

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

To: Honorable Chairman and Members of the Board of County Commissioners

From: Herbert W. A. Thiele, Esq.
County Attorney

Date: February 16, 2009

Subject: Status of *Brock v. Collier County Board of County Commissioners*
Second District Court of Appeal Case No. 2D08-3126

On January 30, 2009, the Second District Court of Appeal ruled against Collier County in a significantly serious opinion which held that the Clerk of the Court was entitled to all of the interest income earned off of surplus county funds held by the Clerk, and the Clerk could use that income for the operations of his office despite a Board of County Commissioners' Resolution directing the Clerk differently. A copy of the Second District Court Appeal's decision is attached hereto. Subsequent to the rendering of this opinion, the Collier County Attorney's Office contacted the Florida Association of Counties ("FAC") and the Florida Association of County Attorneys ("FACA") to seek their participation in seeking either a rehearing by the Appellate Court or to certify the question to the Florida Supreme Court. Our office, acting in our capacity as President of the Florida Association of County Attorneys, and General Counsel, Ginger Delegal, on behalf of the Florida Association of Counties, filed a Joint Motion seeking such amicus status, a copy of which is also attached hereto.

The significance of this decision has been shown by the Florida Association of Counties doing some preliminary investigation as to the fiscal impact that this could have on counties around the state, including Leon County. For Collier County alone, FAC estimated that it would allow the Clerk to keep between 25 million and 30 million dollars. The amount in Bay County has been estimated at approximately 10 million dollars.

Since the Florida Supreme Court decision in *Alachua County v. Powers* in 1977, this Second District Court of Appeal opinion is the first proclamation that a Clerk is entitled to "unrestricted use" of investment income derived from every fund that is in the Clerk's custody, even when there is official direction provided by a Board of County Commissioners to treat the interest income differently. This not only could be of a significant impact to county budgets before the Board of County Commissioners, but will also lead to potential confusion on what is to be done with interest on investments for restricted funds, such as motor fuel tax, enterprise funds, water and sewer fees, and the like.

We bring this matter to your attention now so that you are aware of this significant case at this early stage. The County Attorney's Office will continue to keep you updated as this matter progresses. In the interim, should you have any questions or concerns, please contact the County Attorney's Office.

HWAT:eal
Attachments

cc: Parwez Alam, County Administration
Alan Rosenzweig, Assistant County Attorney