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

SHERYL STECKLER, in her Official Capacity as Inspector General of Palm Beach County, Florida,

Petitioner,

v.

TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM BEACH SHORES, TOWN OF MANALAPAN, TOWN OF MAGNONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH, TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE, CITY OF BOCA RATON, municipal Corporations of the State of Florida,

Respondent Municipalities,

PALM BEACH COUNTY, a political subdivision,

Respondent County, and

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

Respondent Clerk and Comptroller.
_____/

CASE NO: 4D12-4421

RESPONDENT MUNICIPALITIES' RESPONSE TO ORDER TO SHOW CAUSE

The Respondent Municipalities, by and through undersigned counsel, hereby file their Response to the Order to Show Cause, and state as follows:

HISTORY OF THE PROCEEDINGS

A. The Creation of the Countywide Office of Inspector General.

In November of 2010, the voters of Palm Beach County approved a referendum put forward by the Palm Beach County Board of County Commissioners (the "BCC") to amend the County Charter and create a countywide Office of Inspector General (the "Office of Inspector General" or "IG Program"). (Municipalities' Appendix ("Mun. App."), at 82-84). The approval of a countywide program through referendum means that the program applies in both the unincorporated areas of Palm Beach County (the "County"), and in the 38 municipalities within the County. (Mun. App. at 80). On May 17, 2011, the BCC adopted Ordinance No. 2011-009, which implemented the countywide IG Program (the "Implementing Ordinance"). (Mun. App. at 85). Under this Ordinance, the Inspector General (the "IG") is the head of the IG Program. See Section 2-422, Implementing Ordinance (Mun. App. at 121).

B. The Funding Mechanism for the IG Program.

Section 2-429 of the Implementing Ordinance outlines the funding mechanism for the IG Program. (Mun. App. at 127-128). Of particular importance to these proceedings is Section 2-429(7), which 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.**

(emphasis added). (Mun. App. at 128).[1]

C. The Invoices to the Municipalities for the IG Program.

In October of 2011, the County, through the Clerk & Comptroller for Palm Beach County (the "Clerk & Comptroller"), sent invoices to all 38 municipalities within the County demanding payment for costs associated with the countywide IG Program. (Mun. App. at 85). The invoices were sent pursuant to Section 2-429(7) of the Implementing Ordinance. (Mun. App. at 128). Both the Ordinance and the invoices indicate that payment was to be made to the County, not to the Office of Inspector General. (Mun. App. at 128, 145-148).

D. The Municipalities' Legal Challenge to the Invoices.

On November 14, 2011, the Respondent Municipalities filed suit against the County for declaratory relief arguing that the County's efforts to charge them for the IG Program were unlawful. See Town of Gulfstream et al. v. Palm Beach County, Case No. 502011CA017953, Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County; (Mun. App. at 1-77). The Municipalities' Complaint alleged that the charges for the IG Program constituted an unlawful tax

[1] Before the IG Program, the County never had forced the Municipalities to pay for a countywide program created by County Charter amendment. (Mun. App. at 3-4).

(Count I); constituted a double tax on municipal residents (Count II);[2] were in conflict with the County Charter (Count III); and were in conflict with the Municipalities' constitutional and statutory home rule powers to maintain control over their own budgets (Count IV). (Mun. App. at 1-77). The Municipalities' lawsuit focused solely on whether they were required to pay for the countywide IG Program. (Mun. App. at 2). The Municipalities' Complaint expressly stated that it did not challenge the creation of the Office of Inspector General, its continued existence, or the ability of the Office to conduct its activities. (Mun. App. at 2). The County thereafter filed Counterclaims demanding payment from the Municipalities. (Petitioner's Appendix ("Pet. App."), at 111-131).

On December 1, 2011, the Clerk & Comptroller was permitted to intervene in the case for the sole purpose of seeking direction from the Trial Court as to what her Office's obligations were under the Ordinance given the legal challenge from the Municipalities. (Pet. App. at 55-96).

On December 21, 2011, the Trial Court entered an Agreed Order staying the litigation until the parties completed the mandatory inter-governmental dispute resolution process outlined in Chapter 164 of the Florida Statutes. (Mun. App. at

[2] Count II of the Municipalities' Complaint alleges that municipal taxpayers are required to pay for the IG Program twice. They pay for it once through their county ad valorem taxes, which are paid in the same amounts as taxpayers residing in the unincorporated areas of the County. They also pay for the Program a second time with their municipal ad valorem taxes by way of the County's invoices to the Municipalities. (Mun. App. at 15-17).

2). The last step in this dispute resolution process was mediation, which was completed on May 18, 2012, and resulted in an impasse. On June 19, 2012, the Trial Court entered an Order lifting the stay on the litigation.

E. The IG's Motion to Intervene in the Trial Court Proceedings.

On June 7, 2012, before the stay of the litigation was lifted, the IG filed a Motion to Intervene seeking "full party" status and to not be bound by the subordinated and limited rights of intervenors. (Pet. App. at 132-172). In the Motion, the IG requested that she be allowed to move to dismiss the Respondent Municipalities' Complaint and seek mandamus relief against them in order to compel payment of the County's invoices. (Pet. App. at 139, 162-172).

On October 24, 2012, the Trial Court conducted a hearing on the IG's Motion to Intervene. The hearing focused on whether the IG had the capacity or standing to sue on the issue of funding; and if intervention was allowed, what the scope of that intervention would be. On November 16, 2012, the Trial Court entered an Order denying the IG's motion. (Pet. App. at 173-174). On December 5, 2012, the IG appealed. The appeal is Case No. 4D12-4325, and is still pending.

F. The Municipalities' Motion for Partial Summary Judgment on the Funding Issue.

The Trial Court proceedings regarding the Municipalities' Complaint for Declaratory Relief and the County's Counterclaims also are pending. In fact, on November 29, 2012, the Trial Court conducted a three hour hearing on the

Municipalities' Motion for Partial Summary Judgment to address whether the County's invoices to the Municipalities were unlawful. (Mun. App. at 78-148). The Trial Court did not rule on the Municipalities' Motion before the IG filed her appeal regarding intervention.

G. The IG's New Petition for Writ of Mandamus.

On December 14, 2012, the IG filed a new Petition for Writ of Mandamus in this Court seeking to compel the Municipalities to pay their invoices for the IG Program "during the pendency of this litigation; including obligations past due and obligations yet to be due." See Petition at 13, ¶ 2.[3] The Petition filed in this Court represents the second attempt by the IG to seek mandamus relief against the Municipalities. The first attempt was part of the IG's Motion to Intervene in the Trial Court proceedings. (Pet. App. at 139, 162-172).

[3] The County, the Municipalities and the Clerk & Comptroller filed a joint Motion to Dismiss the IG's Petition for Writ of Mandamus in this case for lack of jurisdiction given that both the appeal on the IG's intervention and the resolution of the underlying case on the funding issue are still pending. The Municipalities do not restate these arguments in this Response, but incorporate them by reference and preserve them. Also, many of the arguments raised herein are raised in the Municipalities' Answer Brief in Case No. 4D12-4325, and in the Municipalities' Motion for Partial Summary Judgment in Lower Court Case No. 502011CA017953XXXXMBAO.

LEGAL STANDARD FOR MANDAMUS ACTIONS

To be entitled to mandamus relief against the Municipalities, the IG must establish that she has a clear legal right to the relief requested; that the Municipalities have an indisputable legal duty to perform the requested action; and that the IG has no other adequate remedy available to her. Tyson v. The Florida Bar, 826 So. 2d 265, 268 (Fla. 2002) (citing Huffman v. State, 813 So. 2d 10, 11 (Fla. 2000)).

Mandamus is proper to enforce a right which is clearly and certainly established in the law, but not to litigate the existence of such a right. Florida League of Cities v. Smith, 607 So.2d 397, 401 (Fla. 1992); City of Bradenton v. Johnson, 989 So. 2d 25, 27 (Fla. 2d DCA 2008). The official duty in question must be ministerial and not discretionary. Soto v. Bd. of County Comm'rs of Hernando County, 716 So.2d 863, 864 (Fla. 5th DCA 1998). Mandamus is not an appropriate vehicle to mandate "the doing (or undoing) of a discretionary act." Tyson, 826 So. 2d at 268 (citing Migliore v. City of Lauderhill, 415 So. 2d 62, 63 (Fla. 4th DCA 1982)). Finally, mandamus is not an available remedy if there is a factual dispute regarding the right to which the petitioner claims she is entitled. Immer v. City of Miami, 898 So. 2d 258, 259 (Fla. 3d DCA 2005).

SUMMARY OF ARGUMENT

The IG's request for mandamus relief should be denied given that the IG has no clear legal right to compel payment from the Municipalities. The Office of Inspector General has no capacity to sue or standing to sue on the issue of funding for the IG Program either in its own name or on behalf of the County. The IG's position to the contrary conflicts with state law, the County Charter and the Implementing Ordinance. Additionally, the "right" to payment is being litigated in the Trial Court below. The Municipalities have challenged the constitutionality of the County's ability to charge them for the countywide IG Program. Consequently, there can be no "clear" legal right to payment until these constitutional questions are resolved.

The IG's request for mandamus relief further should be denied given that the Municipalities do not have a legally "indisputable ministerial duty" to pay the County's invoices. The Municipalities have "home rule" powers to set their own budgets and allocate funds. These are discretionary acts, not ministerial acts.

The IG's request for mandamus relief further should be denied given that she has adequate remedies at law. The IG has an adequate remedy at law by way of her appeal in Case No. 4D12-4325. The appeal addresses the issues of the IG's capacity to sue, standing to sue and ability to intervene in the proceedings below. Moreover, this entire dispute is about money. Therefore, if the IG has the capacity

to sue and standing to sue on the issue of funding, then the IG also has an adequate remedy at law by way of an action for damages.

ARGUMENT

A. The IG's Statement of Capacity.

The IG has filed the Petition for Writ of Mandamus in her "official capacity as Inspector General of Palm Beach County." See e.g., the Petition at 1 and 2, ¶ 1. It is important to clarify what the IG's "official capacity" means. Unlike the elected Constitutional Officers such as the Clerk & Comptroller,[4] the IG does not have a stand-alone "official capacity." The IG was not created by the Florida Constitution. Instead, the Office of Inspector General was created by the County Charter and the County Implementing Ordinance. The IG's "official capacity," therefore, arises solely from the Office of Inspector General. Without the Office, the IG has no "official capacity." Therefore, when the IG states that she is suing in her "official capacity," that can only mean she is suing on behalf of the County-created Office of Inspector General.

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[4] Article VIII, Section 1(d) of the Florida Constitution lists five (5) County Officers that are elected and serve separate and apart from the Palm Beach County Board of County Commissioners. These four (4) Officers are known as Constitutional Officers and are: (1) the Sheriff; (2) the Tax Collector; (3) the Property Appraiser; (4) the Supervisor of Elections; and (5) the Clerk of the Circuit Court. The IG has patterned her caption and statement of capacity after the Clerk & Comptroller's caption and statement of capacity. The IG also alleges in her Petition that she is an "officer" of Palm Beach County. See Petition at 2, ¶1. The IG's capacity, however, is not the same as an elected Constitutional Officer.

The IG has argued in her appeal for Case No. 4D12-4325 that she is suing as an "adult natural person who is *sui juris* with no legal disability." See IG's Initial Brief at 10. This argument, if raised by the IG here, directly contradicts the IG's own statement of capacity. The IG does not plead that she is suing in her personal or unofficial capacity. If she were suing in this type of capacity, then the caption would have read, "Sheryl Steckler in her individual capacity." This argument, if raised here, also directly contradicts the actions taken by the IG in this case. The IG's Petition only asserts the interests of her Office, not her personal interests. The IG also has used public funds to bring this litigation, not her personal funds. See filing fee for IG's Petition paid by the BCC.

B. The IG Has No Legal Right to the Relief Requested Because She Has No Legal Capacity To Sue On The Issue Of Funding For The IG Program.

The IG has no clear legal right to compel payment from the Municipalities because the IG does not have the capacity to sue on any issue relating to the funding for her Office.[5] Given that there is no capacity to sue, the IG's Petition for Writ of Mandamus against the Municipalities must be denied.

[5] The IG's capacity to bring suit or defend suits on the issue of funding for the County's IG Program is the subject of the appeal currently pending before this Court in Case No. 4D12-4325.

1. Under State Law, the Office of Inspector General Cannot Be A Legally Separate Entity From The County With The Capacity To Sue And Be Sued In Its Own Name.

The IG presumes that the Office of Inspector General is a wholly independent governmental entity, separate and apart from the County with the capacity to sue and be sued in its own name. See e.g., Petition at 2, ¶ 1. The IG's position is not supported by any legal authority, whether it be constitutional provisions, statutory provisions, or case law. There are only two ways in the State of Florida to create a legally independent governmental entity with the capacity to sue and be sued in its own name: (1) the Florida Constitution; or (2) a statute or special act passed by the Florida Legislature. For example, Article VIII, Section 1(g) of the Florida Constitution provides for the creation of charter counties, such as the County here. Section 125.15 of the Florida Statutes further provides that the County, through its Board of County Commissioners, has the sole authority to sue and be sued in the name of the County. Similarly, Article VIII, Section 2(a) of the Florida Constitution provides for the creation of municipalities. Article VIII, Section 2(b) of the Florida Constitution and Section 166.021(1) of the Florida Statutes state that municipalities have all governmental, corporate and proprietary powers to enable them to conduct municipal government, which include the capacity to sue and be sued.

The Fifth District Court of Appeal previously ruled that the Orlando Utilities Commission qualified as a separate legal entity from the City of Orlando because it was created by the Florida Legislature to be legally distinct. Lederer v. Orlando Utilities Comm'n, 981 So. 2d 521, 525-26 (Fla. 5th DCA 2008) ("explaining that a department created by the state is generally considered a separate entity while a department created by a city is not an entity separate from the municipality even though it is a 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. 2009) (looking to state law to determine whether the utility is a separate governmental entity and finding that the special acts of the Florida Legislature made it so).

The Florida Legislature has given county governments, through specific statutory authorization, the ability to create separate bodies corporate and politic with the capacity to sue and be sued in their own names. This legislative authorization, however, is not a general grant of authority allowing counties to create separate governmental entities at any time and for any reason. Instead, the legislative authorization is limited. A county's ability to create a separate body corporate and politic must be for the purposes expressly outlined in the applicable statute. In other words, when the Legislature proscribes 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 "expressio 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).

For example, the Florida Legislature has specifically authorized counties to create by ordinance a separate public body corporate and politic known as a Housing Finance Authority. See Section 159.604(1), Florida Statutes. Section 159.608(1), Florida Statutes, expressly provides that housing finance authorities created by counties have the capacity to sue and be sued in their own names separate and apart from the counties that created them.

The Florida Legislature also has authorized counties to create by ordinance a separate public body corporate and politic known as a Research and Development Authority. See Section 159.703(1), Florida Statutes. Section 159.705(4), Florida Statutes, expressly provides that research and development authorities have the capacity to sue and be sued in their own name separate and apart from the counties that created them.

Here, there is no constitutional provision, statutory provision or special act authorizing the creation of an Office of Inspector General that is a separate public body corporate and politic from the County with the capacity to sue or be sued in its own name. Given that no such provision or act exists, the IG constitutes a department or division of the County. The IG, therefore, has no capacity to sue for mandamus relief as a separate legal entity.

The IG may argue that the County has broad "home rule" authority under the Florida Constitution and Chapter 125 of the Florida Statutes to pass an ordinance creating a legally independent governmental entity such as the IG with the capacity to sue and be sued in its own name. This argument is without merit. If counties were able to create separate governmental entities under their home rule powers alone, then the statutes mentioned above that expressly grant such power to counties would be meaningless. A basic tenet of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless. State v. Goode, 830 So. 2d 817, 824 (Fla. 2002); see also Allied Fid. Ins. Co. v. State, 415 So. 2d 109, 110-11 (Fla. 3d DCA 1982) ("[I]t is ... an axiom of statutory construction that an interpretation of a statute which relates to an unreasonable or ridiculous conclusion or a result obviously not designed by the Legislature will not be adopted.").

2. Even Assuming *Arguendo* The County Could Create An Office of Inspector General That Is Legally Separate From Itself With The Capacity To Sue And Be Sued In Its Own Name, The County Did Not Do So.

Even assuming *arguendo* state law permitted the County to create an Office of Inspector General that was legally separate from itself with the capacity to sue and be sued in its own name, the County did not do so here. The County Charter and the Implementing Ordinance make references to the IG's "independence."

The IG mistakenly concludes that these references grant her Office "legal independence" from the County with the capacity to sue in its own name on funding issues. See e.g., Petition at 2, ¶ 1. The plain terms of the County Charter and Implementing Ordinance, however, do no such thing.

The IG was set up to be "functionally independent" of the County, not "legally independent" of the County. "Functional independence" means the IG can conduct her audits and investigations free from the interference or influence of those she is auditing or investigating. See e.g., Section 2-422, Implementing Ordinance (the set-up and administration of "the office of inspector general shall be independent to assure that no interference or influence external to the office" exists) (Mun. App. at 121); Section 8.3, County Charter (the IG shall have independent "oversight" of publicly funded transactions, projects, and other local government operations) (Pet. App. at 16). Functional independence does not mean the Office of Inspector General is a separate governmental entity from the County that created it. There is nothing in the County Charter or Implementing Ordinance that states the IG is a legally independent separate public body corporate and politic from the County with the capacity to sue or be sued in its own name.

Since the IG has no legal independence, the Office of Inspector General constitutes a department or division of the County.[6] County departments and divisions do not have the capacity to sue in their own name. See The North Miami Beach Water Board v. Gollin, 171 So. 2d 584, 585-586 (Fla. 3d DCA 1965) (board created to operate city's water utility had no capacity to sue in its own name when it was only a subservient department within the city and not a legally autonomous body, separate and apart from the city). They do, however, have the limited authority to sue on behalf of the County, but only on matters specifically delegated to them by the BCC. State law is very clear on this point. It provides that the power to defend civil actions against the County, and the power to defend the legality of a County ordinance, such as the one at issue here, belongs solely to the BCC. § 125.01(1)(b), Fla. Stat.

The County Charter does not delegate any authority to the IG to bring suit on funding issues relating to her County Office. Instead, Section 4.3 of the County Charter expressly provides that the County Attorney shall act on behalf of the County, the BCC, and all County departments and divisions in such matters.

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[6] The IG is required to sign an employment contract with the County that contains terms "substantially consistent with the terms included in contracts of other contractual employees of the county." See Section 2-425, Implementing Ordinance (Mun. App. at 126). This employment contract must be approved by the Board of County Commissioners. Id. The fact that the IG must sign an employment contract with the County and have that contract approved by the BCC is further evidence that the IG is a department or division head of the County, and not the head of a separate governmental entity.

Therefore, the IG has no authority under the County Charter to bring her current Petition for mandamus relief.

The Implementing Ordinance also does not delegate any authority to the IG to bring suit on funding issues relating to her County Office. Instead, Section 2-429(7) of the Implementing Ordinance states the exact opposite and excludes the IG from bringing such action. (Mun. App. at 128). Section 2-429(7) provides that if a municipality does not pay the County's charges for the IG Program, then the only entities that can sue are the County or any municipality that has paid. Id. The Ordinance does not list the IG as one of the parties that can sue for non-payment. When an ordinance expressly provides the manner of doing things, it cannot be done another way. Bush, 919 So. 2d at 408; Thayer, 335 So. 2d at 817.

In her appeal for Case No. 4D12-4325, the IG cites to Section 2-423(7) of the Implementing Ordinance as proof she has been delegated the authority to sue on funding issues. See IG's Initial Brief at 14. The IG's reliance on this Section, if raised here, is misplaced. Section 2-423(7) provides that the IG may exercise any of her enumerated powers upon her own initiative. (Mun. App. at 123). The IG's powers are listed in Section 2-423, and generally involve her ability to conduct audits and investigations. This Section does not list the power to bring suit on funding issues. Since the IG has no enumerated power allowing her to sue on funding issues, the IG cannot use Section 2-423(7) to give herself such power.

In her appeal for Case No. 4D12-4325, the IG further cites to Section 2-423(3) of the Implementing Ordinance as proof she has been delegated the authority to sue on funding issues. See IG's Initial Brief at 14. This section, however, if raised here, only gives the IG the ability to sue on behalf of the County for the limited purpose of obtaining administrative subpoenas in circuit court to compel document production or witness testimony. (Mun. App. at 122-123). Such suits must be brought by the County Attorney on behalf of the IG's department in order to be consistent with Section 4.3 of the County Charter. Section 2-423(3), by its plain terms, is intended to facilitate and assist the IG in her audits and investigations. This Section in no way states that the IG can go to court to sue over funding for her Office. The IG's interpretation of Section 2-423(3) to give herself broad powers to sue distorts its plain meaning and cannot prevail. Florida Dep't of Revenue v. Florida Mun. Power Agency, 789 So. 2d 320, 323 (Fla. 2001) (rules of statutory construction require that statutes be interpreted as they are written and be given their plain and obvious meaning).

In her appeal for Case No. 4D12-4325, the IG further contends that Section 2-431 delegates her authority to sue to enforce the entire Implementing Ordinance, including the funding provisions. See IG's Initial Brief at 14. Section 2-431 provides: "This article is enforceable by all means provided by law, including seeking injunctive relief ...." (Mun. App. at 130). The IG's interpretation of this

Section, if raised here, is flawed. The County Attorney is charged with enforcing County ordinances under Section 4.3 of the County Charter. Section 2-431 is simply a direction to the County Attorney to do just that on behalf of the County and/or the IG department. It does not give the IG the authority to enforce it herself. Section 2-431 does not even mention the IG. The IG has interpreted Section 2-431 to give herself the power of the County Attorney. This contradicts logic and certainly the Charter and therefore, cannot prevail.[7]

The IG's interpretation of Section 2-431 also contradicts Section 2-429(7)'s express provision that only the County and a paying municipality can enforce the funding provisions of the Implementing Ordinance. The IG's interpretation of Section 2-431 would render Section 2-429(7)'s enforcement terms meaningless. Such an interpretation should not be adopted. See Good, 830 So. 2d at 824 (interpretation should not render provision meaningless). Also, if this Court finds Section 2-429(7) and Section 2-431 to be in conflict, then the more specific provision of Section 2-429(7), which excludes the IG from suing over funding, should control. Murray v. Mariner Health, 994 So. 2d 1051, 1061 (Fla. 2008) ("A rule of statutory construction which is relevant in this construction is that where

[7] The Charter is the constitution of the County. This Court is charged with construing 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 County, 616 So. 2d 966, 970 (Fla. 1993).

two statutory provisions are in conflict, the specific provision controls the general provision.").

3. Even Assuming *Arguendo* The County Did Create An IG That Is Legally Separate From Itself, The IG Still Does Not Have The Capacity To Sue On Funding Issues Relating To Her Office.

Even assuming *arguendo* the Office of Inspector General is a legally separate entity from the County with the capacity to sue and be sued in its own name, the IG still cannot bring suit to force the Municipalities to pay for the IG Program. The IG's powers and authority arise solely from the County Charter and Implementing Ordinance that created her Office. That means the IG's powers and authority are limited. The IG is not the equivalent of a county, municipality, special district, or Constitutional Officer that has been granted all governmental, corporate and proprietary powers under the Florida Constitution, including the right to sue and be sued. The IG only has the powers and authority given to her by the County's Charter and Implementing Ordinance.

As stated above, there is nothing in the County Charter or Implementing Ordinance giving the IG the authority to sue over funding. Instead, Section 2-429(7) expressly excludes her from doing so. (Mun. App. at 128).

C. The IG Has No Clear Legal Right to the Relief Requested Because She Has No Standing To Sue On The Issue Of Funding.

The IG has no clear legal right to compel payment from the Municipalities because she does not have standing to sue on this issue.[8] As explained by this Court:

> Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of this litigation. The interest cannot be conjectural or merely hypothetical. Furthermore, the claim should be brought by, or on behalf of, the real party in interest. Standing encompasses not only this "sufficient stake" definition, but also the requirement that the claim be brought by or on behalf of one who is recognized in the law as the "real party in interest," that is the person in whom rests, by substantive law, the claim sought to be enforced.

Weiss v. Johansen, 898 So. 2d 1009, 1011 (Fla. 4th DCA 2005) (internal citations omitted). There is no legal authority for the proposition that any County department or division whose funding may be affected by litigation will have an interest that confers standing on that department or division. Moreover, and assuming *arguendo* that the IG has a sufficient stake in the outcome of this litigation, the IG does not have a legally cognizable interest recognized by substantive law to make her the real party in interest. The Municipalities' payment obligations, if determined to be lawful, are owed to the County, not to the IG. See Section 2-429(7) of the Implementing Ordinance ("payment shall be submitted to the board [of county commissioners]") (Mun. App. at 128). Therefore, it is the

[8] The IG's standing to bring suit on the issue of funding is the subject of the appeal currently pending before this Court in Case No. 4D12-4325.

County, and not the IG, that is the real party in interest. This makes sense given that Section 2-429(7) authorizes the County, and not the IG, to sue to enforce payment. (Mun. App. at 128).

D. The IG Has No Clear Legal Right to the Relief Requested Given That The "Right" To Payment From the Municipalities Is Being Challenged As Unconstitutional In the Lower Court Proceedings.

The Municipalities have sued the County seeking declaratory relief that its charges for the IG Program are unlawful. The Municipalities have argued, *inter alia*, that the County's charges constitute unauthorized taxes, and unlawfully invade the Municipalities' "home rule" power to control their own budgets and financial affairs. See Municipalities' Motion for Partial Summary Judgment attached to the Municipalities' Appendix, and incorporated by reference (Mun. App. at 78-148). The referendum vote to create a countywide Office of Inspector General did not transform the unlawful charges into lawful ones. (Mun. App. at 86-89). The referendum only allowed the County to extend the IG Program into the Municipalities as it has done on other occasions for other countywide programs.[9] (Mun. App. at 80-81). It in no way gave the County the authority to force the Municipalities to expend municipal tax dollars on a County program.

The Municipalities' lawsuit is still pending in the Trial Court. The Trial Court has not yet determined whether the County can legally charge the

[9] As stated previously, the IG Program represents the first time the County has forced the Municipalities to pay for a countywide program. (Mun. App. at 80-81).

Municipalities for the IG Program. Therefore, and until the Municipalities' constitutional challenges have been resolved, the County/IG department has no "right" to payment. See Smith, 607 So. 2d at 401 (mandamus may not be used to establish the existence of a right, but only to enforce a right already clearly and certainly established by law).

E. The IG's Petition for Writ of Mandamus Should Be Denied Given That The Municipalities Have No Ministerial Duty to Pay for the IG Program.

The IG argues that the Municipalities have a "ministerial duty" to pay for the IG Program during the pendency of the litigation. See Petition at 13-15. This argument is wholly without merit. The IG appears to equate "ministerial" duties with writing a check. The Implementing Ordinance, however, states that the funding requirements contained in Section 2-429 require much more from the Municipalities than just writing a check. Specifically, Section 2-429(1) requires that the Municipalities budget sufficient resources to cover such checks. (Mun. App. at 127).[10]

Municipalities within the State of Florida have "home rule" powers to decide their own budgets and how to allocate scarce public funds for their municipal programs. See Chapter 166.011, et al., Fla. Stat. (the "Municipal Home Rule

[10] Section 2-429(1) recognizes that Municipalities cannot just write checks. All expenditures must be budgeted for as part of a budgeting process. Section 166.241 and Chapter 200, Fla. Stat., outline the specific framework that Municipalities must follow in adopting and amending their budgets.

Powers Act").[11] The County cannot interfere in these "home rule" powers and dictate that the Municipalities pay for a County program. The Municipalities' decisions regarding what programs to budget for, and how to allocate their resources are purely discretionary acts, not ministerial acts. See e.g., Dennis v. City of Tampa, 581 So. 2d 1345, 1351 (Fla. 2d DCA 1991) (city council or city commission's decision to allocate scarce public resources for a park or similar public facility is a discretionary, policy-making decision); Estes v. City of North Miami Beach, 227 So. 2d 33, 35 (Fla. 1969) (city council properly exercised its discretion in paying out funds to special counsel for litigation purposes); Crowe v. City of Jacksonville Beach, 167 So. 2d 753, 755-756 (Fla. 1st DCA 1964) (city council's decision to spend bond funds to buy property and construct improvements thereon was an act lying with the discretion of the council for which courts are reluctant to interfere).

A referendum vote does not transform the Municipalities' discretionary powers to set their own budgets into ministerial acts. A charter amendment, even if approved by referendum, is unconstitutional if it interferes with the Municipalities'

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[11] The Municipal Home Rule Powers Action provides that "municipalities shall have the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services; it further enables them to exercise any power for municipal purposes, except when expressly prohibited by law." Section 166.021(1), Fla. Stat.; City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764, 766 (Fla. 1974) (Dekle, J., concurring).

budgeting authority. See e.g., Charlotte County Bd. of County Commissioners v. Taylor, 650 So. 2d 146, 147-149 (Fla. 2d DCA 1995) (amendment to home rule county charter invalid on grounds that it was inconsistent with general law requirements that the county commission, not the electors, establish a budget and levy ad valorem taxes based upon certain statutory requirements); State ex rel. Keefe v. City of St. Petersburg, 145 So. 175, 175-176 (1933) (court held that initiative and referendum provisions of city's charter were not applicable to appropriations ordinances because such provisions would "materially obstruct, if not entirely defeat, the purpose of having a budget system").

Given that the Municipalities have no ministerial duty to budget or pay for the IG Program, the IG's request for mandamus relief should be denied. Tyson, 826 So. 2d at 268 (mandamus inappropriate to force performance of discretionary act).

Even assuming *arguendo* that the Municipalities have a "ministerial" duty to budget and pay for the IG Program, they still do not have to do so during the pendency of the litigation. There is no requirement in Florida that governmental entities must pay for charges from other governmental entities during the pendency of litigation involving those charges. See e.g., Lewis v. Leon County, 73 So. 3d 151 (Fla. 2011) (counties filed declaratory judgment action challenging constitutionality of statute requiring counties to fund overhead costs for the Office of Regional Conflict Counsel; court held that statute was unconstitutional

unfunded mandate; no requirement mentioned in case that counties must pay for costs during pendency of litigation); North Port Road and Drainage District v. West Villages Improvement District, 82 So. 3d 69 (Fla. 2012) (independent special district challenged municipal drainage district's imposition of special assessments on its property; drainage district's assessments were imposed by resolution; no requirement mentioned in case that special district must pay assessments during pendency of litigation).

In support of her position, the IG relies heavily on the general rule that government officials must presume legislation affecting their ministerial duties is valid until a court rules otherwise. See Petition at 13-14. The IG, however, fails to mention that this general rule has a well-established exception known as the "public funds" exception. This exception is applicable "when the public may be affected in a very important particular, its pocket-book. In such case, the necessity of protecting the public funds is of paramount importance, and the rule denying ministerial officers the right to question the validity of the Act must give way to a matter of more urgent and vital interest." Barr v. Watts, 70 So. 2d 347, 351 (Fla. 1954).

The Florida Supreme Court specifically addressed the public funds exception in Branca v. City of Miramar, 634 So. 2d 604 (Fla. 1994). In Branca, a city had standing to challenge the constitutionality of its own ordinance where it

required the city to expend taxpayer funds to pay pension benefits. Id. at 605-606; see also Kaulakis v. Boyd, 138 So. 2d 505, 507 (Fla. 1962) (county had right to challenge the validity of their own charter, which purported to make the county liable in tort since a judgment from plaintiff would have required the county to expend public funds to satisfy judgment).

Similarly, in State ex rel. Harrell v. Cone, a comptroller refused to disburse road funds on grounds that the law requiring the disbursement of such funds was invalid. 177 So. 854 (1937). A mandamus action was filed against him. The Court held that the comptroller was charged with the control and disbursement of public funds. Id. at 856. Therefore, although the comptroller had a ministerial duty to disburse the road funds, he qualified for the public funds exception and had the right and authority to challenge the constitutionality of the law. Id. at 857; accord Kaulakis, 138 So. 2d at 507; Barr, 70 So. 2d at 351; Sunset Harbour Condominium Assoc. v. Robbins, 914 So. 2d 925, 935-936 (Fla. 2005) (J. Bell, special concurrence).

Similarly, in State ex rel. Florida Portland Cement Co. v. Hale, the State Road Department was sued in mandamus to force compliance with a statute requiring inspection of cement imported from outside of Florida. 176 So. 577 (1937). The department challenged the validity of the inspection law. Citing to Cone, the Florida Supreme Court determined that the state road department was

required to expend public funds under the act and noted that "[o]ne who is required to pay out public funds should be at least reasonably certain that the same are paid out under valid law." Id. at 585. The Court, therefore, rejected the contention that the road department lacked standing to challenge the statute. Id.; accord Sunset Harbour, 914 So. 2d at 936 (J. Bell, special concurrence).

Here, like the government officials in Branca, Kaulakis, Cone, and Hale, the Municipalities qualify for the public funds exception. The Municipalities are charged with the control and disbursement of public funds. The Municipalities in fact can only spend public monies where there is a valid public purpose. See Article VII, Section 10, Fla. Const; Boschen v. City of Clearwater, 777 So. 2d 958, 962 (Fla. 2001) (the expenditure of public funds is legal if it serves a valid public purpose). The Municipalities, therefore, have an obligation to be "at least reasonably certain" that any funds paid toward the IG Program are paid out under a valid law. See Hale, 176 So. At 577.

Given that the Municipalities qualify for the public funds exception, they are not required to presume that the budgeting and payment obligations outlined in the Implementing Ordinance are valid until a court determines otherwise. Instead, they have the right and authority to challenge the constitutionality of the County's charges for the IG Program, and may refrain from budgeting and paying for those charges until the constitutional questions are resolved.

The reasoning for the public funds exception is sound. If the Municipalities were required to budget for and pay the County's invoices during the pendency of the litigation, and then prevailed on the constitutional issues, the Municipalities would be forced to spend additional taxpayer monies to bring another suit in order to recover the funds illegally paid. Additionally, the IG has indicated that she fully intends on spending all municipal money she receives through this mandamus action regardless of whether the Municipalities prevail. See Petition at p. 13. Therefore, it is unclear where any refunds would come from. Given that taxpayer money is at stake, the legal and more prudent approach is to have the Trial Court resolve the constitutional issues first before any payments are made. If the IG truly is in need of additional funding, then she can request such funding from the County like any other County department.

F. The IG's Petition for Writ of Mandamus Should Be Denied Given That The IG Has Adequate Remedies at Law.

The IG's request for mandamus should be denied given that she has adequate remedies at law. First, the IG has filed an appeal of the Trial Court's Order denying her Motion to Intervene in the proceedings below. See Case No. 4D12-4325. This appeal addresses the issues of whether the IG has the capacity to sue on funding, the standing to sue on funding, and the scope of intervention, if any. This appeal provides the IG an adequate remedy at law on these issues. See Saba v. Bush, 883 So. 2d 858, 859 (petitioner had adequate remedy at law through

appeal and therefore, petition for writ of mandamus seeking same relief was denied). Mandamus is not the appropriate vehicle for the IG to obtain relief from the Trial Court's ruling. Id.

Second, this entire dispute is about money. Therefore, if the IG has the capacity to sue and standing to sue on the issue of funding for her Office, then she has an adequate remedy at law through an action for damages. See e.g., Williams v. Schulman, 721 So. 2d 1244, 1245 (Fla. 4th DCA 1998) (petitioner not entitled to mandamus relief because he had adequate remedy at law by way of suit for money damages); Weinstein v. Aisenberg, 758 So. 2d 705, 706 (Fla. 4th DCA 2000) (appellee had adequate remedy at law through money damages). Mandamus is not appropriate when money damages are available.

The IG argues that she has no adequate remedy at law because the loss of funding has resulted in "diminished oversight," which is incapable of proof. See Petition at 10 and 18. The IG further alleges that the "lack of funding is causing ongoing harm to the public welfare." Id. at p. 14. These allegations of "injury" and "harm" are pure speculation. Other than conclusory statements, there are no factual allegations to support the IG's claims. This is insufficient to establish an inadequate remedy at law. See e.g., Biscayne Park, LLC v. Wal-Mart Stores East, LP, 34 So. 3d 24, 26-27 (Fla. 3d DCA 2010) (alleged injury was speculative and therefore, did not support claim of irreparable harm; in the event such alleged

injury were to occur, party would have adequate remedy at law, i.e. a claim for money damages); Lennar Homes v. V Ventures, LLC, 998 So. 2d 660, 663-664 (Fla. 3d DCA 2008) (same).

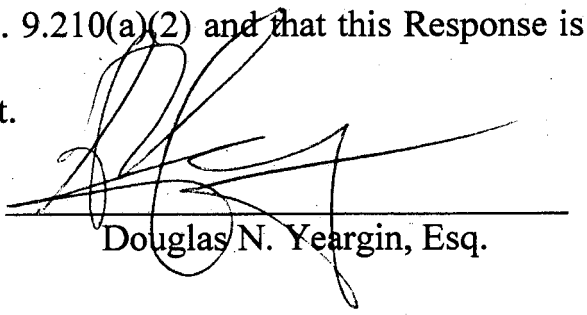
At best, the IG's alleged injuries from "diminished oversight" constitute disputed issues of fact. Mandamus is not appropriate to resolve factual disputes. Immer, 898 So. 2d at 259.

CONCLUSION

The IG has failed to demonstrate that she has a clear legal right to relief, that the Municipalities have an indisputable legal duty to pay for the IG Program during the pendency of the litigation, and that she has an inadequate remedy at law. For these reasons, the Municipalities respectfully request that this Court deny the Inspector General's Petition for Writ of Mandamus.

CERTIFICATE OF COMPLIANCE

The Municipalities, by and through undersigned counsel, hereby certify that this Response complies with Fla. R. App. P. 9.210(a)(2) and that this Response is prepared in Times New Roman 14-point font.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email and U.S. Mail to: Robert B. Beitler, Esq., General Counsel for Office of the Inspector General, Palm Beach County, P. O. Box 16568, West Palm Beach, FL 33416; Leonard W. Berger, Esq., Assistant County Attorney, Palm Beach County Attorney's Office, 301 North Olive Avenue, Suite 601, West Palm Beach, FL 33401; Helene C. Hvizd, Esq., Assistant County Attorney, Palm Beach County Attorney's Office, 300 N. Dixie Highway, Suite 359, West Palm Beach, FL 33401; Nathan A. Adams, IV, Esq., Holland & Knight, LLP, Post Office Drawer 810, Tallahassee, FL 32302; and Larry A. Klein, Esq. and Martin Alexander, Esq., Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, Florida 33401, this 29 day of January, 2013.

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