

AUGUST 8, 2023

The Charter Review Commission Meeting was held on this date in the First Floor Conference Room 118, Lee County Administration Building East, 2201 Second Street, Fort Myers, Florida with the following Charter Review Commission Members:

CHARTER REVIEW COMMISSION MEMBERS:

Nathan Shaw - Chairman	Kevin Besserer	Ronald Inge
Andrew Sund - Vice-Chairman	Doug J. Congress	Liza King - <i>Absent</i>
Richard Akin	Keith Dean	Randal Mercer
Noel Andress	Eric Feichthaler	Maryanne Preston
Carl Barraco Jr.	Ismael Hernandez - <i>Absent</i>	Maribel Sanchez

LEE COUNTY ATTORNEY:

Deputy County Attorney, Andrea Fraser
Assistant County Attorney, Joe Adams

CALL TO ORDER:

Chairman Shaw called the meeting to order at 5:04 p.m., followed by the Pledge of Allegiance.

Chairman Shaw announced that Public Comment would be heard prior to Clerk Karnes presentation.

PUBLIC COMMENT:

Chairman Shaw called for Public Comment, and there were four speakers:

- Commissioner Cecil Pendergrass
 - Discussed the new County Manager, Dave Harner.
 - Reminded the Commission that the Board of the County Commissioners possess the authority to revoke the County Manager contract by majority vote due to unsatisfactory performance.
- Carolyn Moore
 - Discussed discrepancies/items omitted in June 2023 Charter Review Minutes.
 - Discussed the lack of minority representation in Lee County government and the current Charter Review Commission.
- Deborah Swisher Hicks
 - Discussed excessive Developmental Order extensions.
 - Requested the Commission explore the Participants of Record rules and regulations for Hearing Examiner and County Commissioner Zoning Meetings.
- Marsha Ellis
 - Expressed concern over the lack of transparency in Lee County government.
 - Requested the Commission explore the Participants of Record rules and regulations for Hearing Examiner and County Commissioner Zoning Meetings.
- Norman Cannon
 - Expressed concern over the lack of transparency in Lee County government and the County Managers Office.
 - Requested the Commission explore the Participants of Record rules and regulations for Hearing Examiner and County Commissioner Zoning Meetings.

LEE COUNTY CLERK OF THE COURT & COMPTROLLER, KEVIN C. KARNES PRESENTATION ON COMMISSION ON ETHICS:

Lee County Clerk of the Court & Comptroller, Kevin C. Karnes presented a PowerPoint Presentation on the role Lee County's Clerk and Comptroller, Types of Audit and Auditors, and the effects of such on a proposed Commission on Ethics.

Role of the Clerk:

- Article V, Section 16 defines the title of Clerk of the Circuit Court, which supports the local court system, but the position also serves as:
 - Ex-officio Clerk of the Board of County Commissioners
 - County Recorder
 - Custodian of all County Funds
 - County Auditor

Internal Auditor vs. External Auditor:

Clerk Karnes provided a brief recap of the responsibilities and differences between an Internal Auditor, and External Auditor. Clerk Karnes stated that Internal Auditors focus on operations, internal controls, compliance, and fraud/waste/abuse, and have backgrounds in various academic disciplines, while External Auditors focus mostly on financial issues and reports and are licensed professional accountants.

County Auditor Functions:

Clerk Karnes provided a review of the functions of a County auditor including but not limited to:

- Internal Audits (Fla. Stat. Chapter 11)
- Fraud, Waste, and Abuse Investigations (Fla. Stat. Chapter 11)
- Guardianship Audits, and Investigations (Fla. Stat. Chapter 744)
- Collection/Auditing and Enforcement of Tourist Tax (Fla. Stat. Chapter 125 & 212. Lee County ORD 13-14)

Clerk Karnes informed the Commission that the Office of Clerk of Courts and Comptroller is responsible for:

- Review and test the reliability and integrity of financial/operational information;
- Review for compliance with applicable rules, laws, regulations, standards, policies and procedures;
- Review & audit contracts;
- Conduct internal audits to determine if internal controls are sufficient;
- Prepare reports suggesting value added recommendations to management;
- Monitor and evaluate governance and risk management processes.

Clerk Karnes stated that as the County Auditor, the office of Clerk of Courts and Comptroller perform these responsibilities and task for the Board of County Commissioners, Lee County Port Authority, and the Clerk of Court and Comptroller offices, and employees. Clerk Karnes also clarified that at times, the Clerk of Courts and Comptroller may enter into an agreement to work with other Lee County municipalities, Lee County Constitutional Offices, the Board of Education, and the Community College District Board of Trustees.

Entities Not Subject to the Clerk's Audit Authority:

Clerk Karnes stated that the organizations funded with Federal or State monies are not under the audit authority of the Clerk of Court and Comptroller. The State Auditor General oversees offices such as those for the State Senators, Representatives, Judges, the State Attorney, and Public Defenders. County Municipalities, and their funded departments typically have their own Internal Auditors and would only fall under the audit authority of the Clerk of Court and Comptroller if they were using County funds.

Impact on Ethics:

Clerk Karnes stated that Lee County does not have an ethics ordinance, only Policy 206 - *Code of Ethics* that was last revised on June 20, 2017. Policy 206 only applies to Lee County Board of County Commissioner employees, The Lee County Managers office, and its employees, and the Lee County Attorney's Office and its employees. The Clerk only has the authority to perform audits and investigations to ensure compliance if the entity is funded with county funds and a claim has been reported to the Inspector General Department.

Charter Counties Comparison:

Clerk Karnes concluded his presentation with a comparison of charter counties stating that four counties (Broward, Duval, Miami-Dade, and Sarasota) currently have an Ethics Commission. Ten counties (Broward, Clay, Columbia, Duval, Hillsborough, Leon, Miami-Dade, Orange, Palm Beach, and Volusia) have a local Code of Ethics.

Commission Discussion: Commission member, Noel Andress questioned what happens when the Clerk's office finds an issue that ends up being a criminal matter, and requested a review of the audit process. Clerk Karnes stated that the Clerk of Court and Comptroller is a non-law enforcement office, and therefore would continue the audit in partnership with the appropriate law enforcement office. Clerk Karnes provided the Commission with a brief review starting from when a claim is filed with the Inspector General, through the review and testing of the claim, to the investigation and delivery of the audit results. Mr. Andress questioned if the Clerk of Court and Comptroller's office had an Inspector General and if so, if they possessed the power to subpoena. Clerk Karnes confirmed that the Clerk of Court and Comptroller office does have an Inspector General, however that the Inspector General does not have the power to subpoena, stating that most of the information that the Inspector General requires is public record and can be secured by submitting a public records request. Mr. Andress continued his questioning by asking Clerk Karnes if an ethics commission was advanced to a ballot by the Charter Review Commission and passed by Lee County voters, if that commission would fall under the control of the Clerk of Court and Comptroller's office. Clerk Karnes stated that he was unsure of which office would be responsible for an ethics commission, as the Charter Review Commission in conjunction with the Lee County Attorney's Office would be responsible for drafting that language. Clerk

Karnes did state that personally, he would not fully support an ethics commission at this time due to the excessive amount of time it would require to review, organize, and fund. Clerk Karnes stated he would rather see the Charter Review Commission focus on an Ethics Ordinance at this time.

Commission member Keith Dean questioned Clerk Karnes if the Clerk of Court and Comptroller controls or relies on Staff for County contract details. Clerk Karnes stated that the Clerk of Court and Comptroller does not control the contents of a contract, only reviews them to report possible risk to County Administration. Vice-Chairman, Andrew Sund questioned if the Clerk of Court and Comptroller was currently auditing local municipalities, and if not, would the Clerk of Court and Comptroller be open to assuming that responsibility. Clerk Karnes stated that while local municipalities are not under the audit authority of the Clerk of Court and Comptroller, Clerk Karnes would be open to working with local municipalities. Mr. Sund questioned if the Charter Review Commission has the authority to require local municipalities to work with the Clerk of Court and Comptroller. Deputy County Attorney, Andrea Fraser stated local municipalities would need to voluntarily enter into a contract with the Clerk of Court and Comptroller, and could not be mandated to do so.

Public Comment: Chairman Shaw called for Public Comment, and there were two speakers.

OTHER COMMISSION MEMBER ITEMS FOR DISCUSSION:

Deputy County Attorney, Andrea Fraser informed the Commission that this meeting of the Charter Review Commission was the final meeting where members would be able to introduce items they would like to see included on the ballot. Commission Chairman Nathan Shaw brought three items previously discussed by the Charter Review Commission forward for Commission discussion and voting.

Lee County Manager as Citizen Elected Position:

Commission member Kevin Besserer stated that with the recent change in County Manager, he believes that the Commission should provide the new County Manager an opportunity to acclimate to the position and serve the citizens of Lee County. Mr. Besserer stated that at this time, he does not feel that it is warranted or appropriate to move forward with a discussion regarding the County Manager be a voter elected position.

Commission Vice-Chairman, Andrew Sund stated that he was in favor of moving forward with a discussion regarding mandating the County Manager position be a voter elected position. Mr. Sund stated that the Commission should look to the past to times such as the COVID-19 pandemic, and Hurricane Ian limited the County Commissioners authority on certain contracts, and items due to the authority the County Manager is provided to negotiate and enter into multi-million dollar contracts without Commissioners prior approval.

Commission member Noel Andress stated his opinion that an elected County Manager would not assist in improving diversity within the County Government, and would increase cost to the County. Mr. Andress stated that while citizens voted to elect a Lee County Public School Superintendent, the School Board no longer had any say over who would be overseeing and collaborating with them, therefor removing the School Board's power. Mr. Andress stated he did not want to see that happen to the Board of County Commissioners.

MOTION: Commission Vice-Chairman, Andrew Sund moved to proceed forward with drafting language for Commission discussion and review that would precipitate the position of County Manager for Lee County become a publicly elected official, seconded by Commission member Eric Feichthaler.

VOTE: The motion failed by a vote of 2 to 11 with only Mr. Sund, and Mr. Feichthaler voting in favor.

Voluntary Annexation:

Assistant County Attorney Joe Adams notified the Commission that the Lee County Attorney's Office provided the drafted language regarding voluntary annexation as requested following the June 2023 Charter Review Commission Meeting. Commission member Ronald Inge stated that while Voluntary Annexation is an issue, he had concerns about the drafted language that was provided to the Commission by the County Attorney's office.

MOTION: Commission member Kevin Bresserer moved that the Commission proceed with discussions and the drafting of language regarding the issue of Voluntary Annexation in Lee County, seconded by Commission member Ronald Inge.

VOTE: The motion passed by a vote of 13 to 0 with all Commission members voting in favor.

MOTION: Commission member Ronald Inge moved to invite local municipality governmental leaders to present before the Charter Review Commission on the topic of Voluntary Annexation in Lee County.

VOTE: The motion passed by a vote of 13 to 0 with all Commission members voting in favor.

Commission on Ethics:

Deputy County Attorney Andrea Fraser notified the Commission that the Lee County Attorney's Office provided the information on the attempt to create a Commission on Ethics from the 2015-2016 Charter Review Commission. Ms. Fraser also informed the Commission that they do not possess the authority to force local municipalities to adhere to a Lee County Code of Ethics unless that municipality has voluntarily entered into an agreement with Lee County.

Commission member Noel Address requested clarification if the Charter Review had the authority to bestow subpoena authority on to the Inspector General. Clerk Karnes stated that while the Charter Review was able to propose additional responsibilities for the Clerk of Court and Comptroller's office they did not have the authority to reduce the responsibilities of the Clerk of Court and Comptroller's office. Deputy County Attorney Andrea Fraser informed the Commission they did not have the authority to provide the Inspector General's Office with subpoena abilities as those abilities remain regulated at the State level. Clerk Karnes informed the Board that Lee County is the highest populated county in Florida without an Ethics Commission, but urged the Commission to consider the larger picture and focus on an ethics ordinance at this time.

MOTION: Commission Chairman Nathan Shaw requested that the Charter Review Commission vote in favor or against moving forward with exploring a ballot measure to create an Ethics Code and, or an Ethics Commission for Lee County.

VOTE: The motion passed by a vote of 9 to 4 with Commission members Ronald Inge, Kevin Besserer, Eric Feichthaler, and Keith Dean voting against the motion.

Charter Review Commission Members as Citizen Elected Positions:

Commission member Noel Address introduced the idea that the public should elect Charter Review Commission members instead of them being appointed by the Board of County Commissioners. Commission member Kevin Besserer raised concerns over the cost of elections, and possible ethical implications. Chairman Nathan Shaw informed the Commission that the County Attorney's Office has advised him that State Statute stated that Charter Review Commission members are appointed by the County Commissioners. No motion or vote was taken on this item.

County Development/Land Development Code Extensions:

Commission member Richard Akin questioned the public comment about issues regarding County Development/Land Development Code Extensions. Mr. Akin referenced to comments made by public speakers regarding development orders that were issued in previous decades, which continued to receive extensions. Public speakers brought concerns that the needs of the County have changed, and while issued Development Orders might have been appropriate at their passing, they might not be appropriate for the County at this time. Mr. Akin questioned Assistant County Attorney Joe Adams to confirm that Development Orders are good for six years and extensions remain strictly regulated by Executive Orders and state statute. Mr. Adams confirmed and stated that Development Order extensions are based on Executive Orders and State Statute, meaning that the Charter Review Commission does not have the authority to alter the process. No motion or vote was taken on this item.

Percentage of Vote Needed to Move an Item to the Ballot:

Commission member Noel Address introduced the idea to reduce the number of votes required to move a Charter Review Commission item straight to the ballot, bypassing the Board of County Commissioners. Mr. Address emphasized that the Charter Review Commission has been a burden for the Lee County Tax Payers, and to date has not sent a single item before the voting public. Mr. Address questioned the validity and effectiveness of the Charter Review Commission if it is unable to serve the public of Lee County.

MOTION: Commission member Noel Address moved to pursue discussion of changing the percentage/number of in favor votes required to move a Charter Review Commission item to the ballot from 4/5 (12 in favor votes) to 2/3 (10 in favor votes), seconded by Commission member Kevin Besserer.

VOTE: The motion failed by a vote of 5-8, with only Commission members Eric Feichthaler, Kevin Besserer, Vice-Chairman Andre Sund, Noel Address, and Doug Congress voting in favor.

ADJOURNMENT:

Commission Chairman Nathan Shaw moved to adjourn the meeting, seconded by Commission member Ronald Inge called and carried.

The Chairman adjourned the meeting at 6:37 p.m.