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Revision #7: Closing the Loophole!

By: John Smith, Florida Association of Counties

On November 3, 1998, Florida voters have the opportunity to clarify their intent which they originally expressed twenty-six years ago by voting to completely reorganize the state's court system. In doing so, the voters will "put to bed" a debate over funding responsibility that has raged for almost three decades.

In March 1998, the Florida Constitution Revision Commission (CRC) voted to propose an amendment to the state's constitution providing that the state take more responsibility for funding Florida's judicial system. The Commission's proposed revision would shift the major costs of Florida's judicial system from counties to the state. State revenues would fund the state courts system (judges), state attorneys, public defenders, court appointed counsel, and judicial functions of the clerks of court.

That vote followed efforts undertaken over the years by other study commissions, committees, and various groups that recommended that the current system of funding the state's judicial system should primarily be the responsibility of the state rather than the county governments.

Florida TaxWatch supports the adoption of Revision #7. It will help ensure that Floridians have a court system that cost-effectively uses public resources and dispenses justice in a timely and reasonable manner. Although counties would continue to provide some funding, this revision will free up more local revenues for local purposes. Perhaps more importantly, it will mandate that Florida residents begin receiving the full benefits of an issue they dealt with over twenty years ago.

Courts Become Responsibility of the State

In 1970, two years after voters adopted the Florida Constitution of 1968, attention turned to Article V. This attention was fueled by the frustration of lawyers and citizens who realized the time had come to modernize and equalize Florida's court system in accordance with the changes and case decisions being made on the national level. By the end of the 1971 legislative session, a proposal was drafted which sought to completely reform Florida's court system.

The resulting joint resolution passed both houses in December 1971 during a Special Session. In addition, the necessary legislative vote was received to place the proposed amendment on the presidential primary ballot in March 1972. Over two-thirds (70.7%) of the Florida voters approved the amendment of Article V which became effective in 1972.

Source: Florida TaxWatch, Amending the Constitution: The Peoples Consent by Supermajority, September 1994

The constitutional changes resulted in the creation of a consolidated court system, uniform in jurisdiction, with simple geographic divisions, and clearly defined administrative authority and responsibility. In addition, the interpretation of many was that the amendment to Article V created a ***"state funded, independent Judicial Branch of government embracing all courts in the state."*** (1968 Constitution of Florida) Emphasis added.

So What Really Happened

Floridians were promised and voted for a uniform, state-run court system that would shift the burden of funding the judiciary from local ad valorem taxes (property taxes) to the state. Anticipated was a gradual shift in fiscal burden from local governments to the state through future legislation.

Between 1973 and 1977 all justices of the peace, small claims courts, juvenile courts, magistrates courts and civil, criminal and felony courts of record were replaced with a simple two-tier trial court structure of twenty circuit and sixty-seven county courts. The phasing out of local metropolitan and municipal courts was completed prior to January 1977.

By the 1977-78 FY, the state had only assumed 60 percent of the funding responsibility, contributing \$92.8 million to the \$165 million total. In contrast, counties were still expending \$72.1 million, roughly 40 percent. As it turns out, the state's commitment to the judicial system would begin a steady decline. Within six years the state's contribution fell below that of the counties and has remained so ever since.

During the 1984-85 fiscal year state appropriations accounted for \$211 million, while county expenditures rose to \$217 million. Eleven years later, budget data illustrates that for the 1995-96 fiscal year, counties expended over \$613 million, compared to only \$513 million by the state. The result is a \$600 million tax bill property owners voted over twenty years ago not to pay.

"Cash Register Justice"

A main concern of proponents of the 1972 revision rested with the modernization and restructuring of Florida's archaic court system. Their focus was the abolition of a problem known as "cash register justice."

"Cash register justice" refers to a court system where local judges are reliant upon local governments for their funding. Consequently, judges may find themselves entangled in an ethical conflict because they feel compelled to raise local revenues through the imposition of fines in order to perpetuate the existence of the court upon which they sit.

Many proponents concluded that this problem of "cash register justice" was to be resolved through the state funding of the judiciary through Article V.

Management Controls

Florida TaxWatch has taken a keen interest in encouraging a more effective and efficient use of taxpayers' investment in the judicial system since its initial report on the administration of the court system in January 1981. The dual funding of these trial courts from state and county budgets and the lack of sufficient information to determine the total needs of these courts presents a serious defect in the planning and preparation of legislative budget requests for each circuit and county court.

For example, the clerks of court are elected on a countywide ballot every four years. They have several Board of County Commission functions such as clerk of the county commission, county recorder and finance officer. Additionally, they have duties pertaining to the state courts, which functions include records management, personnel, case scheduling and control, jury and witness management.

The operations of the clerks are funded by the county commission in which they serve, though they perform a major judicial function. The Boards of County Commission do not have the necessary prescribed authority to review the budget requests for court related clerk functions or other judicial offices like public defenders and state attorneys.

Neither the Constitution nor Florida Statutes provide for proper administrative control, pre-audit or regulation of these offices. Conflicting allegiances because of the funding mechanism and lack of legislative direction have led to a diffusion of responsibility and accountability. It is the responsibility of the Legislature to allocate the financial resources of the State equitably and to review the budget requests, programs and operations of every agency, including the courts.

"Wheels of Justice"

"The backlog of cases in our courts is not only costly to taxpayers and litigants alike, but often threatens to bring the 'wheels of justice' to a grinding halt. Overcrowded courts can result in the guilty going free and deprive citizens of the constitutional right to a speedy trial." *Source: Florida TaxWatch, Inc. April 1986.* If not for the high profile media coverage of cases in Alachua and Jefferson counties, the Rollings and British tourist murders cases might still be in court, respectively, without substantial state assistance.

Presently, there is a great disparity between circuits in both the quantity and adequacy of local resources made available for the operations of the state court system. For example, data compiled by the LCIR indicates that Lafayette County contributed a total of only \$36,852, while Dade County expended \$126,677,582.

Furthermore, constitutional revenue restrictions inhibit a number of counties from contributing to their judicial branches. For example, fourteen counties are levying

property taxes at their constitutional millage cap of 10 mills and seven counties are closing in at 9 mills or above. Should Revision #7 pass, the Courts now have the opportunity to more fairly and quickly turn the "wheels of justice" in perpetual motion for Florida's growing citizenry.

CRC Proposal for Court Funding

The proposed amendment would require the state to assume responsibility for the operational expenses of the state court system; including judges, state attorneys, public defenders, court appointed counsel and the judicial functions of the clerks of court. The counties would continue to provide office and meeting facilities, security and utilities. The proposal prescribes a phase-in period for implementation, beginning in the 2000-2001 fiscal year and ending in 2004-05.

Thus, the state would assume responsibility for an additional \$218 million based upon 1995-96 county expenditures. Even more significant, after its full implementation and absent any changes in the historic growth in expenditures, Florida property taxpayers could benefit from either a reduction in property taxes or enhancement of local programs and services equivalent to \$566 million.

About the Author

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