FLORIDA DEPARTMENT of STATE

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February 4, 2022

Andrew J. Meyers
County Attorney, Broward County
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

Re: DE 22-01 Preemption – Proposed County Charter Amendments – Financial Impact Statements §§ 97.0115; 101.161(1), Florida Statutes

Dear Attorney Meyers:

This letter responds to your request for an advisory opinion concerning whether a county can require a fiscal impact statement to a proposed charter amendment on the ballot. Because you are a county attorney proposing to take action related to Florida's election laws, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2021).

FACTS

Your request for an advisory opinion asks whether a county may place a financial impact statement on the ballot to accompany a proposed charter amendment's ballot title and summary. Specifically, you ask whether state law preempts a county's ability to require a financial impact statement to a proposed charter amendment on the ballot. As a factual basis, you assert that Broward County approved an amendment to the Broward County Charter in 2008 that requires the County to place a financial impact statement immediately following a ballot question that, if passed, would amend the County Charter. You also identify section 97.0115, Florida Statutes (2010), as the operative statutory provision that could preempt the financial impact statement requirement.

ANALYSIS

The short answer to your question is that section 97.0115 preempts a county's ability to require a fiscal impact statement to a proposed county charter amendment.

The Florida Supreme Court has articulated that a county ordinance can be preempted by state law if (1) the legislature has expressly preempted the field or (2) a state statute conflicts with a local ordinance:

> Pursuant to our Constitution, chartered counties have broad powers of self-government. *See* art. VIII, § 1(g), Fla. Const. Indeed, under article VIII, section 1(g) of the Florida Constitution, chartered counties have the broad authority to "enact county ordinances not inconsistent with general law." *See also* David G. Tucker, *A Primer on Counties and Municipalities, Part I*, Fla. B.J., Mar. 2007, at 49. However, there are two ways that a county ordinance can be inconsistent with state law and therefore unconstitutional. First, a county cannot legislate in a field if the subject area has been preempted to the State. *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006). "Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature." *Id.* (quoting *Phantom of Clearwater[, Inc. v. Pinellas County]*, 894 So. 2d [1011] , 1018 [(Fla. 2d DCA 2005)]). Second, in a field where both the State and local government can legislate concurrently, a county cannot enact an ordinance that directly conflicts with a state statute. *See Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996). Local "ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute." *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So. 2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void."); *see also Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972) ("A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.").

Orange County v. Singh, 268 So. 3d 668, 673–74 (Fla. 2019) (quoting *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008)). In *Singh*, the Florida Supreme Court upheld the Fifth District's holding that Orange County was expressly preempted by section 97.0115 and Chapter 105 from requiring nonpartisan elections for county constitutional officers. *Id.* at 675.

Section 97.0115, Florida Statutes (2010), states, "All matters set forth in chapters 97-105 [the Florida Election code] are preempted to the state, except as otherwise specifically authorized by state or federal law. The conduct of municipal elections shall be governed by s. 100.3605." Section 101.161, Florida Statutes, contained within the Florida Election Code, sets forth the

requirements for constitutional amendments or other public measures submitted to the vote of the people:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. *In addition, for every constitutional amendment proposed by initiative, the ballot shall include*, following the ballot summary, in the following order:
> (a) *A separate financial impact statement* concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(13).

§ 101.161(1)-(1)(a), Fla. Stat. (emphases added). Section 101.161(1) is within the Florida Election Code and is thus preempted to the state. § 97.0115, Fla. Stat. And, as you point out in your request for an advisory opinion, the Florida Supreme Court has held that section 101.161(1) applies to amendments to county charters. *See, e.g., Wadhams v. Bd. of County Com'rs of Sarasota County*, 567 So. 2d 414, 415 (Fla. 1990). Section 101.161(1) requires a financial impact statement for constitutional amendments proposed by citizen initiatives. It does not require, nor does it authorize, a county charter amendment to contain a financial impact statement. Thus, the Division interprets sections 97.0115 and 101.161(1) as preempting Broward County's ability to require a financial impact statement for any proposed amendment to its county charter.

This interpretation aligns with the Florida Supreme Court's opinion in *Singh*, where it stated:

> Notably, chapter 105 does not include any county constitutional officers as nonpartisan. The specific references to the county constitutional officers in the Florida Election Code are in its more general provisions in which candidates nominated by political parties may appear on the general ballot. Moreover, although the Florida Election Code expressly allows for municipal elections to vary from its requirements pursuant to an ordinance or charter so long as the variance does not conflict with "any provision in the Florida Election Code that expressly applies to municipalities," § 100.3605(1), Florida Statutes (2018), there is no similar allowance for county elections.

Singh, 268 So. 3d at 673. Similarly, the Florida Election Code does not provide for counties to require financial impact statements for proposed amendments to county charters. And although the Florida Election Code does allow for municipalities to vary from the code's requirements in certain circumstances, the same is not true for counties.

SUMMARY

A county is preempted by state law from requiring a financial impact statement for proposed amendments to its charter.

Respectfully,

Maria I. Matthews, Esq.
Director, Division of Elections