

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT FILED
IN AND FOR ESCAMBIA COUNTY, FLORIDA SANTA ROSA COUNTY
CLERK'S OFFICE**

**THE HONORABLE ERNIE LEE MAGAHA,
As Clerk of the Circuit Court and Comptroller
Of Escambia County, Florida,
Plaintiff,**

2006 SEP 11 A 10:47

v.

**D.M. "MIKE" WHITEHEAD, JAMES W. "BILL"
DICKSON, MARIE YOUNG, TOM BANJANIN,
KEVIN WHITE, each as Members of the Board of
County Commissioners of ESCAMBIA COUNTY,
FLORIDA, (and not individually), and
ESCAMBIA COUNTY, FLORIDA,**

Defendants. Case No. 2006-0773 CA 01

ORDER GRANTING TEMPORARY INJUNCTIVE RELIEF

THIS MATTER is before the Court on Plaintiff Ernie Lee Magaha's Complaint for Declaratory Judgment and for Temporary Injunctive Relief filed on August 30, 2006. The parties appeared before the Court for an evidentiary hearing regarding only the request for temporary injunctive relief on September 8, 2006. Having carefully considered the positions of the parties and the evidence presented, the Court finds as follows.

On August 17, 2006, the Board of County Commissioners of Escambia County, Florida, [hereinafter BOCC] adopted a resolution which established a county Finance Department that would become effective on October 1, 2006. (Exhibit A). The BOCC amended the resolution on September 7, 2006. (Exhibit B). Plaintiff filed his complaint on August 30, 2006, asserting that the BOCC's resolution is contrary to both constitutional and statutory mandates and that the resolution's implementation should be enjoined pending a final determination of the complaint

for declaratory relief. While the Court recognizes that injunctive relief should be used only sparingly,¹ the Court finds that such temporary relief is warranted in this case.

The purpose of a temporary injunction is to preserve the status quo until a final hearing when full relief may be granted. *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So.2d 750 (Fla. 1st DCA 1994). A temporary injunction must be based upon a showing of the following criteria: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest. *Thompson v. Planning Commission of the City of Jacksonville*, 464 So.2d 1231 (Fla. 1st DCA 1985). The Court finds that all four prongs of the test have been met.

Irreparable injury likely would occur absent injunctive relief. This litigation and the potential implementation of the resolution involve questions regarding the daily responsibilities of Plaintiff as a constitutional officer, affect the status of public employees, and concern the expenditure of public funds. Plaintiff is a constitutional officer charged with serving as clerk and accountant of the Board of County Commissioners, and as auditor, recorder, and custodian of all county funds. Article VIII, Section 1(d), Florida Constitution; Sections 28.12 and 125.17, Florida Statutes (2005). If someone other than Plaintiff and his employees were allowed to prevent Plaintiff from performing his constitutional duties, the acts performed by someone other than Plaintiff or his staff would be violations of the state constitution. Those acts could not be reversed, but Plaintiff would remain personally and criminally liable for them. Additionally, Plaintiff has provided testimony and written evidence showing that Defendants are soliciting Plaintiff's employees thereby causing confusion and concern among employees about their employment status. (Exhibit C). Furthermore, Plaintiff has shown that in implementing the resolution Defendants have made substantial steps toward significantly reducing Plaintiff's

¹ *Thompson v. Planning Commission of the City of Jacksonville*, 464 So.2d 1231 (Fla. 1st DCA 1985).

budget, which likely would prevent Plaintiff from receiving necessary funding to fulfill his legal duties. (Exhibit D).

The Court finds that Plaintiff has no adequate remedy at law to prevent the likely irreparable harm. Defendants' Memorandum of Law in Opposition to Issuance of Temporary Injunction does not address this factor.

Plaintiff possesses a substantial likelihood of success on the merits. A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated. *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So.2d 750 (Fla. 1st DCA 1994). The Clerk of the Circuit Court has the responsibility to perform its auditing functions both as an *arm of the board* in auditing the records of constitutional officers and as a *watchdog of the board* in the case of pre-auditing accounts of the board in determining legality of expenditure. *Alachua County v. Powers*, 351 So.2d 32 (Fla. 1977). The BOCC's resolution empowers the new department with duties outlined in sections 2 - 4 of the document ranging from determining pay for employees and receiving, verifying, and recording deposits in county accounts to preparing checks, deposits, and funds transfers, preparing reports and tax forms, and reconciling statements. There is a substantial likelihood that the terms of the proposal encroach to some degree upon Plaintiff's custodial, recording, and auditing functions and his duty to serve as clerk and accountant of the BOCC.

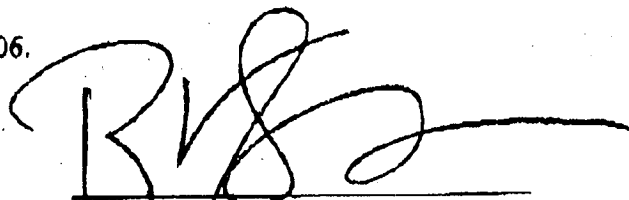
Finally, the Court finds this is an urgent matter of great public interest. This case does not involve merely a private dispute, but it involves questions of constitutional and statutory construction regarding matters of public administration. It affects both the parties involved and the residents of Escambia County, and it has the potential of creating unnecessary financial expenditures. Without granting injunctive relief, the Court would allow disruption of the status

quo by permitting a new Finance Department to begin implementation and/or operation on October 1, 2006, which ultimately could affect the county's annual budget for the coming year and could cause disruption and discontinuity of Plaintiff's constitutionally and statutorily mandated duties.

Accordingly, it is

ORDERED AND ADJUDGED that a temporary injunction against the implementation of the BOCC's resolution is *granted* pending final determination of the action for declaratory judgment.

DONE AND ORDERED in Chambers at the Santa Rosa County Courthouse in Milton, Florida, this 12th day of September, 2006.



Ronald V. Swanson
Judge, First Judicial Circuit

Copies to:

J. Nixon Daniel, III & John F. Windham, Beggs & Lane, 501 Commendencia Street (32502), P.O. Box 12950, Pensacola, Florida 32591-2950

Lisa Norris Bernau, Office of the Clerk of Circuit Court and Comptroller, 190 Governmental Center, P.O. Box 333, Pensacola, Florida 32591-0333

Janet Lander, Escambia County Attorney, 14 West Government Street, Room 411, Pensacola, Florida 32502

Escambia County
Clerk's Original
8/17/2006 / CAR III-2

RESOLUTION R2006-1166

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, ESTABLISHING THE COUNTY'S FINANCE DEPARTMENT; DEFINING THE DUTIES OF THE FINANCE DEPARTMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO EITHER HIRE ADDITIONAL EMPLOYEES TO OPERATE THE FINANCE DEPARTMENT OR CONTRACT FOR THE SERVICES OF AN INDEPENDENT CONTRACTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, § 1(d), Florida Constitution, provides that the Clerk of the Circuit Court shall be the ex officio clerk of the Board of County Commissioners, auditor, recorder and custodian of all county funds; and

WHEREAS, pursuant to a Memorandum of Understanding between Escambia County Board of County Commissioners (County) and Ernie Lee Magaha, Clerk of the Circuit Court (Clerk), dated July 27, 1995, the Clerk has assumed certain additional responsibilities, including payroll preparation for County employees, accounts receivable, accounts payable, fixed assets and grants/projects; and

WHEREAS, the above mentioned responsibilities are not legislatively mandated functions of the Clerk; and

WHEREAS, during the past year the County has proceeded in good faith to cooperate with the Clerk, the Escambia County Sheriff, and the County's computer consultant, Solbourne Computer, Inc., to acquire a modern, reliable, and integrated computer software system (Oracle E-Business Suite) for the core administrative and financial processes of those local government entities; and

WHEREAS, the Clerk has recently withdrawn from the cooperative effort to develop and

Verified By: *Off*
8/21/2006

PLAINTIFF'S

[REDACTED]

implement the Oracle E-Business Suite; and

WHEREAS, the Clerk's refusal to cooperate in the development and implementation of the Oracle E-Business Suite would necessarily require the Clerk to obtain a different and potentially incompatible software system in order to continue performing the aforementioned responsibilities.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:

Section 1. The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Beginning October 1, 2006, the structure of Escambia County's Administration is hereby amended to include a Finance Department under the direct supervisory authority of the County Administrator that shall have among its responsibilities preparation of payroll for county employees, accounts payable, accounts receivable, fixed assets, projects/grants and associated administrative functions necessary to support those responsibilities.

Section 3. The specific duties of the Finance Department shall include but not be limited to: calculation of time worked and compensation earned by County employees; preparation of all payroll checks, deposits, or funds transfer authorizations (except that all authorizations mandated by the Florida Constitution and Florida Statutes shall still be required by the appropriate party); preparation of all necessary payroll reports for outside agencies; preparation and processing of all W-2 and other federal tax forms; management of all taxable reimbursements; management of contracts with all outside agencies regarding pensions and employee benefits; receiving and reviewing invoices and preparing receiving reports and vouchers, verification and recording of deposits in County accounts, and periodic reconciliation of account statements, and the

responsibility for ensuring that the County complies with all applicable federal, state, and local laws and regulations.

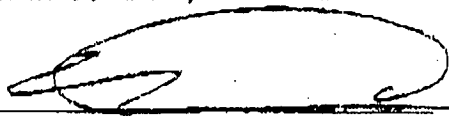
Section 4. The Finance Department shall provide periodic reports and supporting documentation to the Clerk to allow him to fulfill his functions as auditor and accountant for the County and to allow him to authorize disbursement of funds as required by the constitution and laws of the State of Florida.

Section 5. At the discretion of the County Administrator and upon approval of necessary budgetary appropriations and additional positions by the Board of County Commissioners, the Finance Department may fulfill the responsibilities described in this resolution by hiring additional employees or by contracting for specific services with an independent contractor in accordance with the County's established procurement procedures.

Section 6. This Resolution shall take effect immediately upon adoption by the Board of County Commissioners.

ADOPTED this 17th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

By: 
D. M. "Mike" Whitehead, Chairman

ATTEST: ERNIE LEE MAGAHA
Clerk of the Circuit Court



By: [Signature]
Deputy Clerk

BCC Approved: August 17, 2006

Date Executed
1 6 01 2006

This document approved as to form and legal sufficiency.

By: [Signature]
Title: County Attorney
Date: August 16, 2006

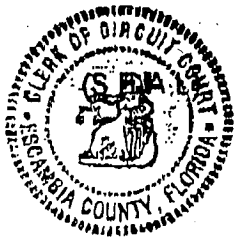
STATE OF FLORIDA
COUNTY OF ESCAMBIA

I, ERNIE LEE MAGAHA, CLERK OF THE CIRCUIT COURT, and ex-officio Clerk to the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of Resolution R2006-166, as the same was duly adopted and passed at a Meeting of the Board on the 17th day of August, 2006, and as the same appears on record in my office.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 21st day of August, 2006.

ERNIE LEE MAGAHA, CLERK OF THE CIRCUIT COURT, AND EX-OFFICIO CLERK TO THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA

By: *Louis Harris*
Deputy Clerk

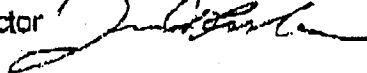


BCC: 9-7-2006



BOARD OF COUNTY COMMISSIONERS
Escambia County, Florida

DEPARTMENT: Administrative Services

FROM: Jean A. Kassab, CGFM, Director 

DATE: August 31, 2006

ISSUE: Amend the action of the Board taken on August 17, 2006 Relative to the Enterprise Resource Planning (ERP) Governance Council's Recommendation Concerning the Continued Implementation of the Enterprise Resource Planning Software/Oracle Implementation

RECOMMENDATION:

That the Board amend its action taken on August 17, 2006 by approval of amended paragraphs D & E, as follows:

D. Authorize the Human Resources Department to release offers of priority consideration documents to all affected employees of the Clerk to the Board's Finance Department and to complete a review of the titles and classifications of the new BCC Finance Department within one year.

E. Affected employees of the Clerk to the Board's Finance Department will be offered priority consideration to the new Board Finance Department with comparable salary, longevity, leave and benefits. Some management positions will be designated under the unclassified service and be eligible for Management Optional Benefits (MOB). The remaining positions will be temporarily unclassified.

BACKGROUND:

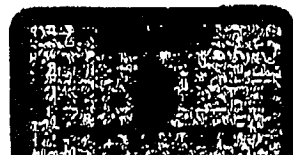
The ERP Governance Council at their meeting on August 9, 2006, requested that BCC staff provide information on how the Board would approach completing the implementation of the Oracle software package as a result of the Clerk's withdrawal from participation.

BUDGETARY IMPACT:

N/A

LEGAL CONSIDERATIONS/SIGN-OFF:

N/A



BCC 9/7/06
RE: Amendment of Board Action of 8/17/06
Date August 31, 2006
Page 2 of 2

PERSONNEL:

N/A

POLICY/REQUIREMENT FOR BOARD ACTION/DISCUSSION:

N/A

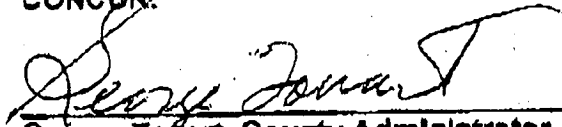
IMPLEMENTATION REQUIREMENTS:

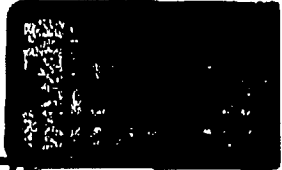
N/A

COORDINATION WITH OTHER AGENCIES/PERSONS:

N/A

CONCUR:


George Tohart, County Administrator



BOARD OF COUNTY COMMISSIONERS

ESCAMBIA COUNTY, FLORIDA



Rod Powell, SPHR
Director

HUMAN RESOURCES DEPARTMENT
2257 N. Baylen Street
Pensacola, Florida 32501
Tel: (850) 595-4961 Fax: (850) 595-4966

September 8, 2006

COPY

Patricia L. Sheldon
4471 Whisper Court
Pensacola, FL 32504

Dear Ms. Sheldon:

The Escambia County Board of County Commissioners, on August 17, 2006, adopted Resolution 2006-168 to establish a BCC Finance Department. On behalf of Mr. George Touart, County Administrator, I would like to announce the formation of a new BCC Finance Department, effective October 1, 2006. This new department will consist of a Department Director with four program areas: (1) Accounts Receivable, (2) Accounts Payable, (3) Payroll, and (4) Administrative Support.

We will be posting all positions for staffing the BCC Finance Department in the HR NeoGov recruitment system at www.myescambia.com. Priority consideration over all other applicants in the selection process will be given to those employees currently performing Board Services Administration and Finance functions. If you apply and are selected for a position at the same or similar grade/qualification level as your current position, you will be eligible for comparable benefits, as well as equal pay, status, and seniority. New employees on board by October 1, 2006, will also be entitled to receive the 3% CPI pay adjustment planned for all BCC employees.

Please consider responding to the position announcements by going to the BCC web site and applying online in NeoGov. Internal applications from employees in the Board Services Administration function must be received or postmarked by September 18, 2006, in order to receive priority consideration.

B2

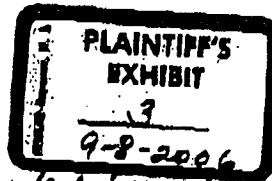
I hope you will carefully consider this opportunity to join our new Finance Department. If you have any questions, please contact me at 595-4680 or Barbara Murphy in HR Employment at 595-1479.

Sincerely,

Rod Powell, SPHR, Director
Human Resources Department

RP/pc

c: Barbara Murphy, Employment Division, Human Resources



(admitted)

Barbara told by Rod to release letters

@ 9:35 am and post jobs on the

Escambia County Clerk of the Circuit Court and Comptroller
Proposed Non-Court Budget
FY 2007

Account	Title	Proposed FY 2007 Budget as of 7/12/06
51100	Executive Salaries	48,415
51200	Regular Salaries	2,840,280
51300	Other Salaries	79,111
51400	Overtime	47,113
51501	Management Option Benefit	8,683
52100	FICA Taxes	208,204
52200	Retirement Leave Payouts	298,498
52300	Life & Health Insurance	398,830
52310	Employee Assistance Program	485
52400	Workers Compensation	15,709
	Total Personnel Costs	3,643,326
53101	Professional Services	38,152
53201	Accounting & Auditing	125,000
53401	Contractual Services	40,569
54001	Travel & Per Diem	23,579
54101	Communications & Postage	61,268
54401	Rentals & Leases	8,045
54501	Insurance	518
54601	Repairs & Maintenance	200,616
54701	Printing & Binding	34,090
54901	Other Current Charges	23,068
55101	Office Supplies	129,452
55201	Operating Supplies	26,000
55401	Publications/Memberships	34,438
55600	Uncollectible Debt	413
	Total Operating Costs	743,202
56401	Machinery & Equipment	17,500
	Total Capital Outlay	17,500
	Total Expenditures Before New Programs	4,404,028
	Less Clerk's Fees	2,780,402
	Board Appropriation Before New Programs	1,623,626
	Salary Survey Adjustment (BCC Reserves)	154,720
	Pentamation Upgrade (BCC Reserves)	180,000
	Total Board Appropriation	1,958,346

PLAINTIFF'S
EXHIBIT

