

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

ERIC JOSEY,

Case No.: 2024 CA 000135

Plaintiff,

v.

FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS;
SCHOOL BOARD OF FLAGLER
COUNTY; FLAGLER COUNTY
SHERIFF; AND CITY COMMISSION
OF THE CITY OF BUNNELL,

Defendants.

**DEFENDANTS' JOINT MOTION TO DISMISS COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Defendants, Flagler County Board of County Commissioners (“County”), School Board of Flagler County (“School Board”), Flagler County Sheriff (“Sheriff”), and the City Commission of the City of Bunnell (“Bunnell”), pursuant to Rule 1.140(b)(6), *Fla. R. Civ. P.*, file this Motion to Dismiss Complaint for Declaratory and Injunctive Relief and in support thereof states as follows:

I. SUMMARY

The Defendants, four local governmental agencies, crafted an Interlocal Agreement to bring enhanced services to underserved youth of Flagler County in a public facility. The agreement represents a remarkable feat of intergovernmental cooperation that will make available opportunities to Flagler County students that otherwise would not exist. The Plaintiff is a disgruntled citizen who has a political dispute with the Defendants and is attempting to undo months of their focused efforts. The Defendants’ activities were not conducted in secret. The Defendants received the input of community stakeholders, and the Interlocal Agreement was

considered in several public meetings. The Plaintiff's remedy is not through the Court but the ballot box. No claim of relief is stated. The Plaintiff has no standing. His sole objection is that the Sheriff is going to involve the Police Athletic League which operates under the Sheriff's auspices. The background of this dispute follows to place the claim in context.

II. BACKGROUND

The George Washington Carver Center, located at 201 East Drain Street in the City of Bunnell is the only remaining portion of the black public high school of Flagler County from the segregation era (the "Carver Center"). The facility has been owned by the County since 2005 and, before that, by the School Board, and has been used by local residents since the time the school closed in the early 1970's as an educational enrichment facility, recreation and community center, and gymnasium.

Funding for youth programs at the Carver Center has been a challenge. In 2011, the School Board and County entered into an interlocal agreement whereby the School Board agreed to staff and handle the daily operations of the Carver Center while the County would provide for the maintenance of the facility and make an annual financial contribution to the School Board for youth programs. This arrangement worked well, but funding the programs remained a challenge.

Beginning in 2023, the Defendants began discussions to also join Bunnell and the Sheriff into the interlocal agreement to improve the programs offered to the students at the Carver Center. Bunnell's role would be limited to an annual financial contribution, while the staff of the Sheriff would jointly run the facility with staff of the School Board. The County's role would continue to include maintenance of the facility as well as an annual financial contribution. The Defendants worked on the details of the new agreement over several months, and it took effect on March 4,

2024 (the “Interlocal Agreement”). Stakeholders, including Josey, were present at the meetings. Their input was solicited and considered in the development of the Interlocal Agreement.

The Interlocal Agreement enhances opportunities for the youth of Flagler County beyond what was previously available, which opportunities are available at no cost to those who cannot afford user fees. By including the Sheriff in the Interlocal Agreement, additional revenues and athletic programs will be available for students through the Police Athletic League “(PAL)”, a non-profit, support organization of the Sheriff’s Office. PAL works to prevent juvenile crime by providing quality programs and activities contributing to the character, integrity, physical and mental fitness, citizenship, sportsmanship, and personal well-being of Flagler County youth. The Board of Directors consists of law enforcement, civilian staff, and a volunteer board of directors made up of business and community leaders. The operation is managed exclusively by employees of the Flagler County Sheriff’s Office. Further, having Sheriff’s deputies on site at the Carver Center will also enhance safety and provide mentors and positive role models for the students.

In the Complaint, Josey alleges a violation of the Florida Interlocal Cooperation Act, Section 163.01, *Fla. Stat.*, which authorizes public entities to enter into written agreements for their mutual benefit. Josey alleges the Interlocal Agreement violates the act because the Sheriff intends to utilize PAL, a private entity, to provide the athletic programming at the Carver Center. For the same reason, Josey concludes that the Interlocal Agreement is beyond the grant of homerule power to the County pursuant to Article VIII, Section 1(g), *Fla. Const.*,¹ and Section 125.01, *Fla. Stat.*, and beyond the homerule power of Bunnell pursuant to Article VIII, Section (2)(b), *Fla. Const.*

¹ Although Josey cites to Section 1(g), pertaining to charter counties, he is proceeding *pro se*, and the Defendants presume Section 1(f), is the intended citation, which is the source of homerule powers of non-charter counties such as Flagler County.

For the reasons stated below, the Plaintiff's claim is wholly without merit. Nothing in the law prohibits the Interlocal Agreement. Hypothetically, the County could lawfully assign space in the Carver Center to the School Board and Sheriff to serve the public purpose of providing youth athletic and academic support services *without* a written agreement. Likewise, the City could contribute funding to the Carver Center without a written agreement. Moreover, as a threshold issue, Josey lacks standing to initiate this cause of action.

III. LACK OF STANDING

Plaintiff alleges no facts establishing a legal basis for standing. “[T]he Florida Supreme Court has repeatedly held that **citizens and taxpayers** lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries to other citizens and taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers.” *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015) (emphasis added) (citing *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154, 155 (Fla. 1985) (“It has long been the rule in Florida that, in the absence of a constitutional challenge, a taxpayer may bring suit only upon a showing of special injury which is distinct from that suffered by other taxpayers in the taxing district.”)). “[A] city charter does not rise to the level of the Florida Constitution for purposes of creating an exception to standing.” *Id.*

The special injury requirement applies here. Plaintiff cursorily describes himself in Paragraphs 4 and 12 of the Complaint. However, he fails to identify any special injury that is unique to him. For example, his entire Prayer for Relief is devoid of any request to correct some wrong personal to himself. Nevertheless, Plaintiff must demonstrate some special injury “different in kind” from any other resident of the County. *See generally Herbits v. City of Miami*, 207 So. 3d 274 (Fla. 3d DCA 2016) (applying special injury requirement to

plaintiffs – five individuals residing in city – who sought declaratory and injunctive relief as to alleged violation of city charter); *see also Kneapler v. City of Miami*, 173 So. 3d 1002, 1004 (Fla. 3d DCA 2015) (applying special injury requirement to plaintiff challenging validity of municipal resolution); *Solares*, 166 So. 3d at 887 (applying special injury requirement to plaintiff, a citizen and taxpayer of the city, challenging city’s extension of lease). Here, Plaintiff alleges no facts even remotely suggesting that he has incurred some special injury. There is no allegation demonstrating how Plaintiff’s injuries are different in kind from all other residents of the County.

Absent allegations demonstrating how his alleged injuries are different in kind from the purported injury to the rest of the County’s residents, Plaintiff has failed to establish a *special* injury required to raise his alleged claims. As a result, the Complaint should be dismissed for lack of standing. *See Kneapler*, 173 So. 3d at 1004 (affirming summary judgment in favor of City where plaintiff failed to allege “a special injury different in kind than any other voter of the City, and therefore lack[ed] standing”); *Herbits*, 207 So. 3d at 281-83 (affirming dismissal of complaint where plaintiffs failed to allege how injury resulting from alleged charter violation affected them “in a manner ‘different in kind,’ not merely greater in degree, than it affect[ed] other residents throughout the City”); *McCall v. Scott*, 199 So. 3d 359, 365 (Fla. 3d DCA 2016) (affirming dismissal of complaint where “trial court correctly determined that Appellants lacked special injury standing because they failed to allege that they suffered a harm distinct from that suffered by the general public”).

IV. FAILURE TO STATE A CAUSE OF ACTION

A. Burden of Persuasion

The primary purpose of a motion to dismiss is to request the Court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal. *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022 (Fla. 4th DCA). In making this determination, the Court must confine its review to the four corners of the Complaint, draw all inferences in favor of the Plaintiff, and accept as true all well-pleaded allegations. *City of Gainesville v. State, Dept. of Transp.*, 778 So. 2d 519 (Fla. 1st DCA 2001); *Cintron v. Osmose Wood Preserving, Inc.*, 681 So. 2d 859, 860-61 (Fla. 5th DCA 1996). It is not for the court to speculate whether the allegations are true or whether the pleader has the ability to prove them. “[T]he question for the trial court is to decide simply whether, assuming the allegations in the Complaint to be true, the plaintiff would be entitled to the relief requested.” *Fox v. Prof'l Wrecker Operators of Fla.*, 801 So. 2d 175 (5th DCA 2001) quoting *Cintron* at 860-61.

B. Plaintiff's Recourse is Through the Electoral Process, Not the Court

The Plaintiff alleges that the Defendants exceeded their authority by entering into the Interlocal Agreement in violation of the Florida Interlocal Cooperation Act of 1969, Section 163.01, *Fla. Stat.* (“the Act”), as well as Section 125.01(1), *Fla. Stat.*, and Article VIII, Sections 1(g) and 2(b), *Fla. Const.*, because through the Interlocal Agreement, the Defendants intend to utilize the PAL, a non-profit corporation and support organization of the Sheriff, to provide athletic programs to youth of Flagler County at the Carver Center. The gravamen of the Plaintiff's Complaint is that the Interlocal Agreement violates these constitutional and statutory grants of home rule powers to the Defendants because the Act only applies to public agencies. For the reasons stated *infra*, this is not a valid legal claim upon which the Court may grant relief, and the Complaint must be dismissed.

The Plaintiff makes other outlandish claims which do not form the basis of any legal claim or cause of action, but which belie Josey's true motivation for bringing the suit. For example, the Plaintiff alleges the Defendants entered into the Interlocal Agreement "with the intended purpose of marginalizing and gentrifying Bunnell's Black community in exchange for FSPAL's undisclosed annual funding contribution." Complaint ¶8. As another example, the Plaintiff states, "...defendant's surreptitious plan to deprive the Bunnell's Indigenous Black community of their historical facility..." Complaint ¶10. Clearly, the Plaintiff is disgruntled with the County and School District's decision to improve the programs offered at the Carver Center by having a police presence at the Carver Center and allowing the PAL to provide athletic programs under the auspices of the Sheriff's Office. It is puzzling why Josey has made such absurd allegations, but even assuming Josey's assertions are genuinely felt, a general disagreement with the Defendants' decision to allow the Sheriff to provide athletic programs to the students in a County-owned building is within their lawful discretion. Josey has not raised any legally cognizable claim upon which this Court may act.

C. The Defendant's Have Broad Home Rule Authority to Manage Facilities and Provide Services that Serve a Public Purpose

1. County's Home Rule Authority

The County is a non-charter county and has expansive home rule authority.

NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have *such power of self-government as is provided by general or special law*. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

Art. VIII, §1(f), *Fla. Const.* (emphasis added).

Thus, the constitutional source of the County's home rule power requires authorization by general law or special act.

Section 125.01, *Fla. Stat.*, by design and intent, is a general law grant of expansive home rule authority to all Florida counties. The statute grants the County the power to: in Subsection(1)(c), “[p]rovide and maintain county buildings”; in Subsection (1)(p), “[e]nter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions”; and in Subsection (1)(w), “[p]erform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.” Section 125.01, *Fla. Stat.*

While Subsection (1) of Section 125.01, *Fla. Stat.*, enumerates certain specific powers, Subsection (3) clarifies that such enumeration is not intended to be exclusive or restrictive, rather the legislative purpose is to be liberally construed to grant to all counties the broad exercise of home rule powers authorized in the State Constitution. The Supreme Court of Florida has approved a broad construction of Section 125.01, *Fla. Stat.*, on numerous occasions. *See, e.g., State v. Orange County*, 281 So. 2d 310 (Fla. 1973), *Speer v. Olson*, 367 So. 2d 207 (Fla. 1978), and *Taylor v. Lee County*, 498 So. 2d 424 (Fla. 1986).

In addition, Section 163.01, *Fla. Stat.*, the Florida Interlocal Cooperation Act of 1969 (the “Act”), authorizes the County, City, School Board, and Sheriff to exercise jointly any power, privilege, or authority which they share in common and which each may exercise separately.

Section 163.01(4), *Fla. Stat.* The stated purpose of the Act is:

[T]o permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental

organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. Section 163.01(2), *Fla. Stat.*

In addition to the broad grant of authority to public entities to enter into agreements for the benefit of the public, the Act specifically authorizes the Defendants to enter into agreements to own, operate, and maintain real property such as the Carver Center. Section 163.01(5)(j), *Fla. Stat.* Finally, the Act contains an elastic provision granting the Defendants the authority to enter into agreements for any lawful purpose: “Any other necessary and proper matters agreed upon by the participating public agencies.” Section 163.01(5)(r), *Fla. Stat.*

Under the constitutional and statutory scheme, as interpreted by the courts of this State, the home rule powers of the County to act cannot be inconsistent with general law. To determine the authority of the County to act, the search is not for a specific legislative authorization. The search is for a general or special law that is inconsistent with subject matter of the Defendant’s action. In the case of the Interlocal Agreement, as explained below, the Act does not prohibit the Interlocal Agreement of the Defendants.

2. School Board’s Home Rule Authority

Like the County, the School Board enjoys a broad grant of legislative and statutory authority to provide educational services with Flagler County.

(1) ... All actions of district school official shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) In accordance with the provisions of s. 4(b), Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.”

Section 1001.32, *Fla. Stat.*

The School Board's home rule power is expansive and includes the power to undertake actions for any educational purpose except when prohibited by the State Constitution or general law. Like the County, the inquiry is whether a general law prohibits the School Board from entering into the Interlocal Agreement.

3. Sheriff's Constitutional Authority

The Sheriff is a constitutional officer of the State of Florida. Art. VIII, S. 1(d) and Sections 30.15 and 30.53, *Fla. Stat.* As a constitutional officer, the Sheriff has the authority and discretion to unilaterally determine the purpose and operation of the Sheriff's Office. Moreover, the Sheriff is a "public agency" under the Act and has the authority to enter into interlocal agreements with the other defendants pursuant to same. Section 163.01, *Fla. Stat.* Again, the question for the Court is whether a general or special law prohibits the Sheriff from entering into the Interlocal Agreement.

4. City's Home Rule Authority

The source and scope of the City's home rule is similar to that of the County.

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Art. VIII, §2(b), *Fla. Const.*

Section 166.021, *Fla. Stat.*, the Municipal Home Rule Powers Act, completed the constitutional design by granting extensive home rule power to all municipalities. *See State v. City of Sunrise*, 354 So. 2d 1206 (Fla. 1978). This legislative grant of power includes the governmental,

corporate, and proprietary power to conduct municipal government, perform municipal function, and render municipal services, and includes the authority to exercise any power for municipal purpose except when prohibited by law. Section 166.021(1), *Fla. Stat.* For purposes of this Act, municipal purpose includes any activity or power which may be exercised by the state or its political subdivisions, such as the County. Section 166.021(2), *Fla. Stat.* The Act grants to the City the broadest possible power to conduct municipal government except as may be limited by the Florida Constitution or by general or special law:

The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.

Section 166.021(4), *Fla. Stat.*

The issue before the Court as to the City is the same as to the other Defendants, whether a law prohibits the City from entering into the Interlocal Agreement.

C. The Interlocal Agreement is within the Constitutional and Statutory Home Rule Powers of the Defendants

Under the constitutional and statutory powers of the Defendants, the authority to act within their respective roles cannot be inconsistent with general law, in this case, with the Act. There is no question each Defendant is a “public agency” within the meaning of the Act. Section 163.01(3)(b), *Fla. Stat.* Likewise, there is no question the Defendants may enter into written agreements to exercise jointly any authority which the Defendants share in common or which each may exercise separately. Section 163.01(4) - (5), *Fla. Stat.* Finally, there is no question the public policy of the State of Florida as expressed in the Act is to empower “local governmental units to

make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities” to meet the needs of the local community.” Section 163.01(2), *Fla. Stat.* The only question, therefore, is whether the Act forbids the Defendants from entering into the Interlocal Agreement because the Sheriff will utilize a support organization to raise funds and provide athletic programs for students at the Carver Center.

Nothing in the Act prohibits the Interlocal Agreement. First, the Complaint points to subparts (5)(c) and (7)(a) – (c) of the Act, which authorize the Defendants to create separate legal entities through interlocal agreements. For example, the Defendants may enter into an interlocal agreement to create a special district, a special purpose unit of local government. However, focusing on the inquiry at hand, the Interlocal Agreement does not violate subpart (5)(c) or (7)(a) – (c), nor do those subparts prohibit the Defendants from entering into other agreements to fulfill their roles under the Interlocal Agreement. For example, to fulfill its obligation to maintain the Carver Center, the County could contract with a janitorial company to provide cleaning services for the Carver Center. If Josey’s assertion were true, it would lead to an absurd result whereby the County could not use a janitorial company without first establishing it as a separate legal entity with quasi-governmental powers. As another example, the School Board may use its non-profit support organization to raise funds or to provide extracurricular activities to students at the Carver Center. Likewise, subpart (5)(c) does not prohibit the Sheriff from utilizing PAL to provide athletic programs at the Carver Center.

Finally, to put a fine point on this analysis, the operative word in the subparts of the Act in question is “may.” The Act empowers the Defendants to create separate legal entities through interlocal agreements. The Defendants “may” establish such entities, but nothing requires them to

do so. Nevertheless, the analysis for the Court when evaluating the Defendants' home rule authority to enter into the Interlocal Agreement is *not* whether they must establish separate legal entities to perform their obligations but whether the Act prohibits them from entering into the Interlocal Agreement and performing their obligations thereunder without establishing such separate legal entities. It does not, and to find otherwise would lead to an absurd result.

V. CONCLUSION

The Plaintiff lacks standing to bring the Complaint and fails to state a legally cognizable cause of action. As such, the Complaint must be dismissed.

WHEREFORE, Defendants request this Court to enter an order granting this Motion to Dismiss Complaint.

Respectfully submitted,

Sean S. Moylan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by service via email to Eric Josey at premier.consulting173@aol.com on this 8th day of April 2024.

Sean S. Moylan

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