Non-charter county may not term-limit commissioners

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Subject:
Non-charter county may not term-limit commissioners

Ms. Joy Cook Carmichael
Highlands County Attorney
600 South Commerce Avenue, B233
Sebring, Florida 33870

RE: COUNTY COMMISSIONERS – NON-CHARTER COUNTY – TERM LIMITS – SPECIAL LAW – There are no constitutional or statutory provisions that would allow a non-charter county to enact an ordinance, or that would permit the Legislature to enact a special law, imposing term limits on county commissioners. Art. VIII, §1; Art. III, §11(a)(1), Fla. Const.

Ms. Carmichael:

We have received your letter on behalf of the Highlands County Board of County Commissioners asking for an opinion on the following questions:

1. Whether article VIII, section 1(f) of the Florida Constitution or any other constitutional or statutory provision, authorizes a non-charter county to establish a limit on the number of terms a county commissioner may serve in office.

2. Whether the recent passage of Florida Amendment 10 to the Florida Constitution, which amended article VIII, section 1(d), affects the authority of a non-charter county to establish a limit on the number of terms a county commissioner may serve in office.

3. If a non-charter county is not authorized to establish a limit on the number of terms a county commissioner may serve in office, whether the county may obtain such authority through the legislature's enactment of a special law.

In sum:

1. No constitutional or statutory authority grants a non-charter county the power to impose a term limit on the office of county commissioner.

2. The amendment to article VIII, section 1(d) does not affect the analysis of the issues herein, because it does not apply to county commissioners.

3. Article III, section 11(a)(1), prohibits special laws pertaining to elections, thus barring the Legislature from enacting a special law on the subject.

1. Whether a non-charter county may impose term limits for county commissioners.

Article VIII, section 1(e), of the Florida Constitution provides: “Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years.” The text of the provision establishes no limit on the number of terms a county commissioner may serve.

Article VIII, sections 1(f) and 1(g), establish the constitutional authority of non-charter and charter counties:

“(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.”

As the text makes clear, the powers granted to non-charter counties are “such power[s] of self-government as [are] provided by general or special law.” Thus, non-charter counties may only enact ordinances in areas authorized by and consistent with general or special law. By contrast, charter counties have broader home rule power and may enact any ordinance not inconsistent with general or special law.

The Legislature has enacted general laws providing for the election of county commissioners, their staggered terms of office, and an alternate procedure for establishing single-member representation.[1] These statutes make no mention of term limits and may not be interpreted to extend to matters not expressly contemplated therein.[2] In section 125.01(1), Florida Statutes (2018), the Legislature enumerated some of the powers a county may exercise, stating that the “legislative and governing body of a county shall have the power to carry on county government[,]” including but not restricted to the powers listed in sections (1)(a) through (1)(c), “[t]o the extent not inconsistent with general or special law.” None of these subsections grants the power to establish term limits or any other eligibility requirement for the office of county commissioner. In addition, you have not identified, and this office has not found, any other general or special law that would authorize the county to do so.

The general “power to carry on county government” granted in section 125.01(1) cannot itself provide the necessary authorization to impose term limits on county commissioners,[3] because this general grant of power is circumscribed by the constitution’s requirement that a non-charter county’s power of self-government is only “as is provided by general or special law.” The Florida Supreme Court concluded in *Telli v. Broward County*, 94 So. 3d 504, 513 (Fla. 2012), that charter counties are authorized to impose term limits for county commissioners by virtue of the “broad authority [that] has been granted to them by home rule power through the Florida Constitution[,]” not by statute. But the *Telli* decision does not apply to non-charter counties. The

difference in home rule authority between charter counties and non-charter counties is rooted in the text of the constitution.

As a result, there is no constitutional or statutory authority that gives Highlands County, a non-charter county, the power to impose terms limits for county commissioners.

2. Whether the 2018 amendment to article VIII, section 1(d) of the Florida Constitution affects a non-charter county's authority to impose term limits.

Article VIII, section 1(d) of the Florida Constitution was amended in November 2018. The provision as amended requires five county officers – the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court – to be elected, and removes the option to use another method under a county charter or special law approved by county voters. The amendment did not affect article VIII, section 1(e), which authorizes county commissions, or section 1(f), which continues to authorize the Legislature to grant powers of self-government to non-charter counties by general or special law.[4]

3. Whether the Legislature may enact a special law authorizing a non-charter county to impose term limits on county commissioners.

Although not set out in your letter, I understand you have also inquired of my staff whether a non-charter county could obtain authority from the Legislature to impose term limits on county commissioners by special law.[5] Article III, section 11 of the Florida Constitution, enumerates 21 categories of special laws that are prohibited. Section 11(a)(1) provides:

"(a) There shall be no special law or general law of local application pertaining to:
(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local government agencies[.]"

"[A]ny inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written."[6] "Pertain" is defined in Black's Law Dictionary as: "To relate directly to; to concern."[7] A special law establishing an eligibility requirement for incumbent county commissioners in Highlands County would appear to "pertain to" the "election … of officers," and thus to be impermissible.[8] Although special laws pertaining to the election of officers of charter counties are explicitly excluded from the prohibition, there is no similar exclusion applicable to non-charter counties.

Accordingly, article III, section 11(a)(1) precludes the Legislature from enacting a special law allowing Highlands County to impose term limits on county commissioners.[9]

It is therefore my opinion that there is no constitutional or statutory authority that would permit the Board of County Commissioners to impose term limits for county commissioners in Highlands County, a non-charter county, or that would permit the Legislature to do so by special law.

Sincerely,

Ashley Moody
Attorney General

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[1] §§ 124.01, 124.011, Fla. Stat. (2018).

[2] *State v. Purdy*, 252 So. 3d 723, 729 (Fla. 2018).

[3] *See Gretna Racing, LLC v. Fla. Dep't of Bus. & Prof'l Reg.*, 225 So. 3d 759, 764 (Fla. 2017) (authority of a non-charter county to conduct a binding referendum regarding placement of slot machines in a pari-mutuel facility could not be based upon section 125.01(1) alone, granting non-charter counties "the power to carry on county government," but instead required "specific constitutional or statutory authority to act on a subject").

[4] I do not address that part of your request asking whether the amendment affects the authority of a charter county to impose term limits. The Attorney General is authorized by section 16.01(3), Florida Statutes (2018), to issue an opinion regarding "the official duties of the requesting officer[,]" which in this case is the Board of County Commissioners of a *non*-charter county.

[5] A special law applies to particular persons or things; a general law relates to subjects, persons, or things as a class. *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 509 (Fla. 2008).

[6] *Brinkmann v. Francois*, 184 So. 3d 504, 510 (Fla. 2016) (quoting *Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1119 (Fla. 1986)).

[7] Black's Law Dictionary (10th ed. 2014).

[8] *See, e.g.,* Op. Att'y Gen. Fla. 79-106 (1979) (while the Legislature could enact a general law of uniform application throughout the state making elections of non-charter county officers non-partisan, a special law on the same subject could not be enacted, because article III, section 11(a)(1) precludes a special law relating to the election of county officers).

[9] You have not asked, and I do not express any opinion concerning, whether the Legislature may impose term limits on county commissioners in non-charter counties by general law.