

Governmental Procedures and Structure Committee
Taxation and Budget Reform Commission
Jacksonville City Hall – St. James Building
Committee Room B, First Floor
117 West Duval Street
Jacksonville, Florida
Thursday, September 20, 2007
9:30 a.m. – 1:00 p.m.

(Committee Members: Alan Levine, Chair; Mike Hogan; Julia Johnson; Carlos Lacasa; Patricia Levesque; Jacinta Mathis; Nancy Riley; Darryl Rouson; Greg Turbeville; Ken Wilkinson; Brian Yablonski)

Commissioners Present:

Alan Levine
Mike Hogan
Julia Johnson
Carlos Lacasa
Patricia Levesque
Jacinta Mathis
Nancy Riley
Darryl Rouson
Greg Turbeville
Ken Wilkinson
Brian Yablonski

Excused Absences:

None

The meeting was called to order 9:40 a.m.

Staff called the roll and announced the presence of a quorum.

During the meeting, the committee heard presentations on education innovations, the scope of the audit authority of a clerk of a circuit court, school voucher programs, and revenue caps.

Education Innovations

Mark Pritchett and Doug Tuthill of the Collins Center made the presentation on education innovations. The presenters described the following five factors driving the expansion of public education:

- Improvements in information and communication technology.
- Customization. Customization has been made possible by new technology.
- More accountability for performance.

- Customer demand. People are used to making demands for education and everything else.
- A growing culture of entrepreneurship.

The presenters believe that the public education system should pursue uniformity of opportunity, rather than sameness.

According to the presenters' research, expanded educational opportunities through innovative education facilities have lead to financial savings for the state of nearly \$4.5 billion.

- The state has saved nearly \$60 million through the use of the Florida Virtual School.
- The state has saved more than \$1.4 billion through the use of charter schools. The state has saved \$1.36 billion through the use of faith based and private providers of the Voluntary Pre-Kindergarten Program.
- The use of home education has saved the state more than \$1.13 billion.
- The use of the Corporate Tax Credit Program has saved the state nearly \$244 million.
- The state has saved more than \$266 million through the use of the McKay Scholarship program.

The presenters concluded by arguing that the state should expand the definition of public education. However, educational choices should be balanced with regulatory control. The presenters asked the Taxation and Budget Reform Commission to help identify the right balance between regulatory control and customer choice.

Scope of the Audit Authority of the Collier County Clerk of the Circuit Court

Thomas Cibula, general counsel of the Taxation and Budget Reform Commission, briefed the committee on litigation between the Collier County Board of County Commissioners and the Clerk of the Circuit Court. The issue in the litigation is the scope of the authority of the Clerk of the Circuit Court to audit the county.

Mr. Cibula paraphrased the clerk's audit authority in Art. VIII, s. 1(d) as follows: "When not otherwise provided by county charter or special law . . . the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

Mr. Cibula explained that recent trial court orders held that the clerk has only pre-audit authority. Pre-audit authority is limited to determining the legality of expenditures. The court held that the clerk does not have post-audit authority or the authority to conduct internal audits. Mr. Cibula further stated that the committee may wish to clarify the scope of the clerk's audit authority or examine whether sufficient checks and balances exist for the use of county funds.

After Mr. Cibula spoke, Fred Baggett and Martha Haynie of the Association of Court Clerks and Comptrollers offered to make themselves available to assist the committee. Mr. Baggett also stated that the Association was in the process of drafting statutory language to clarify the audit authority of the clerk.

City-County Consolidation

The presentation on city-county consolidation was made by Rick Mullaney, General Council, City of Jacksonville and Chip Morrison, General Council, Florida League of Cities.

Mr. Mullaney explained the following:

- Jacksonville-Duval is the only fully consolidated county within the state.
- The consolidation of Duval County with the City of Jacksonville arose out of extraordinary statesmanship following a series of public corruption investigations.
- Consolidation gives Jacksonville-Duval structural advantages over other local governments.
- Efficiencies from consolidation have permitted low ad valorem tax rates.
- Efficiencies have resulted from the elimination of redundant services and government staff.
- Jacksonville-Duval has one General Council's office that represents all organs of local government. The General Council also has the authority to issue binding legal opinions to all organs of government. As a result, costs of intergovernmental litigation and redundant legal departments have been eliminated.
- The Jacksonville-Duval government has checks and balances through a legislative and executive branch.
- The consolidation of Jacksonville-Duval permits the government to address issues from a county-wide view.
- Jacksonville-Duval has one economic development entity, the Jacksonville Economic Development Authority. As a result, county entities do not compete with each other for economic development projects.

Mr. Mullaney recommended that each county be studied individually to determine to what extent consolidation can lead to savings, accountability, and better public policy for different public functions.

Chip Morrison's presentation described the political hurdles that interfere with efforts to city-county consolidation. Mr. Morrison started his presentation by noting that the City of Jacksonville is a member of the Florida League of Cities.

Mr. Morrison described the following as political hurdles to consolidation:

- Elected sheriffs prefer an elected chief law enforcement officer. However, police unions prefer an appointed chief law enforcement officer.
- Elected constitutional officers often object to efforts to reduce their autonomy.

- City residents prefer to elect commissioners by district. However, county residents prefer to elect commissioners on an at large basis to ensure representation to rural areas.
- Cities have non-partisan elections, whereas, counties have partisan elections.
- County residents are concerned that consolidation will lead to higher taxes. City residents are concerned that they will have to fund county services.
- City owned utilities often serve cities. Whereas, private utilities often serve counties. Consolidation can lead to territorial disputes between these utilities.

Due to the political hurdles to consolidation Mr. Morrison recommends that inter-local agreements be used to reduce redundant services.

Lastly, Mr. Morrison expressed his concerns that the Florida Supreme Court opinion in *Strand v. Escambia County* would have a negative impact on the issuance of local government bonds.

School Vouchers from the Opponents' Point of View

Mr. Meyer began his presentation by identifying himself as a representative of the Florida Education Association and proponents of public education.

Mr. Meyer stated that the guiding principles for education are set forth in Article IX, s. 1(a) of the Florida Constitution. That provision states:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .

Mr. Meyer discussed the opinion of the Florida Supreme Court in *Bush v. Holmes*. In that case, the Opportunity Scholarship Program, a school voucher program, was found unconstitutional for the following reasons:

- The uniformity requirement of Article IX, s. 1(a), Fla. Const., was violated by diverting public funds to private schools. These private schools were not subject to the same standards as public schools.
- The existence of voucher programs was evidence of the state's violation of the constitutionally mandated high quality public schools.

Mr. Meyer stated that the Supreme Court in *Bush v. Holmes* did not address the "no-aid" provision of Article I, s. 3, Fla. Const. However, the First District Court of Appeal found that the Opportunity Scholarship Program violated the no-aid provision. The no-aid provision states that "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any

church, sect, or religious denomination or in aid of any sectarian institution.” Some private schools that accepted vouchers under the Opportunity Scholarship Program had sectarian missions. Mr. Meyer explained that the First District Court of Appeal distinguished the Opportunity Scholarship program from other programs using state funds at sectarian institutions.

Mr. Meyer explained the status of several other educational programs. The McKay Scholarship Program uses state funds to permit disabled children to attend private schools. Mr. Meyer explained that the program was not challenged by the Florida Education Association. Moreover, the program may be protected from legal challenges by *Scavella v. School Board of Dade County*.

The Corporate Tax Credit Program intercepts funds that would have otherwise been due to the state before the funds reach state coffers. The Corporate Tax Credit Program is distinguishable from the Opportunity Scholarship Program in that eligibility under the program focuses on the student rather than a public school. Mr. Meyer is concerned that the Corporate Tax Credit Program may lead to the re-segregation of schools.

Mr. Meyer concluded his presentation by stating that the Taxation and Budget Reform Commission should support the public school system. He further stated that the Commission should find ways to make funding available to enable the state to fulfill its duty to public schools.

School Vouchers from the Proponents’ Point of View

The school voucher presentation from the point of view of the proponents was made by Clark Neily of the Institute for Justice.

Mr. Neily explained that the Institute for Justice is a public interest law firm that defends school choice programs. The Institute for Justice represented parents and children in *Zelman v. Simmons-Harris* and in *Bush v. Holmes*.

Mr. Neily stated that Florida has a long history of providing educational choices. However, a number of groups are ideologically opposed to school choice. In *Bush v. Holmes* opponents to school choice claimed that the Opportunity Scholarship Program violated the following constitutional provisions:

- The Establishment Clause of the U.S. Constitution;
- Florida’s Blaine Amendment in Article I, s. 3;
- Uniformity provision of Article IX, s. 1; and
- The provision of a state school fund in Article IX, s. 6.

Mr. Neily stated that in 2004, the First District Court of Appeal held that the Opportunity Scholarship Program violates the Blaine Amendment because participating religious schools receive an indirect benefit. Due to the opinion of the First District Court of

Appeal, a number of education options are in legal jeopardy because of the availability of religious options.

Mr. Neily believes that the constitutional claims are merely opportunistic ways to challenge school choice.

Mr. Neily explained that the Florida Supreme Court in *Bush v. Holmes*, found that the uniformity provision of Art. IX, s. 1, Fla. Const., is a limitation on the power of the Legislature. Moreover, the court found that public schools are the sole means by which the state may provide for a child's education. The court also held that voucher programs undermine education by diverting funds. Mr. Neily further explained that the Court did not address the Blaine Amendment.

Mr. Neily believes that the *Holmes* Court misinterpreted the uniformity provision of the Florida Constitution. Moreover, court interpretations of uniformity provisions of other state constitutions conclude that uniformity clauses do not prohibit legislatures from funding voucher programs. Additionally, studies show voucher programs improve public schools through competition.

State and Local Revenue Caps

The presentation on state and local revenue caps was made by Professor Barry Poulson of Colorado University and Professor Randy Holcombe of Florida State University.

Professor Poulson's presentation focused on Colorado's Taxpayer Bill of Rights Amendment (TABOR). Professor Poulson further argued that Florida should adopt a similar constitutional provision.

Professor Poulson began his presentation by stating that Florida is in the midst of a property tax revolt and that Florida lacks an effective tax and spending limit.

Colorado's TABOR amendment provides an effective revenue cap in that it is based on population and inflation. Florida's revenue cap grows much faster as it is a function of population and income growth.

According to Professor Poulson, Colorado, relative to other states, has prospered under TABOR. Voter approval is required for any increase in taxes or debt, or expenditure of surplus revenue. At the local level, spending referenda are approved by the voters 90 percent of the time.

According to Professor Poulson, the Legislature's approach to property tax reform is flawed. The Legislature's proposal permits the government officials who set property tax rates to vote to exceed the caps established by the Legislature.

Professor Poulson argued that Florida should adopt a Taxpayer Protection Amendment based on a model adopted by the American Legislative Exchange Council (ALEC).

The Taxpayer Protection Amendment (TPA) would limit state and local government spending based on population growth and inflation. The TPA would apply to a broad measure of state revenue and spending with few exceptions. Some surplus revenue would be allocated to a budget stabilization fund. Voter approval would be required for any increase in taxes or debt, or expenditure of surplus revenue.

According to Professor Holcombe, the state budget has increased 45 percent in the past five years. With the TPA, the state budget would have increased 28 percent. Professor Holcombe explained that the biggest factor influencing the size of the state budget was the amount of revenue available. Property tax revenue has also grown faster than inflation.

Professor Holcombe shared his belief that local government officials are not sufficiently accountable for their taxation decisions. Moreover, Professor Holcombe believes that proposed tax increases should be submitted to the voters for approval or rejection.

The meeting adjourned at 1:10 p.m.