
4. County Commissioners: Powers and Duties

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In Florida, except when otherwise provided by county charter, the governing body of each county is a board of county commissioners, composed of either five or seven members.¹

BUDGETING AND SPENDING COUNTY FUNDS

A budget system has been established for the control of the finances of the boards of county commissioners across the state.² The budget controls the levy of taxes and the expenditure of money for all county purposes on an annual basis, and it is unlawful for the county commission to expend or contract for expenditures in any fiscal year for more than the amount budgeted.³ The county budget is to be prepared, summarized, and approved by the board of county commissioners of each county and it must be balanced—that is, the total of the estimated receipts (monies to be received by the county), including balances brought forward, shall equal the total of the appropriations (monies budgeted to be spent) plus monies held in reserves. The receipts side of the budget can include only 95 percent of anticipated receipts from all sources. The expenditure side of the budget must include itemized appropriations for all expenditures that are authorized by law, contemplated to be made, or incurred for the benefit of the county during the year, and the provision for reserves. Finally, the budget must reflect the estimated division between countywide and non-countywide expenditures and revenues.⁴

The annual county budget must make provision for reserves. A reserve for contingencies (i.e., unforeseen circumstances) can be provided but not in an amount that exceeds 10 percent of the budget. When certain statutory thresholds are met, the budget can also provide for a cash carry forward reserve.⁵ Section 129.01 of the Florida Statutes further outlines the requirements for outstanding debt and surpluses in the annual budget.

COUNTY PROPERTY

In every county, there must be a county seat where the principal offices and permanent records of all the county officers must be located.⁶ Counties in Florida have the express statutory power to “provide and maintain county buildings.”⁷ Furthermore, the county commission has the sole authority to allocate space in county buildings to the various county officials and, in the absence of fraud or abuse of that discretion, such a determination will not be interfered with.⁸ In addition, the county can also provide and maintain county buildings;⁹ hospitals;¹⁰ parks, preserves, playgrounds, recreation areas, libraries, museums;¹¹ and roads, bridges, tunnels and related facilities.¹²

ACQUISITION AND DISPOSITION

Purchase. Counties have the express authority to purchase real property for a public purpose.¹³ All appraisals, offers, and counteroffers must be in writing. They are not, however, available for public disclosure or inspection, and they are exempt from the public records law until an option contract is executed, or if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board of county commissioners.¹⁴

Sale of Property. County property can be sold and leased through action of the board of county commissioners. When the board determines that it is in the best interest of the county to do so, the county can sell real or personal property or can lease real property. Such a sale or lease can be made to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and under such conditions as the board may in its discretion determine.¹⁵ In addition, boards can negotiate the lease of an airport or seaport facility and can modify or extend an existing lease of real property for an additional term not to exceed 25 years where the improved value of the lease has an appraised value in excess of \$20 million and can lease a professional sports franchise facility financed by tourist development and/or sales taxes.¹⁶

When selling real property, the county must provide notice and call for bids for the purchase of the real estate. The highest bid complying with the terms and conditions in the notice must be accepted by the board unless the board rejects all bids because they are all too low.¹⁷ A county can conduct a private sale of real property only when the property meets certain criteria, like it is of insufficient size and shape to be issued a building permit, when the value of the property is \$15,000 or less, or when the parcel is of use only to one or more adjacent property owners.¹⁸

Finally, a county can sell and convey any real or personal property in accordance with an ordinance enacted by the board of county commissioners that prescribes standards and procedures to be used by the county in such selling and conveying.¹⁹

Exchange of Property. When a board of county commissioners determines that property is no longer needed for a county purpose and that property could, to the best interest of the county, be exchanged for other real property that the county wants to acquire for county purposes, the county can exchange such property. However, before any exchange of property can occur, notice must be provided and a resolution adopted by the board exchanging such property.²⁰

Sale of County Property to the United States, the State, or a Nonprofit. A county can convey or lease real property in a private sale to the United States, one of its departments or agencies, the state or any political subdivision, a municipality of this state, or other not-for-profit organization.²¹ These entities must petition the county, describing the public or community interest and welfare that the county-owned property is needed for. If the board is satisfied that such property is required for such use and it is not needed for county purposes, the board can convey the property at such price as the board may fix.

COMMISSIONER COMPENSATION

“The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.”²² In all non-charter counties and in all charter counties where charters do not alter the salaries of county commissioners, the salary is established by the Legislature.²³ Section 145.031, Florida Statutes, establishes county commissioner salaries as a function of population.

COMMISSIONER VACANCIES

Suspension from Office. The governor has the power to suspend any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony and can fill the office by appointment for the period of suspension.²⁴

Malfeasance, as grounds for removal from office, refers to evil conduct or an illegal deed; doing that which one ought not to do; or performance of an act in an official capacity that is wholly illegal and wrongful.²⁵

Misfeasance, as grounds for removal or suspension from office, refers to performance by an officer in his or her official capacity of a legal act in an improper or illegal manner—literally a misdeed or trespass.²⁶

Neglect of duty, as grounds for removal or suspension from office, refers to neglect or failure of an officer to do and performance of some duty imposed by virtue of his or her office or required by law.²⁷

Nonfeasance, as grounds for removal or suspension from office, refers to neglect or refusal without sufficient excuse, to do that which is in the officer's duty to do.²⁸

Drunkenness, as grounds for suspension or removal from office, has reference to such use of spirituous, vinous, or malt liquors as impairs or incapacitates, whether slight, temporary, or permanent, an officer in the efficient discharge of his or her official duties.²⁹

Incompetency, as grounds for removal or suspension from office, refers to any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his or her office. Examples include gross ignorance or carelessness, lack of judgment or discretion or serious physical or mental defect not present at the time of election.³⁰

The governor also has the power to fill by appointment any vacant county office for the remainder of the term if the term had less than 28 months remaining. If more than 28 months, the governor can appoint the replacement who will serve until the first Tuesday after the first Monday, following the next general election.³¹

COMMISSIONER RECALL

County commissioners in charter counties, except Miami-Dade County, by operation of law, may be removed from office by elector recall. Such is not the case in non-charter counties. The process is defined by state statute.³²

NOTES

¹ See Art. VIII, § 1(e), Fla. Const.

² See § 129.01(1), Fla. Stat.

³ See § 129.07, Fla. Stat.

⁴ See § 129.01(1)(b), Fla. Stat.

⁵ See § 129.01(1)(c), Fla. Stat.; the cash carry forward may be used to pay expenditures from October 1 of the ensuing fiscal year until such time as the revenues for that year are expected to be available. See § 129.01(1)(c)2, Fla. Stat.

⁶ See Art. VIII, § 1(k), Fla. Const.

⁷ See § 125.01(1)(c), Fla. Stat.

⁸ See Atty. Gen. Op. 79-107 (opining that the Hillsborough County Board of County Commissioners were required to pay the utility costs of the clerk of court as the sole occupant of a county building); see also Atty. Gen. Op. 76-173 (opining the county commission of a county with a fee officer tax collector has the duty to provide office space within the county seat to the county tax collector without charge but the county commission did not have to equip and maintain the office space).

⁹ See § 125.01(1)(c), Fla. Stat.

¹⁰ See § 125.01(1)(e), Fla. Stat.

¹¹ See § 125.01(1)(f), Fla. Stat.

¹² See § 125.01(1)(m), Fla. Stat.

¹³ See § 125.355(1)(a), Fla. Stat.

¹⁴ See *Id.*

¹⁵ See § 125.35(1)(a), Fla. Stat.

¹⁶ See § 125.35(1)(b), Fla. Stat.

¹⁷ See § 125.35 (1)(c), Fla. Stat.

¹⁸ See § 125.35(2), Fla. Stat.

¹⁹ See § 125.35(3), Fla. Stat.

²⁰ See § 125.37, Fla. Stat.

²¹ The not-for-profit entity must be created for the purposes of promoting community interest and welfare. See § 125.38, Fla. Stat.

²² Art. II, § 5(c), Fla. Const.

²³ See § 145.012, Fla. Stat.

²⁴ See Art. IV, § 7(a), Fla. Const.

²⁵ See *Hardie v. Coleman*, 155 So. 129 (Fla. 1934).

²⁶ See *Id.*

²⁷ See *Id.*

²⁸ See *Id.*

²⁹ See *Id.*

³⁰ See *Id.*

³¹ See Art. IV, § 1(f), Fla. Const.

³² See § 100.361, Fla. Stat.