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Judge considers arguments to settle dispute between Collier clerk, commissioners over paying vendors



FILE: Collier County Clerk of Courts Dwight Brock stands by while debating with Georgia Hiller during a Collier County Commission meeting on Thursday, September 9, 2014. Image credit: Scott McIntyre

By Greg Stanley of the Naples Daily News

A state judge said Tuesday he needs time to consider arguments that he should settle before trial a dispute between county officials over how vendors are paid.

County Clerk Dwight Brock sued county officials over their purchasing policy, saying state law doesn't allow commissioners to hand over spending authority to their county manager and purchasing

director for items under \$50,000. The commission has allowed the practice for more than 20 years, saying it's necessary to keep the government operating, and a majority of Florida counties have similar policies in place.

Brock and county commissioners opposing him asked Circuit Court Judge James Shenko to issue a summary judgment to settle the matter.

Shenko, who said he'll need time to rule, can either throw out Brock's suit, side with the clerk or allow the matter continue toward a February trial date.

Brock had argued against the county policy for years, but went along with it until last spring. In June, county vendors, many of them small and local businesses, stopped getting paid after the clerk refused to cover some of the county's bills.

Over the course of a month, Brock blocked payment of a total of \$5.6 million to hundreds of companies and employees until he and commissioners agreed to a deal that allows vendors to be paid while the matter is in court.

Commissioner Georgia Hiller said she is hopeful the judge's ruling, when it comes, will end the dispute.

"What we're doing is absolutely legal," Hiller said. "I sincerely hope the judge sees that as a matter of law and this ruling leaves no question that this practice is absolutely legal."

The practice allows county staff members to make purchases under \$50,000 with little scrutiny from commissioners or the public, said attorney David Ackerman, who represents Brock.

"None of it is in the sunshine," Ackerman said. "The way the threshold is being applied lets staff members spend more than \$50,000. You see them sign three-year contracts that cost \$24,000 a year. It's a myth that this is kept to \$50,000."

Ackerman said state law makes it clear that commissioners must approve each expenditure of public money before the money is spent.

But that reasoning is "ludicrous," said **attorney Jamie Cole**, who represents County Manager Leo Ochs.

The law clearly allows commissioners to delegate ministerial duties, he said. Expecting commissioners to approve each expense before it's made would be like asking commissioners to personally handle all of their other statutory duties, requiring the five of them to enforce their liquor laws or mow the grass in public parks.

"The board can delegate this," **Cole said**. "They can't give a manager the power to go buy whatever he wants. It has to be limited." And the county's spending policies are limited, he said.

Staff can only spend money that's budgeted and within the \$50,000 threshold. To buy anything that costs more than \$3,000, employees need to have three quotes and find the best price. And, in the end, every expense is cataloged and has to be brought before commissioners, who vote on whether it served a valid public purpose, **Cole said**.

"This power is very limited," he said. "It's clearly ministerial. Commissioners do exactly what the clerk wants them to do, because every expense goes before them and they get to approve it or not."

But the board only approves the expenses after the fact, when the county is already obligated to pay, Ackerman said.

"This blanket approval doesn't give sufficient information about each expenditure," he said. "Neither the county manager nor the purchasing director can document the purpose of each purchase. It's not too much to ask to say they should be responsible for knowing why they're buying it."

If the case is allowed to continue it is scheduled to start trial February 24.