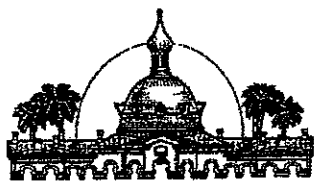


BOARD OF COUNTY COMMISSIONERS

KEN HAGAN
BOCC Chairman
County Commissioner, District 2



Hillsborough County
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March 9, 2009

OPEN LETTER TO THE COMMUNITY

As Chair of the Board of County Commissioners, I've now had an opportunity to review the auditor's recent report in depth and to review again those matters which have been raised over the last few months about our County's overall administration and management. It is clear to me that each of the three senior administrators involved have all had made tremendous errors in decision-making, to say the least. Further, many of those poor decisions have been compounded by public and private disagreements, back-biting and in fighting, and posturing. In my view, each of them has been more focused on maintaining their own status rather than serving the public good. The culture they have created has become toxic and dysfunctional, and the leadership displayed by these three top managers has fallen woefully short of expectations.

Perhaps, if this latest information from the auditor's report were an isolated issue, I would be less vehement; however, that is not the case. And therefore, today, I am compelled to advocate both swift and immediate action to return the County to its proper course. It is my firm belief that these issues may only be effectively addressed by sweeping change in the staff leadership of Hillsborough County.

Although deeply saddened that such actions have become necessary, I have strongly suggested to each -- the County Administrator, the County Attorney and the County Auditor -- that they submit their resignations no later than Tuesday, March 16, 2010 at noon. Absent those resignations, I will ask and encourage the full Board of County Commissioners to immediately terminate their employment.

We are fortunate to have an experienced, committed and talented staff in Hillsborough County, many of whom work tirelessly in public service. It is these individuals who will be critical to ensuring that the County and the administration continue to function and that no services to our citizens are delayed or forgone. In that spirit, I will suggest that the Board choose one or more interims from that capable staff to oversee these areas, pending a national search for permanent heads of the Administrator, Attorney's office and Auditor's department.

Certainly, this is a difficult decision to make, and it is not a position I've come easily to advocate. However, I am cognizant as never before that with commitment, integrity and focus we can effectively manage this very serious situation, and return quickly to the business of running this County.

Sincerely,


Ken Hagan, Chair
Hillsborough Board of County Commissioners

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March 25, 1986

Mr. Gary Shepherd
Executive Assistant
Hillsborough Charter Review Board
800 East Twiggs Street, Room 302
Tampa, Florida 33601

HAND DELIVERY

Dear Members:

The following will outline for you the basic legal considerations you should bear in mind while deliberating on whether to propose any changes in the existing structure of the executive branch.

A prefatory comment is in order, lest you think I am disregarding my admonition that you should worry about policy and let me worry about the law. I said that when I saw clear-cut legal considerations, of which you should be aware, I would outline them for you. On the structure of the executive branch there are some, and I will outline them now.

Section 125.84, Florida Statutes (1985) limits you to three basic executive structures. They are:

1. An elected Executive;
2. Manager - (called Administrator in our Charter) appointed by the Commission; and
3. An elected Chairman, who appoints an Administrator.

Here are the statutory provisions on each:

*Submitted into the Record for
Charter Board Members Review by Gerald L. White, Jr.
10-11-2010*

(1) COUNTY EXECUTIVE FORM.—The county executive form shall provide for governance by an elected board of commissioners and an elected county executive and such other officers as may be duly elected or appointed pursuant to the charter. The elected county executive shall exercise the executive responsibilities assigned by the charter and shall, in addition, approve each ordinance by signing it or allowing it to become approved without signature by failing to veto it or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his objections. If two-thirds of the members of the board present and voting and constituting a quorum shall, upon reconsideration, vote for the ordinance, the executive's veto shall be overridden and the ordinance shall become law in 10 days or at such other time as may be provided in the ordinance or by resolution of the board, without the executive's signature.

(2) COUNTY MANAGER FORM.—The county manager form shall provide for governance by an elected board of commissioners and an appointed county manager and such other officers as may be duly elected or appointed pursuant to the charter. The county manager shall be appointed by, and serve at the pleasure of, the board and shall exercise the executive responsibilities assigned by the charter.

(3) COUNTY CHAIRMAN-ADMINISTRATOR PLAN.—The county chairman-administrator plan shall provide for governance by an elected board of commissioners, presided over by an elected chairman who shall vote only in case of tie, and an appointed county administrator and such other officers as may be duly elected or appointed pursuant to the charter. The county administrator shall be appointed by, and serve at the pleasure of, the chairman. The chairman shall exercise, in conjunction with the administrator, the executive responsibilities assigned by the charter.

Having laid out those legal constraints let me comment on your deliberations. The question of changes in the executive structure has many facets, whether the ultimate change as proposed were simple or complex. Perhaps then, because of these facets, the whole question should be looked at in orderly phases.

At the risk of being felt to be intruding on policy matters I have this suggestion for the phasing of your deliberations on this question. There should be an initial phase focusing on whether a change is needed. Succinctly, that should result in deliberations designed to see if you can conclude whether:

1. The existing executive structure works well, or
2. The existing executive structure does not work well.

In deliberating on that question and reaching a determination on it, probably it would be well to keep in the back of your mind the changes that could be lawfully proposed. They are:

- A. Within the allowances of § 125.84(1) you could propose:
 - (1) Creating an elected Executive; or
 - (2) Creating an elected Executive, but allowing or requiring the elected Executive to appoint an Administrator answerable to the elected Executive.
- B. Within the allowances of § 125.84(2) you could propose:
 - (1) Retaining the Commission's appointed Manager (Administrator), but transferring powers to him from other members of the Executive Branch, or powers from him to other members of the Executive Branch.
- C. Within the allowances of § 125.84 you could propose:
 - (1) Creating an elected Chairman who appoints an Administrator.

The initial phase, however, should not focus on these available changes, but they should simply be borne in mind in the initial phase.

To this point, I hope you will agree, that I have not actually intruded into your policy area, but have merely given you some guidelines and suggestions, albeit not of a strictly legal nature as relates to the phasing of the deliberations.

Now I am going to venture a little bit further with the hope I will still remain outside of policy.

If a consensus were to emerge in the initial phase that the existing executive structure works well, then deliberations on proposing changes in the existing executive structure should be at an end.

If, however, a consensus were to emerge that the existing executive structure does not work well, then you should move into a phase consisting of an examination of the basic reasons it does not work well. Doubtless, this phase would be somewhat expedited because some of the reasons why it was felt it does not work well would have been perceived during the phase considering whether it works well.

At that point I feel the phase should move logically to deliberations between the appointed approach with structural changes (since a consensus would have been reached

that the existing structure did not work well, ipso facto, changes of some sort would be needed), on the one hand; and an elected officer, be it an executive or a chairman, on the other hand. The reason the focus at that point should be on an elected, versus appointed, and not on each of the two types of elected and one type of appointed executive, is that the basic meaningful dichotomy in political science at that level is between elected and appointed. In fundamental political science terms, the differences are much greater between an administrator appointed by a collegial or multi-member body such as the County Commission, versus either an elected executive or an elected chairman who appoints an administrator, than the differences are between an elected executive versus an elected chairman who appoints an administrator. Put simply by re-phrasing an old saw, the difference between an apple and an orange, or an apple and a tangerine, is greater than the difference, between an orange and a tangerine.

If my phased deliberations or some variation on them were followed, (and I do not claim any infallibility in my phasing) at this juncture the deliberations would fork in one direction or the other, depending upon whether you chose to go with the appointed approach or the elected approach.

My first comments will consider the decision to be made if you decided on the elected approach. The reason for that is that if you were to decide on the elected approach there would be one step left before the general nature of your discussions would be the same whether you chose to go with the election approach or the appointment approach. That is because if you followed my phasing and decided upon the elected you would still not have chosen between the elected executive and the elected chairman who appoints an administrator. Thus, if you had decided to go with the elected approach it would be time to move to a phase designed to select between the elected executive and the elected chairman who would appoint an administrator.

When you had determined that you wanted to go with the appointed approach or if you had determined that you wanted to go with the elected approach and had chosen between the elected executive and the elected chairman who appoints an administrator, you would then turn to a distribution of the executive powers. Here law intrudes again.

Section 125.85, Florida Statutes (1985) sets forth certain functions which must be assigned to the Executive Branch. It is important to note, however, that the assignment of these functions to the Executive Branch does not necessarily mean that they have to be assigned to one of the four offices allowed by § 125.84 (the elected Executive, the elected Chairman, the Chairman's appointed Administrator, or the Commission's appointed Manager (called Administrator in our Charter)). Section 125.85 simply requires that they not be performed by the legislative branch (i.e., the Commission).

Here are the executive functions in question:

(1) Report annually, or more often if necessary, to the board of commissioners and to the citizens on the state of the county, the work of the previous year, recommendations for action or programs for improvement of the county, and the welfare of its residents;

(2) Prepare and submit to the board for its consideration and adoption an annual operating budget, a capital budget, and a capital program; establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection therewith; and supervise and administer all phases of the budgetary process;

(3) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board, the county charter, and all applicable general law, to assure that they are faithfully executed;

(4) Supervise the care and custody of all county property, institutions, and agencies;

(5) Supervise the collection of revenues, audit and control all disbursements and expenditures, and prepare a complete account of all expenditures;

(6) Review, analyze, and forecast trends of county services and finances and programs of all boards, commissions, agencies, and other county bodies and report and recommend thereon to the board;

(7) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures as may be authorized by the administrative code;

(8) Negotiate contracts, bonds, or other instruments for the county, subject to board approval; make recommendations concerning the nature and location of county improvements; and execute services determined by the board;

(9) Assure that all terms and conditions imposed in favor of the county or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;

(10) Supervise, direct, and control all county administrative departments;

(11) Appoint, with the advice and consent of the board, all appointed departmental heads, who shall serve at his pleasure, and employ, pursuant to appropriation and the administrative code, such personnel as necessary to administer county functions and services;

(12) Order, at his discretion, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county government to do so; and

(13) Any other power or duty which may be assigned by county charter or by ordinance or resolution of the board.

I think that the matters for determination there are purely policy matters. I think the statutory explication of the various responsibilities and duties is clear enough so that I see no need for suggestions from me on a structure for the discussion or determination during that phase.

Once you had dealt with those duties and responsibilities you would be able to turn to a more free-wheeling examination of other matters that you might wish to deal with. Here, however, once again the law intrudes because § 125.86, Florida Statutes (1985) mandates the assignment of certain duties to the legislative branch (i.e., the County Commission).

Here are the legislative functions in question which you cannot assign to the executive branch:

- (1) Advise and consent to all appointments by the executive for which board confirmation is specified;
- (2) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county;
- (3) Appoint a clerk to the board who shall serve at its pleasure and keep the records and minutes of the board;
- (4) Approve the annual operating and capital budgets and any long-term capital or financial program;
- (5) Conduct continuing studies in the operation of county programs and services and take action on programs for improvement of the county and the welfare of its residents;
- (6) Adopt, and amend as necessary, a county administrative code to govern the operation of the county;
- (7) Adopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county; and
- (8) All other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.

Mr. Gary Shepherd
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March 25, 1986

In this phase the only topics that come immediately to my mind that you would want to give some consideration to is the matter of service upon various authorities.

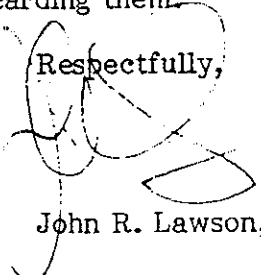
Memberships are now provided variously on boards, commissions, and authorities relating to civil service, aviation, the port, sports, transportation, hospital planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts. Under the provisions of Section 2.01 of the Charter, it is necessary for special law passed by the Legislature to prevail with regard to those matters and the membership on the bodies. There are other such bodies, the membership of which is governed by County ordinance. With respect to the former groups, you could recommend to the Legislative Delegation that an alteration be made in the method of selection of the memberships. With respect to the latter group, which are dealt with by ordinance, you could provide as you chose.

There doubtless are other things that you would wish to discuss in this free-wheeling and last phase. The most that I could offer at this point is that I would follow the discussion carefully and let you know if I saw any legal problem with any direction you were leaning.

I want to assure you that it has been with some reluctance that I have written this, but I overcame that reluctance out of a hope that perhaps it might be of some help to you. I have served as counsel to a number of bodies of various makeups which have looked at Charter government for counties, and I can assure you that there is nothing infallible about my suggestions and in the last analysis there are about as many approaches to these questions as there are people that have looked at them.

If you have any questions please feel free to call me. Of course, it goes without saying, that since I recognize there is no infallibility to my suggestions you certainly will not offend me by either varying them or discarding them.

Respectfully,



John R. Lawson, Jr.

JRLjr/dkm

JRL/LegalCons