

**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,

CASE NO. 4D12-4421

Petitioner,

v.

TOWN OF GULF STREAM, et al.,

Respondents.

**RESPONDENT, PALM BEACH COUNTY'S,
RESPONSE TO ORDER TO SHOW CAUSE**

Respondent, Palm Beach County (the County), by and through undersigned co-counsel, files this response to this Court's January 14, 2013, order to show cause, respectfully requesting this Court deny the instant Petition for Writ of Mandamus as against the County, and as grounds therefor states:

FACTS

Petitioner, the Palm Beach County Office of Inspector General, (Palm Beach County OIG, or OIG), seeks mandamus relief as against each of the Respondent municipalities, (the municipalities), the Clerk and Comptroller (the Clerk) and the County. The instant response addresses the impropriety of mandamus relief as against the County only.

The Palm Beach County Office of Inspector General seeks mandamus relief following the trial court's denial of its motion to intervene in a civil lawsuit brought by numerous municipalities against Palm Beach County, which challenges the legality of the Palm Beach County Ordinance establishing the method for funding the Palm Beach County OIG, Chapter 2, Article XII of the Palm Beach County Code (the OIG Ordinance) (Petitioner's Appendix (App) – Ex D).

It should be noted that although the OIG Ordinance imposes a shared duty on the County and municipalities to provide funding for the Palm Beach County OIG, the County has provided additional funding to its Office of Inspector General during the pendency of the underlying suit. The County's Amended Counterclaim seeks to recover that additional funding from the municipalities, including \$687,864 expended by the County on the County's OIG during Fiscal Year 2012, and a projected \$2,512,276 to be expended by the County on its OIG during Fiscal Year 2013 (App – Ex K).

MUNICIPALITIES' LAWSUIT

The municipalities' lawsuit questions whether the method of funding the Palm Beach County OIG, as contained in Article XII, Section 2-429 of the Palm Beach County Code, comports with law (App – Ex E). Palm Beach County, through its County Attorney's Office, has defended against the municipalities' lawsuit from the suit's inception (App – Ex J).

Despite the County's on-going defense of the municipalities' lawsuit, the Palm Beach County Office of Inspector General filed a motion attempting to intervene in the on-going litigation (App – Ex L). The OIG contended it was entitled to intervene based on language in the Palm Beach County Ordinance creating the Office of Inspector General which refers generally to the independence of that Office. It contended it was “independent in all material respects” from the Palm Beach County Board of County Commissioners, based, in part, on the fact that the Inspector General is the “sole determiner” of the contents of her reports and “which matters she will refer to other agencies” (App – Ex L).

The Palm Beach County OIG's Motion to Intervene was denied by the trial court (App – Ex M). The OIG appealed that order (Case No. 4D12-4325), and filed the instant Petition for Writ of Mandamus. The instant Petition is similar to those the OIG attached to its Motion to Intervene, with the exception that the OIG has now added the County as a Respondent, and seeks an order compelling the County to “fully fund” the Palm Beach County OIG.

ARGUMENT

I. THE PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL LACKS CAPACITY TO SUE AND BE SUED, THUS THE INSTANT PETITION FOR WRIT OF MANDAMUS SHOULD BE DENIED.¹

THE COUNTY ATTORNEY IS THE SOLE OFFICE AUTHORIZED TO PROSECUTE AND DEFEND SUITS ON BEHALF OF PALM BEACH COUNTY

The instant petition should be denied because the Petitioner lacks capacity to sue or be sued, as the Palm Beach County Attorney's Office is the sole office authorized to prosecute and defend suits on behalf of Palm Beach County.

Section 125.01(1)(b) of the Florida Statutes grants to the governing body of a county the power to provide for the prosecution and defense of legal causes on behalf of a county. That section provides in pertinent part:

125.01 Powers and duties

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

* * *

¹ The County respectfully requests this Court take judicial notice of its file in Case No. 4D12-4325, which involves the Palm Beach County OIG's appeal of the trial court's denial of the OIG's motion seeking to intervene in the municipalities' underlying suit against Palm Beach County. *Gulf Coast Home Health Servs. Of Florida, Inc. v. Department of Health and Rehab Servs.*, 503 So. 2d 415 (Fla. 1st DCA 1987) (noting appellate court may take judicial notice of its own cases). Much of the argument advanced below is contained in the County's Answer Brief filed in that related case on January 28, 2013.

(b) Provide for the prosecution and defense of legal causes in behalf of the county or state and retain counsel and set their compensation.

§ 125.01(1)(b), Fla. Stat. (2010) (County's Appendix, Ex 1 – pg).

Pursuant to this section, the Palm Beach County Board of County Commissioners is the sole legislative and governing body authorized to provide for the defense of legal causes brought against the County, such as the municipalities' underlying suit.

The Palm Beach County Charter expressly authorizes the Board of County Commissioners to select the County Attorney, and further provides that the Office of the County Attorney shall have sole responsibility for defending cases such as the municipalities' underlying suit. Section 4.3 of the Palm Beach County Charter provides in pertinent part:

Sec. 4.3. – Office of the county attorney.

There shall be a county attorney selected by the board of county commissioners who shall serve at the pleasure of the board.

* * *

The office of the county attorney shall be responsible for the representation of Palm Beach County, the board of county commissioners, the county administrator, and all other departments, divisions, regulatory boards and the advisory boards of county government in all legal matters relating to their official responsibilities. **The office of county attorney shall prosecute and defend all civil actions for and on behalf of Palm Beach County and the board of county commissioners,** and shall review all

ordinances, resolutions, contracts, bonds, and other written instruments.

Palm Beach County Charter, Art. 4, § 4.3, January 2011 (emphasis supplied).

The Palm Beach County Charter is the “constitution and the fundamental law” of Palm Beach County. *Metro-Dade Fire Rescue Serv. Dist. v. Metro-Dade County*, 616 So. 2d 966, 968 (Fla. 1993) (characterizing Dade County charter thusly). “The main purpose in construing constitutional provisions is to ascertain the intent of the framers and to effectuate the object designed to be accomplished.” *Id.* (quoting *Metropolitan Dade County v. City of Miami Beach*, 396 So. 2d 144, 146 (Fla. 1980)).

The intent of the Palm Beach County Charter is clear and unambiguous. The only office empowered to prosecute and defend all civil actions for and on behalf of Palm Beach County and the Board of County Commissioners is the Palm Beach County Office of County Attorney.

The Palm Beach County OIG does not possess a right to prosecute or defend civil actions, and any such grant of authority would be in conflict with section 125.01(1)(b), and would fail. “[M]unicipal ordinances are inferior in status and subordinate to the laws of the state.” *City of Wilton Manors v. Starling*, 121 So. 2d 172, 174 (Fla. 2d DCA 1960). “[A]n ordinance must not conflict with any controlling provision as principle of law, and if any doubt exists as to the extent of

a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. *Id.*

The instant petition should be denied because the Palm Beach County OIG is not authorized to prosecute actions on behalf of Palm Beach County, which is precisely what Petitioner is seeking to do here.

**THE OIG IS NOT A BODY CORPORATE AND
POLITIC WITH A CAPACITY TO SUE**

By enacting the ordinance creating the Palm Beach County OIG, the County did not create an independent body corporate and politic, thus the Palm Beach County OIG lacks capacity to sue or be sued. The County could not have created such an independent body because there exists no enabling statute which would allow the County to do so.

To explain, section 1(g) of Article VIII of the Florida Constitution grants charter counties “all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.” Art. VII, § 1(g), Fla. Const. (1968). This Article of the 1968 revision furthered the home rule movement, which grants local government broad authority to govern its affairs. The 1968 revision also provided some limits on what the Legislature could do as concerns local governments. Article III, section 11 of the 1968 revision contains a long list of special acts or laws of local application which the Legislature is prohibited from adopting. Art. III, § 11, Fla. Const. (1968).

With this background, charter counties are understood to have broad authority to pass an ordinance as long as it does not contradict state law. But that authority extends only to the management of its own affairs. Charter counties cannot be understood to have the authority to create an entirely independent governmental entity, as the Palm Beach County OIG suggests.

This is not to say there is no instance when the County may create a separate body corporate and politic; however, to do so, the legislature must grant counties that authority.² Obviously, if a county were given the power under its home rule authority alone to create a separate governmental agency, the above statutes would be unnecessary. Such an interpretation flies in the face of the “basic rule of statutory construction . . . that the Legislature does not intend to enact useless provisions” *Larimore v. State*, 2 So. 3d 101, 114 (Fla. 2008) (quoting *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002)). Absent a statutory provision granting a county the authority to create a body corporate and politic, a county may not do so.

² For example, the legislature has passed several enabling statutes which grant to the counties the power to create independent bodies corporate and politic. *See e.g.* § 159.604(1), Fla. Stat. (2010) (authorizing counties to create “separate public body corporate and politic” known as “Housing Finance Authority”); § 159.45(1), Fla. Stat. (2010) (authorizing counties to create County Industrial Development Authority); § 159.701(1) (authorizing counties to create Research and Development Authorities); § 163.356 (authorizing counties to create community redevelopment agencies); § 190.005(2) (authorizing counties to create community development district)

Moreover, where the County has indeed created a body corporate and politic pursuant to legislative mandate, the County ordinance makes clear that a separate legal entity is being created. Again, by way of illustration, section 2-183 of the Palm Beach County Code provides: “There is hereby created a **separate public body corporate and politic** to be known as the housing finance authority of the county” Palm Beach County Code, Ch. 2, Art. V, Div. 3, § 2-183 (emphasis supplied). Section 2-202 provides: “There is hereby created a **public body corporate and politic** to be known as the Florida Atlantic Research and Development Authority.” Palm Beach County Code, Ch. 2, Art. V, Div. 4, § 2-202 (emphasis supplied). Section 2-231 provides: “There is hereby created a **public body corporate and politic** to be known as the Westgate/Belvedere Homes Community Redevelopment Agency” Palm Beach County Code, Ch. 2, Art. V, Div. 6, § 2-231 (emphasis supplied).

No such language is present in the Palm Beach County OIG ordinance. The language highlighted by the Palm Beach County OIG in a strained attempt to portray a county department as something it is not, is completely different from the above-noted “body corporate and politic” language.

THE OIG ORDINANCE

Understanding the issue of the Palm Beach County OIG’s lack of capacity to sue requires an examination of the OIG Ordinance, Chapter 2, Article XII of the

Palm Beach County Code. The OIG Ordinance contains fourteen sections, section 2-421 through 2-432:

- Section 2-421 contains the title of the Article XII, and provides that the ordinance applies to the County, all County departments, the municipalities who approved the County's charter amendment in the referendum held November 2, 2010, any other entity which elects to be bound by the article, and any municipality formed after January 1, 2011.
- Section 2-422 establishes the Office of Inspector General and provides that the inspector general shall initiate, conduct, supervise and coordinate investigations of county and municipal officials, employees, agencies, and others doing business with the county or municipalities and/or receiving funds from them. This section provides that **“the organization and administration of the office of inspector general shall be independent** to assure that no interference or influence external to the office of inspector general adversely affects the independence and objectivity of the inspector general.”
- Section 2-423 outlines the authority of the inspector general to make investigations, publish results of investigations, review and audit county and municipal programs, accounts, records, etc., and prepare reports and recommendations to the County Board, municipalities, or entities. This section requires that those to whom the ordinance applies cooperate with the inspector general during the course of investigations, audits, or reviews. **As concerns these investigations, audits, and reviews, if a person refuses to obey the inspector general's request for documents or an interview, “the inspector general shall have the power to subpoena witnesses, administer oaths, and require production of documents.”** This section further provides that the inspector general may exercise “any of the powers contained in this article upon his or her own initiative.” Finally, this section provides for the OIG to enter into agreements with entities wishing to benefit from the services of the OIG, which shall include a provision for payment of fees.
- Section 2-423.1 provides for public awareness strategies to inform the public of the OIG's authority and responsibilities.

- Section 2-424 addresses the minimum qualifications for the inspector general, the method of selecting the inspector general, and the term of office.
- Section 2-425 addresses the inspector general's contract of employment, and provides that "the contract must be approved by a majority of the board [of county commissioners] at a regularly scheduled board meeting."
- Section 2-426 provides that the County shall provide office space and physical facilities to the OIG, and the OIG shall have the power to appoint, employ, and remove personnel.
- Section 2-427 addresses finalization of the inspector general's reports, and provides for a person or entity to dispute findings in those reports.
- Section 2-428 requires the inspector general to prepare and publish an annual report.
- Section 2-429 is the first of two sections addressing financial support and budgeting of the OIG. This section provides that "the county and each municipality shall provide sufficient financial support for the inspector general's office to fulfill its duties" It provides that "the county and municipalities shall fund the inspector general's office proportionately, based on actual expenses of each governmental entity" This section requires the OIG to "deliver to the board a budget request . . ." and provides that "[t]he budget of the inspector general shall be subject to final approval of the board." It addresses the office of the clerk and comptroller's duty to prepare an allocation schedule and invoice the county and each municipality for its proportionate share of the approved budget. Funds received are to be placed in a special revenue fund, and if payment is not timely received, **"the county or any municipality in compliance with this section may pursue any available legal remedy."**
- Section 2-429.1 addresses the funding base, or minimum level of funding, and provides the method of calculating the funding base and adjustments to that funding base. This section provides that the board of county commissioners may adjust the funding base percentage, subject to review by the review committee, whose recommendation may be overruled by a supermajority vote of the board.

- Section 2-430 provides the procedure for removing an inspector general.
- Section 2-431 addresses enforcement of Article XII of the county code, and provides that “[t]his article is enforceable by all means provided by law, including seeking injunctive relief in the Fifteenth Judicial Circuit Court in and for Palm Beach County.” This section **does not** name the inspector general as the entity entitled to seek injunctive relief.
- Section 2-432 provides for penalties for threatening a person who is cooperating with the inspector general, and for obstructing an OIG investigation.

Ch. 2, Art. XII, Palm Beach County Code.

Examination of the OIG ordinance reveals that the ordinance does not grant any authority or power to the Palm Beach County OIG to sue or be sued. The “independence” language highlighted by the OIG is expressly limited to organization and administration of the office.

THE OIG ORDINANCE EXPRESSLY GRANTS “THE COUNTY” A RIGHT TO ENFORCE THE ORDINANCE, NOT THE OIG

The “financial support and budgeting” provision of the OIG Ordinance, section 2-429, addresses the circumstance of the County or a municipality not timely paying an invoiced proportionate share, and in those circumstances, grants the right to pursue a legal remedy to “the county or any municipality in compliance with this section” Palm Beach County Code, Ch. 2, Art. XII, § 2-429(7). This grant of power to pursue a legal remedy to “the county,” is in keeping with

section 125.01(1)(b) and the County Charter, and evidences a clear intent that the County Attorney defend the municipalities' underlying suit.

Pursuant to Florida Statutes and the Palm Beach County Charter, the Palm Beach County Attorney has sole responsibility to defend the municipalities' underlying claim, thus the Palm Beach County Office of Inspector General necessarily lacks capacity to defend that action.

THE POWER TO SUBPOENA AND SEEK INJUNCTIVE RELIEF

As to investigations, audits, and reviews, the OIG may subpoena witnesses and require production of documents, but this provision does not state that the OIG may do so independently of the County Attorney. Finally, the section of the Palm Beach County Code which speaks of the right to seek injunctive relief does not name the inspector general as an entity entitled to do so.

In sum, examination of the OIG ordinance yields the conclusion that, in keeping with the County Charter, the limited subpoena power and injunctive relief addressed in the ordinance are remedies to be sought by the County through the County Attorney.

To rule otherwise, and to find that a department of County government has the capacity to sue and to inject itself into litigation being defended by the County, would be to turn local government law on its head, establishing precedent which would wreak havoc in the administration of local governments.

THE PALM BEACH COUNTY OIG'S AUTHORITY TO SEEK REDRESS IN COURT DOES NOT CREATE CAPACITY TO SUE ON ITS OWN BEHALF

As noted above, the Palm Beach County Charter specifies that only the county attorney's office prosecutes and defends all legal actions on behalf of the County. Palm Beach County Charter, § 4.3. The OIG ordinance provides for subpoenas and injunctive relief, but it does not specify that the OIG may independently seek injunctive relief. Other county ordinances include the same sort of language the Palm Beach County OIG highlights, and it is unreasonable to suggest that these ordinances all give departments of the County the capacity to sue on their own behalf.

For example, the Consumer Affairs Ordinance gives the executive director, among other "powers," the ability to "investigate complaints, institute actions and proceedings under this chapter" and to "take whatever action is necessary to preserve such status quo or to prevent such irreparable harm, including, but not limited to, seeking temporary restraining orders and preliminary injunctions, without bond." Palm Beach County Code, Ch. 9, Art. I, §§ 9-10(4) & 9-16. The Roadside Vendor Ordinance grants a similar enforcement power to the County Engineer. Palm Beach County Code, Ch. 23, Art. V, § 23-114. The Wellfield Protection Ordinance states that nothing in that chapter of the Unified Land Development Code "shall preclude or be deemed a condition precedent to [Environmental Resources Management] seeking a temporary or permanent

injunction.” Palm Beach County Unified Land Development Code, Art. 14, Ch. B, Sec. 13.G.

When these officials or departments want to use these ordinance provisions to go to court, the county attorney does so on behalf of the department. That is the only reasonable way to read each ordinance in concert with section 4-3 of the Palm Beach County Charter.

Alternatively, even if one were to conclude that the OIG had the capacity to proceed to court independent of the County Attorney, such capacity could only be read as applying to the functions specifically enumerated in the OIG Ordinance, functions implicated in the conduct of investigations, audits, and reports. The OIG Ordinance cannot reasonably be read as allowing the OIG to proceed to court to defend a legal challenge to an ordinance of the Board of County Commissioners, such as in the underlying case, even if that ordinance involves the OIG.

To read the OIG Ordinance this broadly would have wide-ranging effects on the conduct of County governance, creating a precedent which would undo long-standing principles of law and turn local government law on its head. It is well-settled that claims challenging the actions of a county department should be brought against the county itself, rather than against the county department. *Masson v. Miami-Dade County*, 738 So. 2d 431, 432 (Fla. 3d DCA 1999); *Florida City Police Dep’t v. Corcoran*, 661 So. 2d 409, 410 (Fla. 3d DCA 1995). A

holding that a county department has the capacity to sue and be sued flies in the face of this long-standing principle of law, setting up the very real possibility of legal challenges which would cripple counties.

In sum, the Palm Beach County OIG lacks capacity to sue, and the instant Petition for Writ of Mandamus should be denied.

II. THE PALM BEACH COUNTY OIG LACKS STANDING TO SEEK MANDAMUS RELIEF.

Should this Court determine that the Palm Beach County OIG, a department of Palm Beach County, has the capacity to sue and be sued, the instant Petition should nonetheless be denied because the OIG lacks standing to seek mandamus relief.

This Court explained the principle of standing in *Weiss v. Johansen*, 989 So. 2d 1009 (Fla. 4th DCA 2005):

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 the litigation. *See Nedeau v. Gallagher*, 851 So. 2d 214, 215 (Fla. 1st DCA 2003). The interest cannot be conjectural or merely hypothetical. *See id.* at 216. Furthermore, the claim should be brought by, or on behalf of, the real party in interest. *See id.* 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 a “real party in interest,” that is the person in whom rests, by substantive law, the claim sought to be enforced. *See Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1183 (Fla. 3d DCA), *review denied*, 476 So. 2d 675 (Fla. 1985).

Weiss, 989 So. 2d at 1011.

There is no legal authority for the proposition that any County department whose funding base or budget may be affected by litigation will have an interest that confers standing. Moreover, and assuming *arguendo* that the Palm Beach County OIG has a sufficient stake in the outcome of this litigation, the OIG does not have a legally cognizable interest recognized by substantive law to make her the real party in interest. As stated previously, substantive law gives the County alone, not the OIG, the legally cognizable interest in this litigation. Therefore, it is the County, not the OIG, which is the real party in interest. Payment obligations under the OIG Ordinance are to the County.

The OIG also must have alleged that she suffered or will suffer a special injury. *Wexler v. Lepore*, 878 So. 2d 1276, 1280 (Fla. 4th DCA 2004). *See also*, *Alachua v. Scharps*, 855 So. 2d 195 (Fla. 1st DCA 2003) (generally, to have standing to bring an action the plaintiff must allege that he has suffered or will suffer a special injury). A special injury is an injury different in kind than those similarly situated. *Jack Eckerd Corp. v. Michels Island Village Pharmacy, Inc.*, 322 So. 2d 57 (Fla. 2d DCA 1975). The OIG has failed to allege a special injury that is separate and distinct from any other County department.

No County department has a legally cognizable interest in its own budget given that the Board of County Commissions has the discretion to amend its

overall budget at any time to shift the loss or budget shortfall from one department to another, or to revise the budget to cover any shortfall. The OIG Ordinance is clear that the OIG's budget is subject to approval by the Board of County Commissioners. Ch. 2, Art. XII, § 2-429(6).

Moreover, the Board of County Commissioners has sole responsibility to prepare and adopt its budget, which obviously includes the OIG's funding. *See* § 129.01(2)(a), Fla. Stat. (2009) (providing "[t]he budget must be prepared, summarized, and approved by the board of county commissioners of each county."). Allowing a department of a county to sue the county over its budget, which is tantamount to what the Palm Beach County OIG sought to do in the underlying case, and seeks to do by way of the instant Petition for Writ of Mandamus, is a sure invitation to chaos.

The instant Petition should be denied because the Palm Beach County OIG lacks standing to seek mandamus relief.

III. NEITHER THE COUNTY CHARTER, THE OIG ORDINANCE, NOR THE COUNTY BUDGET IMPOSE A MINISTERIAL DUTY ON PALM BEACH COUNTY TO "FULLY FUND" THE PALM BEACH COUNTY OIG, THUS MANDAMUS DOES NOT LIE AS AGAINST THE COUNTY.

Alternatively, should this Court determine to reach the merits of the instant petition as it concerns the County, no basis for mandamus relief has been shown to exist.

In *Williams v. Shulman*, 721 So. 2d 1244 (Fla. 4th DCA 1998), this Court noted that “mandamus may only be issued to enforce the duty of a public official when the duty is specific, clearly defined, and peremptory in nature. *Sandegren v. State ex rel. Sarasota County Public Hospital Bd.*, 397 So.2d 657 (Fla. 1981). In other words, the duty for which mandamus is sought must be purely ministerial.” *Williams*, 721 So. 2d at 1245.

The Palm Beach County OIG maintains, in the most general of terms, that the County has an obligation to “fully fund” that County department, asserting that such a duty is evidenced in three sources: 1) the County Charter; 2) Chapter 2, Article XII of the Palm Beach County Code - the OIG ordinance; and 3) the County budget (Petition at pg 23).

The OIG does not, nor can it, point to any language of the Charter or the OIG ordinance which expressly imposes a duty on the County to fully fund the OIG. To the contrary, all language in these laws which addresses funding of the Palm Beach County OIG expressly addresses the proportionate shares of funding which are to be assumed by “the County **and** all other governmental entities subject to the authority of the Inspector General” Vol. I, Art. VIII, § 8.3, Charter of Palm Beach County (emphasis supplied).

The OIG ordinance quite explicitly establishes that “the county **and** each municipality shall provide sufficient financial support for the inspector general’s

office” Ch. 2, Art. XII, § 2-249(1), Palm Beach County Code (emphasis supplied). The language of this section defines how “[t]he county and each municipality’s **proportionate share**” of the OIG’s funding will be determined. Ch. 2, Art. XII, § 2-249(2), Palm Beach County Code (emphasis supplied). The ordinance provides that the Office of the Clerk and Comptroller shall prepare an allocation schedule, and that “[t]he proportionate share to be paid by the county and each municipality” may be adjusted based on other sources of funding. Ch. 2, Art. XII, § 2-249(4), Palm Beach County Code. The Clerk “shall invoice the county and each municipality one-fourth of the proportionate share . . .” due from these entities on a quarterly basis. Ch. 2, Art. XII, § 2-249(7), Palm Beach County Code. Finally, section 2-249 provides for “[t]he county and each municipality’s proportionate share for the period of June 1, 2011 through September 30, 2011” Ch. 2, Art. XII, § 2-249(8), Palm Beach County Code.

Section 2-249.1 addresses the “Funding Base,” or minimum level of funding, and again uses language which makes clear that this amount is to be “determined as a percentage of contract activity **of the governmental entities** subject to the authority of the inspector general.” Ch. 2, Art. XII, § 2-249.1(1), Palm Beach County Code (emphasis supplied).

In sum, the plain language of the County Charter and OIG Ordinance directly contradict Petitioner’s assertions. These laws make clear that the County

and the municipalities are responsible for proportionate shares of the Funding Base of the Palm Beach County OIG. There is simply no support in law for Petitioner's assertion that the County has any individual obligation to fully fund the Palm Beach County OIG.


As noted above, the County has expended more than its proportionate share of funding on its Office of Inspector General during the pendency of the underlying litigation. Thus, the County has exceeded the duty imposed on it by law, such that mandamus relief is plainly improper as against the County.

Lastly, Petitioner speaks in broad terms of a duty to fully fund the OIG being imposed on the County by its "budget." The county is unable to even respond to this vague assertion. Again, Petitioner has pointed to no language of "the budget" which amounts to a "specific, clearly defined, and preemptory in nature" duty which would be the proper subject of mandamus relief.


CONCLUSION

The County respectfully requests this Court deny the instant Petition for Writ of Mandamus as to the County. The Palm Beach County OIG lacks capacity to sue, lacks standing, or alternatively, Petitioner has failed to establish the existence of a "specific, clearly defined, and preemptory in nature" duty on the part of the County to fully fund its Palm Beach County OIG.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Respondent, Palm Beach County's, Response to Order to Show Cause was efiled at efiling@flcourts.org and served by mail this 29th day of January, 2013, to:

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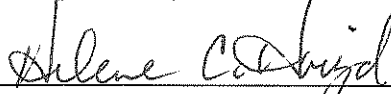
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Respectfully submitted,



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