

# PRESS RELEASE

## County Continues Legal Fight with Clerk; Costing Taxpayers More Money

Collier County officials have [decided to continue their legal battle](#) with the Clerk of Courts all the way to the Florida Supreme Court wasting more tax dollars on legal fees and court costs in their latest attempt to prevent the Clerk from auditing county finances.

This comes after Second District Court of Appeals (DCA) of the State of Florida issued its opinion on September 23, 2009 reaffirming the Clerk of Courts is accountant, auditor and custodian of all county funds. The DCA also denied two additional motions filed by Collier County in response to the DCA opinion; one to rehear the case and the other to certify the case to the Florida Supreme Court. Both were denied by the DCA.

“Why is the Board of County Commissioners fighting so hard and spending so much of the taxpayer’s money to prevent the Clerk from doing his job to audit the public’s business?” Dwight asked after learning of the County’s latest maneuver. “This, in pursuit of the very act the DCA refused to ask the Supreme Court to consider.”

The DCA reaffirmed its rulings to uphold the Clerk’s right to audit “to the extent that the Clerk is the custodian of all county funds, he necessarily can only be the custodian of those funds to which he has been given custody, which would presumably encompass all County funds.”

The DCA opinion stated “A public officer with the right and responsibility to maintain custody of public funds necessarily has the authority both to investigate circumstances in which public funds have wrongfully been withheld from the officer’s custody and seek to obtain custody of the withheld funds. Restricting the Clerk’s authority to do so is inconsistent with the goal of protecting public funds from misappropriation, and it is inconsistent with the effectual and complete exercise of the Clerk’s authority as custodian of all county funds.”

The DCA decision concluded that the trial court’s ruling prohibiting post payment audits is inconsistent with the Clerk’s statutory power to inspect and examine all county accounts at all times and with the Clerk’s statutory duty to ensure all payments of county funds comply with applicable legal requirements. Post-payment audits to verify the legality of payments that have been made are necessary to effectively carry out the Clerk’s duty to ensure that county funds are expended only as authorized by law. Verification of the legality of payments already made – a process which tests the soundness of existing internal controls – is directly related to ensuring that future payments are legal. To deny the Clerk the ability to conduct such post payment audits would compromise the Clerk’s duty and power to guard against the illegal use of county funds.

The DCA stated that prior to signing any warrant for the payment of any claim, bill or indebtedness from county funds, the Clerk is required to insure that the payment is lawful. Consequently, any auditing necessary to insure the legality of the expenditure prior to payment is proper.

To read the complete DCA opinion visit [CollierClerk.com](http://CollierClerk.com) "News Room." *Appeals Court Reaffirms Brock's Role as Auditor and Custodian of All County Funds*, dated September 24, 2009.

Related story:

[It's Your Money: Millions spent on legal fees in County vs. Clerk of Courts](#)

By Nicole Papageorge, Wink TV, December 7, 2009

### **November 25, 2009**

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