevailed. *See Lederer v. Orlando Utils. Comm'n*, 981 So. 2d 521, 525-26 (Fla. 5th DCA 2008) (*citing* 1 MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 2.30 (3d ed. 2008)).[11]

The Fifth District Court of Appeal unambiguously ruled that its holding to the effect that the Orlando Utilities Commission qualified as a quasi-municipal agency hinged upon legislative enactment. *Lederer*, 981 So. 2d at 525 (*citing* MCQUILLIN, *supra* ("explaining that department created by state is generally

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[10] Appellant claims to be entirely autonomous from Appellee County, but Appellant is a County employee paid by the County, Ch. 2, Art. XII, § 2-423(11), 2-425, County Code; her contract is approved by BOCC, Ch. 2, Art. XII, § 2-425, County Code; she prepares reports and recommendations to BOCC, Ch. 2, Art. XII, § 2-427, County Code; her contracts with outside private and public entities are subject to BOCC approval, Ch. 2, Art. XII, § 2-423(2), (9), County Code; she is housed in County facilities, Ch. 2, Art. XII, § 2-426(1), County Code; and, most importantly, the County approves her budget. Ch. 2, Art. XII, § 2-429(6), County Code. If every County department could sue the County for "insufficient funding" there would be no end to the litigation.

[11] *Accord Florida City Policy Dep't v. Corcoran*, 661 So. 2d 409 (Fla. 3d DCA 1995) (police department was not an entity subject to suit); *Manuel v. St. Petersburg Police Dep't*, Case No. 8:11-cv-1843-T-30MAP, 2011 WL 4382648 (M.D. Fla. Sept. 20, 2011) (similar); *Tozier v. City of Temple Terrace*, Case no. 8:10-cv-2750-T-33EAJ, 2011 WL 3961816 (M.D. Fla. Sept. 8, 2011) (similar); *Mann v. Hillsborough Cnty. Sheriff's Office*, 946 F. Supp. 962, 970-71 (M.D. Fla. 1996) (similar).

considered separate entity while department created by city is not entity separate from municipality even though distinct city department"); *accord Hodge v. Orlando Utils. Comm'n*, No. 6:09-cv-1059-Orl-19DAB, 2009 WL 4042930, at *7 (M.D. Fla. Nov. 23, 2009) (looking to state law to determine whether the utility is a municipal entity and finding that the special acts of the Florida Legislature made it so). Conversely, the court in *Lederer* observed that a police or fire department, planning department or city attorney's office not enacted by the legislature is not a separate legal entity. *Id.* at 526. Neither is the OIG.

Appellant considers all of this authority distinguishable, but cites not a single case holding that a similarly-situated entity has the capacity to sue as a legally "independent" entity.[12] To intervene the OIG instead relies on its general authority to conduct audits and investigations not found in the Funding Mechanism. For example, the OIG states that it has the ability to "exercise any of the powers contained in this article," Ch. 2, Art. XII, § 2-423(7), County Code, and

[12] In the single relevant case where the North Miami Beach Water Board "contended in effect that it was an autonomous entity rather than a department of the municipality," and, thus, entitled to intervene, the court ruled against the would-be intervenor. *North Miami Bch. Water Bd. v. Gollin*, 171 So. 2d 584, 585 (Fla. 3d DCA 1965). The Third District Court of Appeal affirmed the trial court when after examining the charter of the City of North Miami Beach it denied the Board's motion to intervene for lack of standing in an employment dispute. *Id.* 585-86 The Board sought to defend its right to discharge the petitioner, but the court ruled that the board was not in fact an autonomous body entitled to sue or be sued. *Id.*

the authority to make application to any circuit court to order a witness to appear. *Id.* § 2-423(3). The OIG's reliance on these general powers to justify intervention is misplaced. Neither power is at issue in this litigation.[13] From the exclusive enumerated power to order a witness to appear, the OIG erroneously infers an expansive general power contrary to statute, charter, and other enumerated powers in the ordinance to defend this civil action and sue for mandamus.

Of course, this is nonsense according to traditional rules of statutory construction which apply equally to ordinances. "Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control...." *Stroemel v. Columbia Cnty.*, 930 So. 2d 742, 746 (Fla. 1st DCA 2006) (citation omitted). Thus, "'a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.'" *Mortgage Elec. Registration Sys. v. Mahler*, 928 So. 2d 470, 472 (Fla. 4th DCA 2006) (citation omitted). Here, the Funding Mechanism provision in the Implementing Ordinance specifically and unambiguously gives only the County and any paying municipality the authority to enforce the funding mechanism, not the OIG.

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[13] *Cf. Sirgany Int'l, Inc. v. Miami-Dade Cnty.*, 845 So. 2d 1017 (Fla. 3d DCA 2003) (concerning the Miami-Dade Inspector General's authority to enforce a subpoena) and 887 So. 2d 381 (Fla. 3d DCA 2004) (similar).

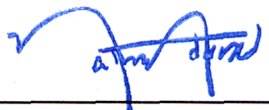
State law, the County Charter, and the Implementing Ordinance unambiguously accord the County Attorney the authority to defend the underlying lawsuit. There is no authority granting the OIG the capacity to sue and defend against the Appellee Municipalities' lawsuit. Without the capacity to sue, the OIG has no ability to intervene and participate in these proceedings. Therefore, the Trial Court did not abuse its discretion when it denied the OIG's motion to intervene. The Trial Court's order denying intervention should be affirmed.

CONCLUSION

Appellee Sharon R. Bock, in her official capacity as the Clerk & Comptroller of Palm Beach County, Florida respectfully requests that this Court affirm the Trial Court's order denying the OIG's motion to intervene.

Respectfully submitted this 28th day of January, 2013.

HOLLAND & KNIGHT LLP



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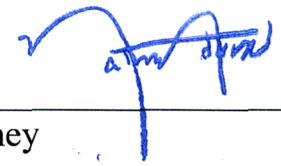
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Answer Brief of Appellee Sharon R. Bock, in her official capacity as the Clerk & Comptroller of Palm Beach County, Florida, has been furnished by email to those on the attached service list, this 28th day of January, 2013.



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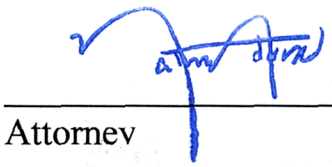

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