

Fla. Court OKs County's Delegation Of Contracting Authority

by Carolina Bolado

A Florida appeals court on Wednesday affirmed a decision declaring that the Collier County Commission's delegation of authority to make purchases and enter into contracts under a certain amount to the county manager was lawful.

After hearing oral arguments this month, Florida's Second District Court of Appeal issued a per curiam affirmance of the trial court's ruling that the process in place allowing Collier County Manager Leo Ochs to make purchases and enter into associated contracts under \$50,000 was legal under Florida law.

Collier County Clerk of Courts Dwight Brock had challenged the process, arguing that as a noncharter county, Collier County's commissioners could not delegate purchasing and contracting power.

The county manager had for decades had the power to enter into contracts below a certain threshold, set most recently in 2013 at \$50,000, according to the trial court's summary judgment order. Any contracts over \$50,000 would need to be awarded by the county commissioners.

The state constitution grants charter counties more freedom to set their own rules for self-governance as long as they do not conflict with state law, but it specifically enumerates the powers granted to noncharter counties. Brock argued that state law specifically grants county administrators the power to negotiate leases, contracts and other agreements.

But in a summary judgment ruling in February, Judge James R. Shenko said reading that limitation on the county commission's ability to delegate limited purchasing and contracting authority "ignores the statutes' clear admonition that the listed powers are 'by way of enumeration and not by way of limitation'" and does not take into account another statute that allows the county commission to delegate additional administrative and ministerial powers.

The judge found that the purchasing ordinance allowing the county manager to enter into contracts is a lawful delegation of administrative authority.

Jamie Cole of Weiss Serota Helfman Cole & Bierman PL, who represented Ochs, said the decision is an important one for non-charter counties in Florida, almost all of which have delegated the power to make purchases and enter into associated contracts to their county managers. He said county commissions are supposed to set policy and enact laws, not handle day-to-day administrative details.

"The clerk's position, which was based upon an old opinion from the Florida Attorney General, would have meant that each of these delegations was illegal and would have disrupted purchasing procedures through the state," Cole said.

Ochs is represented by Jamie Cole of Weiss Serota Helfman Cole & Bierman PL.

Brock is represented by Anthony Pires of Woodward Pires & Lombardo PA, Dana Foster and David Ackerman of Ackerman Link & Sartory, and Collier County Clerk of Court General Counsel Marni Scuderi.

The Collier County Board of Commissioners is represented by Gregory T. Stewart and Carly J. Schrader of Nabors Giblin & Nickerson PA, and County Attorney Jeffrey Klatzkow.

The case is Brock v. Ochs et al., case number 2D16-705, in the Second District Court of Appeal of Florida.