

IN THE SUPREME COURT OF FLORIDA

Case No. SC06-521

**ADVISORY OPINION TO THE ATTORNEY GENERAL RE:
REFERENDA REQUIRED FOR ADOPTION AND AMENDMENT OF
LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANS**

**AMENDED SUPPLEMENTAL BRIEF OF THE
ATTORNEY GENERAL**

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STATEMENT OF THE CASE AND FACTS

The Attorney General requested this Court’s opinion as to whether the financial impact statement prepared by the Financial Impact Estimating Conference on the constitutional amendment, proposed by initiative petition, entitled “Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans,” is in accordance with section 100.371, Florida Statutes. This Court subsequently entered an order directing the Attorney General and all interested parties to file supplemental briefs addressing three issues: (1) the basis for this Court’s jurisdiction as it pertains to financial impact cases; (2) the standard of review that this Court should apply when reviewing a financial impact statement; and (3) whether the language of the financial impact statement as presently drafted complies with the requirements of section 100.371, including any further arguments regarding whether there are any ambiguities as to the financial impact statement in this case.

Statutory Background

Section 100.371, Florida Statutes, was amended in 2002 to require that a “fiscal impact statement” appear on the ballot with all constitutional amendments proposed by citizen initiative petition. See Ch. 2002-390, § 3, at 2-3, Laws of Fla. The amended statute directed the Secretary of State to submit all citizen initiative petitions to the Revenue Estimating Conference for preparation of a clear and

unambiguous fiscal impact statement, no more than 50 words in length, addressing the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. See id. at 2.

Chapter 2002-390 also amended section 16.061, Florida Statutes, directing the Attorney General to petition the Supreme Court for an advisory opinion regarding “compliance of the fiscal impact statement with ss. 100.371 and 101.161.” Ch. 2002-390, § 2, at 2, Laws of Fla. Any fiscal impact statement this Court found not to be in accordance with section 100.371, section 100.381, or section 101.161, was to be remanded solely to the Revenue Estimating Conference for redrafting. See id. (amending § 16.061(3)).

This Court subsequently declared chapter 2002-390, Laws of Florida unconstitutional, but noted that “[i]f Floridians wish to have a fiscal impact statement included with all initiatives to amend the constitution, then they can vote to adopt House Joint Resolution 571.” See Smith v. Coalition to Reduce Class Size and Pre-K Comm., 827 So. 2d 959, 964-65 (Fla. 2002).¹ Florida voters did just that at the November 5, 2002, general election, voting in favor of House Joint

¹ House Joint Resolution 571 provides in relevant part:

A joint resolution proposing a revision of Article XI, Section 5 of the State Constitution requiring the Legislature to provide by general law for the provision of an economic impact statement of each amendment proposed by initiative to the State Constitution prior to its adoption by the voters of the state.

Resolution 571 and amending article XI, section (5)(b) of the Florida Constitution as follows: “The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to Section 3.”

In response, the Legislature enacted chapter 2004-33, Laws of Florida, amending several Florida Statutes relevant to citizen initiative petitions. The 2004 amendments changed the “fiscal impact statement” to “financial impact statement,” and replaced the Revenue Estimating Conference with the Financial Impact Estimating Conference.² See Ch. 2004-33, Laws of Fla. The language in section 16.061(1) directing the Attorney General to petition the Florida Supreme Court for an advisory opinion regarding the fiscal impact statement was deleted. See Ch. 2004-33, § 2, at 2, Laws of Fla. The language in section 16.061(c), however, directing this Court to remand a noncompliant financial impact statement solely to the Financial Impact Estimating Conference for redrafting was left largely intact. See id. at § 2.

Section 100.371, setting forth the procedure for placement of financial impact statements on the ballot, was also substantially amended. See Ch. 2004-33,

² Section 100.371(6)(b)2 describes the authority and composition of the Financial Impact Estimating Conference. See Ch. 2004-33, § 3, at 2, Laws of Fla.

§ 3, at 2-4, Laws of Fla. Relevant to the questions presented in this case, section 100.371(6) was amended to provide:

(6)(a) . . . [T]he Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

...

3 Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court 5 p.m on the 75th day before the election, the following statement shall appear on the ballot pursuant to s. 101.161(1): “The financial impact of this measure, if any, cannot be reasonably determined at this time.”

...

(d)(1) Any financial impact statement that the Supreme Court finds not be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court’s advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall

prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

This is the version of the statute currently in effect; in 2005 section 100.371 was further amended but such amendments are not effective until January 1, 2007. See Ch. 2005-278, § 28 at 33-36, Laws of Fla.

SUMMARY OF THE ARGUMENT

Advisory opinions issued by this Court are governed by the Florida Constitution and enabling legislation. This Court's jurisdiction in cases involving financial impact statements on citizen initiative petitions to amend the state constitution involves the interplay between three articles of the Florida Constitution and several statutory provisions. These statutory provisions limit this Court's review to two issues: (1) whether the financial impact statement addresses the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the amendment; and (2) whether the financial impact statement is set forth in clear and unambiguous language that is no more than 75 words in length. § 100.371(6)(a), (6)(b)3, Fla. Stat. (2006). The language of the financial

impact statement at issue in this case appears to comply with these statutory requirements for placement on the ballot because the statement is internally consistent and unambiguous.

ARGUMENT

(1) Jurisdiction

This Court’s jurisdiction to issue advisory opinions is governed by the Florida Constitution and enabling Florida legislation. See generally Gandy v. State, 846 So. 2d 1141, 1143 (Fla. 2003) (“The jurisdiction of this Court extends only to the narrow class of cases enumerated in article V, section 3(b) of the Florida Constitution.”). Three provisions of the Florida constitution are relevant to the Court’s jurisdiction in this case. Article V, section (3)(b)(10) provides that this Court “[s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.” (Emphasis added.) Article IV, section 10 states:

The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.

(Emphasis added.) The Florida Constitution therefore provides that the Attorney General’s power to request and this Court’s duty to issue advisory opinions on citizen initiative petitions are governed by general law. That general law, relevant to the questions presented here, is set forth in sections 16.061(1) and 100.371, Florida Statutes.

In addition, article XI, section 5(c) of the Florida Constitution mandates that the “legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.” Before its amendment in 2004, section 16.061(1) directed the Attorney General to petition this Court for an advisory opinion regarding the statutory compliance of these “financial impact statements.” See Ch. 2004-33, § 2, at 2, Laws of Fla.

Although section 16.061(1)’s directive as to financial impact statements was deleted,³ section 16.061(3) continues to reference such statements, stating: “Any fiscal impact statement that the court finds not to be in accordance with s. 100.371 shall be remanded solely to the Financial Impact Estimating Conference for redrafting.” Section 16.061(3) therefore contemplates judicial review of financial

³ It should be noted that section 100.371 directs the Financial Impact Estimating Conference to submit completed financial impact statements to the Attorney General. See § 100.371(6)(a), (b)3, Fla. Stat. (2006).

impact statements before placement on the ballot. Since the 2004 amendment, this Court’s review of financial impact statements has been conducted pursuant to this statute and under the jurisdiction granted to the Court by article IV, section 10, and article V, section 3(b)(10), of the Florida Constitution. See, e.g., Advisory Op. to Att’y Gen. re Florida Marriage Protection Amendment, 926 So. 2d 1229 (Fla. 2006) (approving financial impact statement for placement on the ballot); Advisory Op. to Att’y Gen. re Protect People, Especially Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco, 926 So. 2d 1186 (Fla. 2006) (same); Advisory Op. to Att’y Gen. re Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutuel Facilities, 882 So. 2d 966 (Fla. 2004) (same); Advisory Op. to Att’y Gen. re Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutuel Facilities, 880 So. 2d 689 (Fla. 2004) (rejecting financial impact statement).

Further, section 100.371(6) provides that this Court will review the financial impact statement and issue an advisory opinion, stating in relevant part:

(6)(b)4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot pursuant to s. 101.161(1): “The financial impact of this measure, if any, cannot be determined at this time.”

...

(d)1. Any financial impact statement that the Supreme Court finds not be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

(Emphases added.) However, if this Court does not issue an advisory opinion by 5 p.m. on the 75th day before the election, “the financial impact statement shall be deemed approved for placement on the ballot.” § 100.371(6)(d)2, Fla. Stat. (2006).

(2) Standard of Review

When reviewing a financial impact statement, it appears this Court is statutorily limited to two issues: (1) whether the financial impact statement addresses the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the amendment; and (2) whether the financial impact statement is set forth in clear and unambiguous language that is no more than 75 words in length. § 100.371(6)(a), (6)(b)3, Fla. Stat. (2006); see also Advisory Op. re Protect People from Health Hazards of Using Tobacco, 926 So. 2d at 1194.

Both the Florida Constitution and section 100.371(6)(b)3 further modify this standard of review. Article XI, section 5(b) limits financial impact statements to providing the “probable financial impact” of any amendment, while section 100.371(6)(b)3 permits the statement to set forth a “range of potential impacts.”

This Court has stated that the “range of potential impacts” in section 100.371(6)(b)3 must relate to the phrase “probable financial impact” set forth in the constitution. See Advisory Op. re Slot Machines in Parimutuel Facilities, 880 So. 2d at 690. Also, the “fact that the FIEC is unable to discern the actual financial impact does not render a proposed FIS in violation of applicable law when those laws in fact contemplate such a scenario.” Advisory Op. re Florida Marriage Protection Amendment, 926 So. 2d at 1241.

(3) Language of the Financial Impact Statement

The financial impact statement in this case provides:

The direct impact of this amendment on local government expenditures cannot be determined precisely. Over each two year election cycle, local governments cumulatively will incur significant costs (millions of dollars statewide). Costs will vary depending on the processes employed by cities and counties in obtaining approval for plan amendments. The direct impact on state government expenditures will be insignificant. There will be no direct impact on government revenues.

The Attorney General typically limits its request for an advisory opinion to whether the financial impact statement prepared by the Financial Impact Estimating Conference is in accordance with section 100.371, Florida Statutes. The Attorney General does not routinely comment on whether the language complies with the requirements of section 100.371, or whether there are any ambiguities as to the financial impact statement. However, here the financial impact statement clearly states that the “direct impact of the proposed amendment

on local government expenditures cannot be determined precisely.” It further explains that local governments will incur costs and that these could vary depending on the procedures followed. This explanatory language appears to be internally consistent and unambiguous in view of the conclusion that costs cannot be precisely quantified.

CONCLUSION

The Attorney General respectfully submits this brief in response to the Court's order directing supplemental briefing on the financial impact statement in this case and requests this Court's opinion as to whether the financial impact statement in this case is in accordance with section 100.371, Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing was served by U.S. Mail this 13

th day of October, 2006, to the following: THE HONORABLE ALLAN G. BENSON, Florida House of Representatives, Room 420, The Capitol, Tallahassee, Florida 32399-1300; THE HONORABLE TOM LEE, Florida Senate, 409 Senate Office Building, Tallahassee, Florida, 32399-1100; AMY BAKER, Office of Economic and Demographic Research, Room 576, The Pepper Building, Tallahassee, Florida 32399; ROSS STAFFORD BURNAMAN, 1018 Holland Drive, Tallahassee, Florida 32301; VIRGINIA SAUNDERS DELEGAL, Florida Association of Counties, Inc., 100 South Monroe Street, Tallahassee, Florida 32301; HARRY MORRISON, JR., and REBECCA A. O'HARA, Florida League of Cities, Inc., P. O. Box 1757, Tallahassee, Florida 32302 and LESLEY BLACKNER, Florida Hometown Democracy, Inc., P. O. Box 636, New Smyrna Beach, Florida 32170-0636.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the font used in this brief is Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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