


**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
SITUATION AWARENESS REPORT**

DATE: July 15, 2019

FROM: Jerry Cameron, Interim County Administrator 

SUBJECT: Status of Courthouse Space

Commissioners,

I have made every attempt to carry out the Commission's instructions at the May 20 meeting. I worked closely with the County Attorney to seek resolution to what has been a solid impasse. Because the situation is complex, there has been much back and forth, sometimes in the media, In order to avoid further confusion, I have with the assistance of the County Attorney prepared the attached memorandum. This memorandum will constitute my report for the BCC meeting on the 15th regarding this matter.

Attachments:

1. Memo
2. Attorney General Opinion 64-63

/ld

Administration

1769 E. Moody Blvd
Bunnell, FL 32110



Phone: (386) 313-4001

TO: Commissioners

FROM: Jerry Cameron, County Administrator

DATE: July 15, 2019

RE: Status of Courthouse Space

On May 20, 2019, the Board instructed me to determine the availability of space in the courthouse to expand the Sheriff's operations there on an interim basis, including the impact such reallocation of space would have on the Clerk of Court and the cost. There appears to be available space, but a decision of this magnitude cannot be made based on anecdotal evidence.

Based on his public comment, the Clerk has decided that *any* additional space allocated to the Sheriff is unworkable. At the same time, the Clerk has not responded to repeated overtures by myself or the County Attorney one way or the other. In short, the Clerk has not afforded me the opportunity to adequately determine the availability of space within the courthouse. Meantime, the Sheriff's untenable situation lingers. It was in this context, during my vacation last week that my designee sent a memo to the Clerk requiring him to identify 5,000 sq. ft. of space for use by the Sheriff.

The courthouse is a physical space subject to overlapping authorities. The County's role is to provide and maintain the facilities of constitutional officers. The Chief Judge without question controls the aspects of the courthouse pertaining to judicial functions. And the Clerk of course has multiple responsibilities both to the court, to the public, and to the Board.

The Attorney General opined as early as 1964 that county commissions determine the allocation of space by county officers as a corollary of their duty under law to fund, provide and maintain such facilities. The Attorney General Opinion 64-63 stood out to me because it highlights the operational difficulties faced by county commissions when it comes to space needs of courthouses. Although in his opinion the Attorney General references a statute that has been replaced, the same principle holds true today that the County controls the court facilities subject to the inherent power of the court and the powers conferred on county officers by the Florida Constitution and general law.

Charles Ericksen, Jr.
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien Jr.
District 5

The law requires us to base a decision as to the allocation of courthouse space on factual evidence, one that takes into account the unique configuration of our building and the needs of courthouse operations.

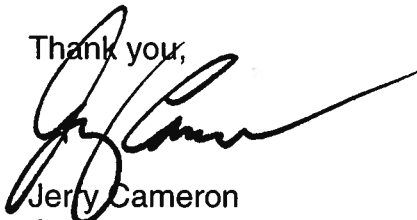
Out of concern for this situation, Chief Judge Zambrano sent a letter with important points to keep in mind when making our decision. The Chief Judge has the highest authority to determine the use of the courthouse relative to judicial functions, which are of course the primary functions of the facility. His points must be incorporated into a space needs study, including the space needed for the long awaited, second county judge. The Sheriff's use of the courthouse as an interim operations center is and must be ancillary to its primary functions.

Judge Zambrano also points out the potential perception of defendants when law enforcement officers are stationed in the courthouse. This is unavoidable based on the current crisis in the Sheriff's scattered operations. The best way to minimize this downside is by building the Sheriff's new branch office as quickly as possible, which we are committed to do.

This is a difficult situation on all sides. However, the specter of the taxpayers having to pick up a large bill as an alternative solution requires that we try to utilize existing facilities. The Clerk is adamant that there is no additional space to give. I'm reasonably certain he would not oppose an expert space needs consultant examining the courthouse to confirm his position or, alternatively, to see if any reconfiguration can accommodate the competing needs. I would ask the Board to direct me at Monday's meeting to engage an expert to inform the Board how much space may be available. This would be accompanied by an estimated cost to reconfigure the courthouse to accommodate the Sheriff without unduly disrupting the Clerk's functions or judicial operations.

We have reached the point that we must seek an expedient resolution to this issue. If accommodations for the Sheriff cannot be arranged in the Courthouse they must be found elsewhere, regardless of the fact that it will constitute a considerable financial burden. The only reasonable alternative to this would be to initiate litigation necessary to determine authorities and solutions in resolving this issue.

Thank you,

A handwritten signature in black ink, appearing to read "Jerry Cameron", with a long, sweeping horizontal line extending to the right.

Jerry Cameron
County Administrator

statute, which are by their very nature judicial questions, which should be passed on by the courts of this state and not by its attorney general. Only the said courts may furnish a final authoritative answer to the said questions, needed where titles to real property are involved.

064-63—May 18, 1964

COUNTY OFFICERS AND ORGANIZATIONS
ASSIGNMENT OF OFFICE SPACE IN COUNTY COURT-
HOUSES—§§5 AND 11, ART. VIII, §19, ART. VI, STATE
CONST.; §§2.01, 125.01 AND 125.22, F. S.

To: *Sidney F. Dick, County Assessor of Taxes, Brooksville*

QUESTION:

What person, board, commission, or otherwise, has the jurisdiction and duty to assign and reassign office space in county courthouses where such power or duty is not specifically spelled out by applicable local statutes or laws?

Neither the present constitution nor the statutes of this state specifically set out the manner of assigning office space in the county courthouses, or the officer or officers upon whom is imposed the duty of making such assignments, as well as reassignments when conditions change, that indicate the necessity of making a reassignment of such office space. Present and past constitutions of Florida, as well as the laws relating to the Territory of Florida, clearly show an intention to divide said territory and state into political divisions known as counties. The division of the Territory and State of Florida into counties has ranged from 2 counties at the time of the acquisition of the Floridas from Spain, to the present 67-county division of the state.

"The division of the state into counties had its origin in England, preceding the organization of the kingdom itself, and in the United States counties were first created by the legislatures of the various colonies and subsequently by the state legislatures." (8 Fla. Jur. 147, §2; 14 Am. Jur. 185, §2; 20 C.J.S. 757, §2.) "Government by means of counties has existed in England since an early date, and in all of the United States, with a few exceptions, since their settlement." (20 C.J.S. 757, §2). Counties, therefore, appear to be of common law origin. Although counties in Florida are established and their boundaries changed, and evidently abolished, by legislative action (*Payne v. Washington County*, 25 Fla. 798, 6 So. 881, text same), they are recognized by the State Const., as "legal political divisions of the State; that is, as governmental agencies. They are therefore not of statutory origin." (*Whitney v. Hillsborough County*, 99 Fla. 628, 127 So. 486, text 492).

Boards of county commissioners for the several counties of Florida, except for Dade county (§11, Art. VIII, State Const.) consists of 5 members, one from each of the five county commissioner districts of the county (§5, Art. VIII, State Const.) §19, Art. VI, State Const. of 1868, provided for the appointment by the governor of boards of county commissioners for the several counties of the state, said §19 having contained the provision that "their duties shall be prescribed by law," Florida constitutions of 1845, 1861 and 1865 merely stated that the legislature was authorized to establish in each county a board of (county) commissioners. Ch. 11, 1845, (approved July 26, 1845) provided for the first boards of county

commissioners as such, "consisting of the judge of probate of the county, as chairman ex officio, and four commissioners elected for terms of two years each. These boards of county commissioners were to exercise all the powers and perform all the duties which by the laws of the Territory appertain to the County Courts when sitting for county purposes." Prior to said Ch. 11, 1845, county business was carried on through a so-called *county court* consisting of the judge of the county court and two or more of the justices of the peace of the county, or, in the absence or inability of the judge of the county court, then consisting of three or more of the justices of the peace of the county. (Duval's Digest 275).

There has been little change in the county government plan since it was brought to the American colonies from England where it came down from the remotest period of Anglo-Saxon history. Under this county government plan the board, whether referred to as a board of county commissioners, a county court, or other designation, has operated the county similar in plan to the operation of a business corporation by its board of directors. "Subject to such limitations as may be prescribed by law, a county board ordinarily exercises the corporate and executive powers of the county and manages its affairs." (20 C.J.S. 848, §81).

"Boards of county commissioners are quasi corporations, and their official duties and powers partake more of the characteristics of corporate acts and powers than those of mere trustees." (Martin v. Townsend, 32 Fla. 318, 13 So. 887, text 890, and authorities there cited). Under §125.01, F. S., boards of county commissioners may at any legal meeting make "such orders concerning the care of and the improvement of the corporate property of the county as may be deemed expedient, and also to build and keep in repair county buildings, . . . issue bonds . . . for the purpose of erecting a court house, jail . . . perform all other acts and duties which may be authorized by law." Under §125.22, F. S., boards of county commissioners under the circumstances therein described and set out may lease such space in buildings other than county buildings necessary for the proper transaction of the county business and for the courts as available funds will permit. One of the duties of the boards of county commissioners is "the construction and repair of court houses and jails" to meet the needs of the county, at least to the extent of available funds (Tapers v. Pichard, 124 Fla. 549, 169 So. 39, text 40; Posey v. Wakulla County, 148 Fla. 115, 3 So. 2d 799, text 801).

The history of the ancient county courts of England is traced in II Taylor, Origin and History of the English Constitution, 574 et seq.; one of the duties of that court appears to have been the administration of the business of the county. This appears to have been true as of the date of the settlement of the American colonies. "The common law and statute laws of England which are of a general and not local nature" which are not inconsistent with the State Const. and statutes and laws of Florida, are declared to be in force in Florida by §2.01, F. S. One of the duties of the several boards of county commissioners in this state is the providing of public buildings and keeping the same in repair (§125.01(1), F. S.), including courthouses, jails, etc. Unless otherwise provided by the statutes of this state, the board of county commissioners of the several counties in Florida "in their control over county buildings," and other properties "have the duty, as well as the discretionary power, to designate or appropriate rooms in the county buildings

or elsewhere for the use of county officers. This power is a continuing one, not exhausted by a single exercise, and the assignment of offices may be changed when, in the judgment of the authorities, the public convenience will be promoted by the change, but the exercise of the power is subject to the inherent power of the courts to control court facilities, and to whatever rights and powers are conferred by statute on other county officers." (20 C.J.S. 1001, §169).

When assigning office space in a county courthouse the county commissioners should make an equitable assignment of office space between the several county offices, taking into account the needs of each such officer as well as the available space. The space assigned to each officer should be as compact as possible so that no office will be scattered throughout the building in which assigned. When there is insufficient space for the proper operation of the several offices of the county, so that the space available is limited, the available space should be apportioned among the officers or offices on an equitable basis. The fact that office space may have been assigned when the courthouse or other public building was constructed, or that there has otherwise been a general assignment of the office space in the building, gives to the offices or officers to which assigned no continued and perpetual use of the said office space preventing its reassignment when the equities of the case require reassignment.

064-64—May 19, 1964

SMALL CLAIMS COURT

CONSTRUCTION OF REFERENCE TO PLAINTIFF OR HIS
AGENT—MEANING OF TERM "AGENT" IN §42.10,
F. S.—§§63.08, 45.01, 42.19; CH. 42, F. S.

To: *Reece Brown, County and Small Claims Judge, Live Oak*

QUESTION:

What construction should be placed on the phrase "the plaintiff or his agent" as used in the second sentence of §42.10(1), F. S., relating to the commencement of actions in small claims courts under Ch. 42, F. S.?

Said §42.10, F. S., provides that actions shall be commenced in the small claims courts under Ch. 42, F. S., "by the filing of a statement of claim including the last known address of the defendant, in concise form and free from technicalities. The plaintiff, or his agent, shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto . . ." (Emphasis supplied.) As a general rule, "an agent may be expressly authorized to institute legal proceedings in behalf of his principal, but a mere agent usually has no implied power to institute legal proceedings on behalf of his principal in respect to the subject matter of the agency. The mere fact that an agent has the authority to receive payment does not give him authority to institute legal proceedings by attachment or otherwise, nor does it give him the authority to place a claim in the hands of an attorney for collection . . ." (3 Am. Jur. 2d 494, §92; see also 2 C.J.S. 1338, §116, to the same general effect). Authority to institute or conduct litigation will not be implied from the mere fact of agency, although it may arise from the