

Press Release

Florida Supreme Court Reaffirms Clerk's Role as Auditor and Custodian of All County Funds Dismisses Appeal by Board of County Commissioners

The Florida Supreme Court today dismissed the appeal of the Board of County Commissioners (BCC) of Collier County v. Dwight Brock by a vote of 5-1 (with 1 recusal) and in doing so reaffirmed the right of Clerk of Courts, Dwight Brock to audit **all** public funds used in county operations. The Supreme Court upheld an earlier decision by The Florida Second District Court of Appeals (DCA) issued on September 23, 2009.

When Dwight Brock learned of The Florida Supreme Court ruling he said “ After many years this issue is now put to rest. The citizens have prevailed, and the checks and balances in county government have been reaffirmed. This is not a victory for me or for the Clerks of this state, it is a victory for the public. The public’s tax dollars have been spent trying to take away their checks and balances, but the Board of County Commissioners were ultimately unsuccessful.”

The DCA concluded that the trial court’s ruling prohibiting the Clerk from investigating county funds that have not been placed in his custody unduly limits the Clerk’s ability to carry out his responsibilities as custodian of all county funds. In its opinion the court wrote “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 decision also 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 postpayment 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.”

The court upheld the trial court’s ruling that the Clerk does not have independent authority to prepare the county’s financial statements.

The complete DCA opinion will be posted in the “News Room” section of www.CollierClerk.com

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