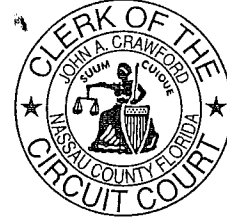




John A. Crawford
Clerk of the Circuit Court
Nassau County



January 25, 2007

The Honorable Jim B. Higginbotham, Chairman
Nassau County Board of County Commissioners
Post Office Box 1010
Fernandina Beach, FL 32035

Dear Chairman Higginbotham and Commissioners:

On Monday, January 22, I expressed my concern about continuing to authorize payments under the "Amended Agreement," dated October 12, 2005, between the Board of County Commissioners of Nassau County, Florida and the Nassau County Administrator, Michael G. Mahaney. My concerns were also expressed to you in a memo from Clerk's counsel dated January 18, 2007. The nature of my concerns, you will recall, stem from the fact that the County Attorney, Mike Mullin, has stated on the record and repeatedly to me in private that a significant term, Section 2.3, of the Amended Agreement does not appear to have been entered into in the Sunshine, and from the effect this has on my duties and personal liabilities as Clerk of the Circuit Court and Ex-officio Custodian, Recorder, and Auditor of county funds. As you know, such duties prohibit me from issuing payment on unlawful contracts. My counsel also expressed to you his understanding that the effect of the unauthorized inclusion of Section 2.3 of the Amended Agreement is to render the Amended Agreement void *ab initio*, or unenforceable from the start, such that it currently has no validity. My counsel also expressed to you his understanding that regardless of whether the Sunshine violation regarding Section 2.3 of was intentional or accidental, the effect on the Amended Agreement is the same.

My counsel and I have proposed various possible remedies, including, when Mr. Mullin suggested he might recommend striking Section 2.3 from the Amended Agreement, taking the additional step of re-negotiating or formally ratifying a compliant version of the Amended Agreement, in order to remove the taint of the Sunshine violation. However, on Tuesday, January 23, the Board resolved to seek a declaratory judgment as to the legality of the Amended Agreement. At my request, the resolution to seek the declaratory judgment included a request to address the legality of Section 2.3.

As the Board knows, a declaratory judgment will in all probability not be entered for several months, and while the Board awaits the judgment, I am in the same predicament I was in prior to your January 23 vote. Specifically, each payday, I am put in a position of issuing payment on a contract that the County Attorney has stated is

tainted by the Sunshine law violation. Because of these express statements, I will never be in a position to say that I did not have a good faith reason to believe that the Amended Agreement is an invalid contract, and I will therefore never be able to defend adequately an allegation, should it arise some time in the future, that I knowingly issued unlawful expenditures of county funds if I continue to issue payment of salary pursuant to the Amended Agreement. As a consequence, I have been advised that my safest course, dictated by my duties and liabilities as Clerk, is to refuse payment on the Amended Agreement.

I expressed these concerns in my letter of January 18, 2007, forwarding a memo from my counsel, and in person to the Board on January 22. However, I am cognizant of the potential difficulties inherent in the course I am required to take. I am also of the belief that while the County Administrator remains in office, he is entitled to some payment for his services, just as, in the January 18, 2007 memo, my counsel advises with respect to past services rendered. However, I suggest that payment for such services should be directed not pursuant to the Amended Agreement, but pursuant to the Board's anticipated continued employment of the County Administrator while it awaits a declaratory judgment on the legality of the Amended Agreement. Therefore, I respectfully propose that the Board pass a Resolution to that effect. Such a Resolution would allow me to issue payment to the County Administrator for continuing services but would not constitute payments pursuant to an unauthorized contract that would implicate my personal liabilities. If the Board is agreeable to this proposal, please consider the attached resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Crawford". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

John A. Crawford

Attachment

RESOLUTION NO. 2007-____

A RESOLUTION OF NASSAU COUNTY, FLORIDA, DIRECTING ONGOING PAYMENT OF SALARY TO THE NASSAU COUNTY ADMINISTRATOR PENDING DECLARATORY JUDGMENT ON THE AMENDED AGREEMENT DATED OCTOBER 12, 2005 BETWEEN THE BOARD OF COMMISSIONERS OF NASSAU COUNTY AND MICHAEL G. MAHANEY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 12, 2005, the Board of County Commissioners of Nassau County, Florida (the "Board") and the Nassau County Administrator, Michael G. Mahaney, entered into an employment contract titled the "Amended Agreement"; and

WHEREAS, the County Attorney, Mike Mullin, has stated that Section 2.3 of the Amended Agreement does not appear to have been entered into in accordance with the Sunshine Law; and

WHEREAS, the Clerk of the Circuit Court of Nassau County (the "Clerk") has expressed personally and through counsel his concern about continuing to authorize payments under the Amended Agreement in light of its implications on his duties and personal liabilities as Ex-Officio Custodian, Recorder, and Auditor of county funds; and

WHEREAS, the Clerk has been advised that if Section 2.3 was in fact entered into in violation of the Sunshine Law, whether through mistake or otherwise, the Amended Agreement is void *ab initio*, rendering payment thereunder unlawful; and

WHEREAS, on Tuesday, January 23, 2007, the Board resolved to seek a declaratory judgment as to the legality of the Amended Agreement, including (at the Clerk's request) as to the legality of Section 2.3; and

WHEREAS, a declaratory judgment will in all probability not be issued for several months, leaving the Clerk in the position of issuing payments on a contract that the County Attorney has indicated is tainted by a Sunshine Law violation; and

WHEREAS, such continued payments reasonably implicate the Clerk's duties and liabilities; and

WHEREAS, the Board is able to authorize and direct payment of the County Administrator's salary on an ongoing basis regardless of the legality of the Amended Agreement;

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

The Board hereby authorizes and directs payment of continued salary to the Nassau County Administrator, not pursuant to the Amended Agreement but instead

pursuant to this resolution and the County Administrator's anticipated continued services while the Board awaits a declaratory judgment on the Amended Agreement. Such payments should be in the amount and frequency of the most recent salary payment to the County Administrator. This Resolution is effective as of Friday, January 26, 2007, and will remain in effect until such time as the Board re-addresses payment pursuant to the Amended Agreement after issuance of the declaratory judgment with respect thereto.

PASSED AND ADOPTED by the Board on this ___ day of January, 2007.

**BOARD OF COUNTY COMMISSIONERS
OF NASSAU COUNTY, FLORIDA**

CHAIRMAN

ATTEST:

CLERK

APPROVED AS TO FORM:

COUNTY ATTORNEY