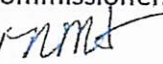


MEMORANDUM

TO: Levy County Board of County Commissioners
FROM: County Attorney Nicolle Shalley 
CC: Wibur Dean, County Coordinator
Jacqueline Martin, Human Resources Director
DATE: October 5, 2023
RE: Authority to Hire Department Heads

This memorandum is prepared in follow up to the brief discussion at your September 19th Regular Meeting when the County Coordinator asked if the Board would like to conduct interviews for the Director of the Construction/Maintenance/Water Department or if you would like the County Coordinator to do so. As you will recall, I told the Board I was under the impression that the County Attorney and County Coordinator were the only two at-will employees of the board, but I would look into it further and report back to you.

Turns out no one could readily answer the question of “who has the authority to hire Department Heads” and so, after much research, meeting with each of you individually, consulting our outside Labor and Employment Law counsel and discussing these issues with the County Coordinator and County Human Resources (HR) Director and others, what follows is a summary of the issue along with my thoughts and recommendations from both a legal and practical perspective.

To begin with, to answer the “authority” question you must understand Levy County’s chosen form of County Government. I started with a look at the County’s Code of Ordinances and although it has a Chapter 2 titled “Administration” with an Article II. titled “Board of County Commissioners” and an Article III. titled “Officers and Employees” all of those sections are marked “reserved.” Commissioner John Meeks located a portion of the Florida County Government Guide published by the Florida Association of Counties titled “County Government Structure in Florida” which I have attached and it is well worth your time to read. I will summarize from that document (with pages noted):

- Levy County is a non-charter, “variation” of the traditional “county commission” form of government (p. 7 & 14).
- The County is non-charter because it has not adopted a charter (p.11).
- The County is a “variation” of the traditional “county commission” form of government because: (1) the Board has not adopted the County Administration Law of 1974 per Section 125.70, Florida Statutes, and (2) the Board has employed a “County Coordinator” that performs many (but not all) of the duties of a County Administrator or Manager (p. 12-14).

The Guide identifies 4 counties (Hamilton, Jefferson, Levy and Madison) structured as a “variation” of the traditional “county commission” form of government (p. 13). It now appears

that Jefferson County and Madison County have adopted the County Administration Law of 1974 per Section 125.70, Florida Statutes and each now employs a County Manager.

In a traditional "county commission" form of government, the Board derives its authority and duties from Article VIII of the Florida Constitution; Chapter 125, Florida Statutes and various other statutory sections. As stated most broadly in Section 125.01, Florida Statutes – the Board as the "legislative and governing body of a county shall have the power to carry on county government." The Board can then delegate certain authority and duties to County staff – such delegation can take many forms (e.g., job descriptions, ordinances, resolutions, policies, or even a simple motion of the Board.)

So to answer the question - who has the authority to hire a Levy County Department Head – one has to figure out what authority and duties the Board has delegated to the County Coordinator and what it has reserved to itself.

- The County Coordinator's job description, under "Examples of Work Performed" states that he "Directs and manages the administration of all departments and agencies and designated by the County Commission, with authority to suspend, discharge or remove any employee under the jurisdiction of the Board pursuant to procedures adopted by the Board of County Commissioners." The County Coordinator's job description does not specifically address hiring authority. The HR Department's records reflect that the County Coordinator position title was first used in 2002, prior to that there were positions titled "Administrative Assistant to the Board", "County Administrator" and "Assistant County Administrator." The HR Director recalls that the Board worked with attorney Ted Wilkins to develop the County Coordinator position and made intentional choices in crafting the job description. This makes sense as the job description includes many of the authority and duties stated in Section 125.74, F.S. (copied verbatim), but not all of them. In 2008, it appears (from a memo and draft ordinance in the County Attorney's files) that the Board discussed moving to a County Administrator/Manager form of government, but did not take action to adopt the County Administration Law of 1974 per Section 125.70, Florida Statutes.
- Personnel Policy Number 302 in the "Comments/Procedures" section states "Department heads will be evaluated annually by the County Coordinator."
- Personnel Policy Number 101 in the "Comments/Procedures" section states "Department Heads of the County are considered "at will" employees. This means that Department Heads serve at the pleasure of the County and may be separated from employment at any time for any reason subject to applicable employment laws."
- The County's organizational chart reflects that Department Heads report to the County Coordinator.

- As to the hiring of employees below the Department Head level, Personnel Policy Number 202 delegates that authority as follows: "The department head has the responsibility to determine whether an applicant is technically qualified for the open position and meets the other job-related criteria necessary to perform the job. The decision whether to hire the applicant is to be made by the department head, but must also have the approval of the Human Resource Manager."

Based on the foregoing, it appears the Board reserved to itself the authority to hire Department Heads; however, once hired, the County Coordinator has been delegated the full authority to supervise, evaluate, suspend, discharge or remove the Department Head. The Board has no further role in those matters, except, of course, the Board can always provide information/feedback to the County Coordinator, but must refrain from directing any employment actions that are within the County Coordinator's authority. That is the case I discussed with each of you.

In speaking with those with institutional knowledge, it appears that sometimes the Board has handled the hiring of a Department Head and other times they have delegated that authority to the Coordinator. That is why the County Coordinator asked the Board how you wanted to handle it this time. The County's outside Labor and Employment Law counsel confirmed that, from a legal perspective, it is best to be consistent in such matters and, from a practical perspective, it may lead to confusion when some Department Heads are hired by the Board and may then think they report to the Board, while others are hired by the Coordinator.

To provide consistency and transparency, the HR Director and I have outlined a process for Department Head hiring by the Board. This process generally follows past Board practice and the hiring process for other employees. I recommend that it be made clear to applicants that the Board handles the hiring and, upon being hired, the Department Head is a direct report and at-will employee under the County Coordinator.

- (1) Upon vacancy, the HR Director will post the position.
- (2) Upon close of the posting, the HR Director will screen the applications and prepare a brief report identifying those that meet the minimum qualifications and those that do not. The applications and report will be forwarded to each Commissioner for their review.
- (3) Each individual Commissioner should timely review the applications and report and contact the HR Director to advise which applicants that Commissioner has chosen to interview. All applicants chosen by one or more Commissioners will be invited to interview.
- (4) The HR Director will contact the chosen applicants and schedule the interviews for a Regular Meeting or Special Meeting (if the Board calls one for that purpose.)
- (5) The HR Director will prepare a list of interview questions and provide that to the Board.
- (6) The Board will convene the public meeting, conduct the interviews, deliberate and vote on the top applicant (or the Board may rank multiple applicants) the Board would like to extend an offer of employment to. The Board will then direct the County Coordinator to negotiate the terms of employment within the County's adopted policies. In deliberating,

the Board will determine the top applicant(s) by consensus, not by use of scoring or other numeric formula.

- (7) The County Coordinator will negotiate and upon acceptance of the offer of employment by an applicant will inform the Board and the HR Department will process all remaining employment paperwork and on-boarding.

Additional thoughts/recommendations:

- (1) Although the County is not required to adopt Code provisions that explain its unique "variation" on the traditional "county commission" form of government, it may be helpful at least at the highest level – Board, County Coordinator, County Attorney and Department Heads. And, if the Board is going to continue the practice of "assigning" Commissioners to particular Departments, the Board should discuss and provide direction regarding the intent, purpose and limitations of such "assignment" and that can be included in the Code.
- (2) The County's Organizational Chart and Personnel Policies could benefit from review and revision to update obsolete provisions and provide clarity on some of these issues.
- (3) Before engaging in a lot of work on (1) and (2), the Board may wish to discuss whether the County's current form of government is working well? Or could it benefit from some changes - such as an Assistant County Coordinator – given the 17 Departments that report to the Coordinator? Or does it make sense to move to a County Manager/Administrator form of County government (like the vast majority of non-charter counties) as the County grows – in terms of residents, development, complexity?

As always, just give me a call or stop by my Office if you have any questions about this memorandum or other matters.