

Official

**Escambia County Charter Commission
Meeting of November 13, 2003 at 5:30 p.m.
Escambia County Courthouse – Third Floor
(Thirty – fourth Meeting)
(5:32 p.m. – 8:45 p.m.)**

Members

Present:	M. J. Menge, Chair	Denis McKinnon, Jr.
	Charles F. Beall, Jr	Frank Montenes
	Johnny W. Blackmon	E. P. “Ted” Nickinson, Jr.
	LeRoy Boyd	Lucy Rentz
	BarbaraForehand“Bobbie”Brown	Lamar Smith
	Jewel Cannada-Wynn	Garrett W. Walton
	Laurel Dick	

Members Rita A. Riffel, Vice Chairman (schedule conflict)
Absent: Elbert Jones, Jr. (schedule conflict)

AGENDA NUMBER

1. Call to Order – Chairman Menge at 5:32 p.m.
2. Approval of the Agenda

Motion made to approve the agenda by Mr. Beall and seconded by Ms. Rentz with the following change: Move Mr. Beall’s committee report first under agenda item #6, due to the fact he will be leaving the meeting early. The motion passed unanimously.

3. Approval of the minutes of the October 30, 2003 meeting

Motion made by Mr. Boyd and seconded by Ms. Rentz to approve the minutes of the October 30, 2003 meeting. The motion passed unanimously.

4. Approval of the minutes of the November 4, 2003 meeting

This motion was delayed because the minutes were not completed in time for the members to review.

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

AGENDA NUMBER-Continued

5. Communications

- 1) Letter to Senator Clary dated November 6, 2003.
- 2) Correspondence from Captain Jackson regarding the Citizen's Review Board.
- 3) Copy of Section 112.531-112.535 Florida Statutes
- 4) Memo from Mr. Nickinson regarding districting
- 5) Letter to Don Partingdon dated November 7, 2003
- 6) Letter to George Touart dated November 4, 2003
- 7) Handout relating to Constitutional Officers

6. Committee Reports

A. Report from the committee chaired by Charles Beall

Mr. Beall stated that his committee has tentatively completed four out of the six sections of the charter that they had been tasked with drafting. They are largely done with a fifth section and have yet to complete the sixth. Mr. Beall referred to the document titled 'Issues submitted to entire Charter Commission,' that brings attention to the Commission six issues that his committee felt needed additional discussion, debate, and votes. Mr. Beall reviewed the issues one by one with the Commission.

The first item for discussion was the issue of term limits for the members of the Santa Rosa Island Authority. Mr. Beall discussed the issues with Monte Blews, Director of the Santa Island Authority in order to understand the specifics of how the SRIA board functions currently.

Motion made by Mr. Beall and seconded by Ms. Brown to include an eight (8) year term limit in the charter for all of the members of the Santa Rosa Island Authority. The motion passed 12 – 1 with Mr. Walton voting against.

The second item for discussion was the subject of removal of the appointed SRIA board members by the BCC and if it should be done by a majority vote or a super majority vote. The subject of debate with Mr. Beall's committee was how to get ten members of the BCC to appoint five people. As it stands right now, the five members of the BCC each appoint one person a piece and that particular person serves at the pleasure of that particular commissioner. Since they will not be serving at the pleasure of one particular commissioner, there needs to be a way to call them back

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

AGENDA NUMBER-Continued

Mr. Menge did want to clarify that when the term of the County Commissioner ends so does that of the SRIA member that that commissioner appointed. Also, any member of the SRIA selected for service can be removed by the person who nominated him for any reason; otherwise they are removed by a simple majority.

Mr. Walton stated that one of the items the Charter Commission should focus on is the appointment process if we are going to have ten commissioners. He would not want to vote on the issue of removal. The selection process also needs to be discussed.

Motion made by Mr. Beall and seconded by Ms. Cannada-Wynn to require a supermajority vote of the BCC for removal of appointed members of the SRIA. The motion failed 3 – 10 with Mr. Blackmon, Mr. Boyd, Mr. Dick, Mr. McKinnon, Mr. Menge, Mr. Montenes, Mr. Nickinson, Ms. Rentz, Mr. Smith, and Mr. Walton voting against the motion.

Motion made by Mr. Beall and seconded by Mr. McKinnon to require a simple majority vote of the BCC for removal of appointed members of the SRIA. The motion passed unanimously.

The third issue raised by Mr. Beall's committee was, should the elected member of the SRIA be subject to recall? Mr. Beall stated he saw no reason for the elected member to be subject to recall because the person serves only a two year term.

Motion made by Mr. Beall and seconded by Mr. Dick to not make the appointed member of the SRIA subject to recall. The motion passed unanimously.

The fourth issue raised by Mr. Beall's committee was, should the one elected member of the SRIA be elected on a partisan or non-partisan basis? It is currently a non-partisan election.

Motion made by Mr. Beall and seconded by Mr. Dick that the elected member of the SRIA continue to be elected on a non-partisan basis. The motion passed unanimously.

The fifth item raised by Mr. Beall's committee was, should the members of the ECUA be elected in a partisan or non-partisan election?

Motion made by Mr. Walton and seconded by Mr. Dick that the members of the ECUA be elected on a partisan basis. The motion passed 10 – 3 with Mr. Beall, Mr. McKinnon, and Ms. Rentz voting against the motion.

The last item raised by Mr. Beall's committee was, should there be a non-interference clause? If a clause is included, the committee has recommended that it mirror the one adopted for the BCC.

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

AGENDA NUMBER-Continued

Mr. Montenes desired clarification on if the districts were going to be spelled out in the charter. He felt that there would be a duality of districts.

Mr. Menge stated there will probably have to be language in the charter dealing with the ECUA that states they will be elected from five districts similar to the language that is used for the BCC at the current time.

Mr. Walton stated that the Charter Commission had previously decided to leave ECUA alone, so let's leave them alone. We should do what we have to do to make them a part of charter, but otherwise leave them alone.

Mr. Beall did want to clarify that the Commission would be adding something that is not there and to our knowledge it is not broken.

Mr. Menge stated that it seems the principle that you would not have a Board of Directors directing the work of those people who report directly to the Executive Director as a good principle. That principle is a good one and should be applied to the county. He fails to see why the same principle should not apply to the ECUA.

Ms. Cannada-Wynn stated that there is something wrong with the ECUA, they have no oversight at the local level at all. ECUA provides a service to everyone in Escambia County and when something goes wrong, we as citizens should be able to address it somewhat locally. Leaving it alone is wrong, bringing it up under the charter is appropriate in light of some the things that have gone on in its history.

Mr. Montenes stated that in reality there should be a relationship and if the board wants to get involved they should have the freedom to get involved. Maybe if the board did tinker a little then we would not have the problem with radium.

Mr. Menge stated for any observer of county government that they would conclude that a non-interference clause was pretty necessary on the basis of some of the things that took place in this county. He doubts any business or organization that is for-profit would operate efficiently if they had a board of directors that were countermending the orders of the management.

Mr. Montenes stated that it is very rare for a board of directors to go down on the floor in manufacturing and tell the operator what to do. We are putting a self-protection clause in there; it should be up to the freedom of the board to arrange and penetrate to correct whatever is there.

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

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Motion made by Mr. Beall and seconded by Ms. Cannada-Wynn to include a non-interference clause for the members of the ECUA board. The motion failed by a vote of 7 – 6 with Mr. Blackmon, Mr. Boyd, Mr. Menge, Mr. McKinnon, Mr. Nickinson, and Ms. Rentz voting for the motion.

Mr. Beall then led the review of his committee's assignments and their completed Articles that have been handed out to the entire Commission. Article I is the preamble to the Charter. No objections were made to the content of Article I and it was filed as submitted by the committee.

Article X covers the Escambia County Utilities Authority. There were no questions or comments on Sections 1001 Status and 1002 Purposes and Powers. Mr. Beall then reviewed Section 1003 Legislative Body. Mr. Menge suggested that language be added that clarifies that the ECUA Board will be elected from five districts. It was agreed that Mr. Beall would research on whether it is the ECUA or the BCC who actually establishes the districts. A correction is needed in regard to the sentence that establishes the salaries and that the salaries are to be set by the ECUA board but shall not exceed the salary established for the members of the school board.

Mr. Boyd would like to see a super majority vote to appoint and remove the ECUA Director in order to have consistency throughout the Charter.

Motion made by Mr. Boyd and seconded by Mr. Blackmon that the ECUA Director would be hired and removed by a super majority vote. The motion failed 6-7 with Mr. Blackmon, Mr. Boyd, Mr. McKinnon, Mr. Menge, Mr. Montenes, and Mr. Nickinson voting in favor of the motion.

Mr. Beall will re-word Section 1005 (1) to accommodate the proposal by the Legislative delegation of sunseting the Civil Service Board by October 1, 2005. Mr. Menge stated that it would be wise to dovetail the implementation of the ECUA's Personnel Administration System and the County to go along with the sunseting of the Civil Service Board. The reasoning is; if the ECUA is pulled out prior to the sunseting of the Civil Service Board, then the funding for the Civil Service Board is jeopardized.

Mr. Blackmon would like for the Personnel Appeals Board to reference the Civil Rights Act of 1964. In sub-section (4), Mr. Beall will change the word 'adoption' to 'effective date' to mirror the decision of the Legislative delegation.

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Sections 1006 Recall and Code of Ethics and Section 1007 Vacancies will mirror the language of the BCC written by another committee.

Article XI Administrative, Regulatory and Advisory Boards and Agencies were reviewed next by Mr. Beall. Mr. Beall believes there needs to be further discussion on the SRIA. Mr. Beall explained the reasoning for some of the wording in Section 1102. He stated that the SRIA members that were appointed by Commissioners whose terms expire in 2006 will remain in office in order to coincide with the BCC terms. No objections were made to the content of Article XI and it was filed as submitted by the committee.

Article XII Code of Ethics was reviewed and no objections were made to the content of Article XI and it was filed as submitted by the committee.

Mr. Beall's committee is scheduled to meet one more time on Tuesday November 18, 2003 at 4 p.m. in the PJC Baroco Center prior to the Commission meeting. They plan on finishing their portions of the charter at that time.

B. Report from the committee chaired by Garrett Walton

Mr. Walton's committee met this afternoon and plans to present their portion of the charter at next week's meeting. He would like to address various items that are in need of clarification from the Commission.

The first item for clarification is tax caps. Mr. McKinnon stated that their committee has two different views on what the will of the commission is. The first view is that it was the wish of the Commission to put in the charter to not allow the BCC to raise taxes or revenues anything other than what they have at the current time the other view was for the charter to dive into the weeds of ad valorem taxes and how they are done and should the charter be able to affect any other fees. It is a question of macro versus micro. Mr. McKinnon favors the macro approach, but the committee needs to know how the Commission feels on how much depth the charter needs in regard to taxes.

Mr. Menge felt like they would be taking a macro approach by letting the voters know that this charter government will not have the authority to levy any taxes or assessments any more than they could as a non-charter county. If a limitation is put in the charter stating that in fact the BCC shall not be able to enact or assess any taxes other than

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they could as a non-chartered county, then as a non-chartered county you cannot assess a public service tax.

Motion made by Mr. McKinnon and seconded by Mr. Montenes to address the issue of taxation on a macro level and the BCC cannot impose any fees or taxes other than that of a non-chartered county. The motion passed unanimously.

Mr. Walton stated that the second issue that his committee desired more direction on was appointments of various boards that have five appointees when there will be ten commissioners.

Mr. Menge felt like it should be left up to the discretion of the BCC. If there are ten commissioners and there is a board with five members, each of whom are currently appointed by one member of the BCC, the BCC may decide that the Board as a whole will select the five members. He stated the BCC should have the authority to make such decisions on a case by case basis.

Mr. Beall desired clarification that the reason the SRIA was kept at five members was the elected member from the island is intended to grant Pensacola Beach leaseholders a strong voice on the SRIA board.

Mr. Montenes felt like the Commission had a pretty good idea on how to handle the SRIA. The Planning Board, the Board of Adjustments, and the Citizens Environmental Committee, are they going to be made up of five or ten people. Will this be handled under General Provisions?

Mr. Menge suggested that it be handled in broad terms previously mentioned by letting the BCC have the discretion. It does not have to be guaranteed for each official to nominate one member apiece.

Mr. Walton then addressed the third item in relation to elections: he felt as if legal input is needed on some issues. If the objective is to have the Charter on the March 9th ballot and it passes, then we need to address the qualifying for County Commissioners. The qualifying begins in July and that is when the papers are filed. The petition method is an alternative qualifying method that begins in January 2004 and continues through June 2004. A couple of issues confronting the Commission are: can we get the re-districting done in a timely and legal fashion to let people become qualified in July? We know Bonnie Jones has the districts re-drawn from prior research. General Law provides that re-districting is done in odd-numbered years and after the decennial census, can the charter override this? Candidates qualifying by petition, they will be in theory beginning their qualifying January 7th to run next November, if re-districting comes about in the spring of 2004 what is the consequence to the person who has already begun the petition process? Another question for the legal team is on the ECUA

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Board, the special act mirrors the BCC in districts and in numbers. We need to know how to address ECUA separately or has it been done.

Mr. Menge responded to the dates of the elections and the qualifying of the candidates in the election following the passing of the referendum. Assuming the referendum passes March 9th, this would give time to the candidates to know what districts they would be representing and what form of government will be in effect. Since Bonnie Jones has already completed the possible re-districting of the county, that is not a time hurdle that warrants concern. The question of time required on this will be presented to Ms. Jones.

Ms. Brown suggested that the qualifying paperwork state ‘if charter passes’. It was unknown if Bonnie Jones could do this or not.

Ms. Cannada-Wynn informed the Commission that the petition method is only one percent of the electorate; a candidate could easily obtain the three hundred or so signatures from a particular district in a short period of time to meet the deadline.

Mr. Nickinson suggested that the Commission request that the BCC adopt a resolution that would state ‘if Charter passes this is the way the districts will be divided.’ This question will be presented to the legal advisory team.

Mr. Beall offered what his committee has in the draft process on the transition provision. It has language that states ‘Charter shall become law upon its approval by the electorate, but the Charter government will not be the effective government until the second Tuesday following the first Monday after the general election in November.’ This essentially states that the Charter is law from March 9th until November, but it is in an interim stage. There will be a second provision that will address the interim Commission. We can only mandate that the BCC do something after March 9th, so that is the way the Charter will read.

Mr. Montenes desired to address the Attorney General’s opinion on the re-districting aspect. He continues to believe that obtaining the AG’s formal opinion is worthwhile.

Mr. Menge reminded the Commission that David Tucker was drafting a letter to send to the AG.

Mr. Montenes stated he would like the language he has drafted to be reviewed and he will supply this either to the Whitman Center or to Mr. Tucker.

Mr. Walton also desired to address the issue of timing and the subsequent scheduled meetings for the Commission.

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Mr. Menge agreed that timing is of a concern and had been hoping that Mr. Walton's would have submitted something in writing by this time for review of the Commission as a whole. The Commission needs time to digest all of the information presented to them. He was hoping that at the next meeting the Commission members would have all of the suggested language before them for review. That way all the proposed language would have been voted on prior to the first public hearing meeting. Mr. Menge proposed that if all the language is together by the November 18th meeting, it would be compiled for review by November 25th for an additional meeting for completion of the Charter. He was then going to give it to the Pensacola News Journal to have printed in the Sunday edition (November 30th) preceding the first public hearing meeting on December 4th.

Mr. Walton suggested a change in dates of the public hearings. Mr. Menge was amenable to changes if the currently scheduled deadlines could not be met, but would prefer that the Commission attempt to abide by the calendar that was adopted. Mr. Walton added that the Commission members would like to have plenty of time to review the Charter prior to voting on the contents and the Legal Advisory Team also needs time to review the proposed Charter. Mr. Walton believes that March 9th could be met even with a change of dates of the public hearings. Mr. Menge reminded Mr. Walton that the Commission has to have time to amend the Charter if needed and that is the reasoning for the current schedule.

Mr. Nickinson stated that it the clock starts ticking when it is delivered to the BCC then that is what the Commission should be concerned about. It is not when the BCC meets but when the document is delivered that matters.

BREAK: 7:25 p.m – 7:50 p.m.

Mr. Beall left during the break.

C. Report from the committee chaired by Lamar Smith

Mr. Smith reviewed Article V County Attorney with the recommended changes of the verbiage of 'Deputy Attorney' which is separate from the Assistant Attorney. No objections were made to the content of Article V and it was filed as submitted by the committee.

Article VI Elected County Officers was then reviewed by Mr. Smith. The committee did keep in mind that the Commission had voted to keep the Constitutional Officers as they are currently. They

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are also aware of the fact that each one of these items that is in Article VI was also voted on individually in previous meetings to be included in the proposed Charter. The committee would like for these items to be reviewed and decide if the items need to remain in the proposed Charter as they are currently.

Mr. Menge addressed Section 601. Unless otherwise stated in a charter the Clerk will be the ex-officio Clerk, Auditor, and Recorder of the County. He believes that if the clause is not put in the charter the Clerk would be the auditor. Mr. Nickinson and Mr. Walton questioned if that clause is needed depending on the language that is currently being drafted by their committee that is addressing the Jackson & Atkins recommendation. Mr. Walton clarified that the audit selection committee is different than what his committee is drafting on the actual audit committee.

Mr. Dick offered copies of various legal opinions that state no responsibilities can be taken away from the Constitutional Officers unless they are made Charter Officers. Unless they are made Charter Officers they will retain full Constitutional status and will remain independent of the county.

Mr. Menge differs with Mr. Dick's opinion and referred to the Florida Constitution Article VIII, Section 1 (d). There is a specific provision that deals with the Clerk of the Circuit Court as far as some of the duties are concerned. If one wishes to do something different with the Clerk's office in a charter than to let the Clerk fill certain functions, then it can be done. Mr. Menge offered to submit Mr. Dick's paperwork to the Legal Advisory Team for further review.

Mr. Menge referred to Don Partingdon's letter dated August 5, 2003 when discussing the partisan nature of the Constitutional Officers. The response was if there is no change in the title or duties, the charter can provide for non-partisan elections of some or all of the existing County Officers, specifically Article VII, Section 1(d) of the Florida Constitution provides authority for the county charter to provide for the manner of election for the County Officers. He believes that the Commission can provide for non-partisan elections of the Supervisor of Elections if placed in the charter.

Mr. Walton stated that what he had in mind when he voted on the Constitutional Officers that they would not be Charter Officers and their duties would be what is described in general law today. He remembers several other motions that would make Central Purchasing available to them as well as Personnel provisions as well as the Supervisor of Elections would be non-partisan and nothing else. If he was drafting that section, he would have something similar to Section

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601 and nothing else. Many of the charters in place currently have something standard in the way of Section 601. Mr. Dick and Mr. Boyd supported Mr. Walton's comments.

Mr. Menge stated that what was voted on prior had nothing to do with the powers, duties, and responsibilities of the Constitutional Officers. The vote was to put a residency requirement on the Constitutional Officers the same as what is required for the BCC.

Mr. Nickinson and Mr. Montenes voiced that they would like to keep Section 605 that allows for the BCC to appoint vacancies in the Constitutional Offices.

Mr. Smith stated that he would prefer to strike all of the provisions including the non-partisan provisions.

Mr. Walton stated that another charter has a savings clause in regard to the Supervisor of Elections.

Motion made by Mr. Walton and seconded by Mr. Nickinson to strike Sections 602, 603, and 604 with the exception that the Supervisor of Elections would be elected on a non-partisan basis. The motion passed 10 – 2 with Mr. Menge and Ms. Rentz voting against.

Ms. Holley, Tax Collector addressed the Commission on the language in Section 601. If the charter is adopted, she would like to suggest language similar to that in the Leon County charter, something very specific needs to be inserted such as 'shall not be altered by this home rule charter and will remain independent County Officers.' She would like the Commission to expand the language as she has suggested.

Mr. Menge responded that he did not adopt that language because he understood that the Constitutional Officers would like the option of utilizing Centralized Purchasing and the Personnel Appeals Board. He opposes inserting language that makes the Constitutional Officers look like complete outsiders of Escambia County, especially when there will be other language that they may want to participate in at a later date if it is seen to be in the best interest of the citizens. He does not believe that there is any question that the Constitutional Officers are remaining as elected County Officers with all of the powers, duties, and responsibilities provided in general law.

Ms. Holley would like to see 'independent elected Constitutional County Offices' inserted and some reference that they are not subject to home rule charter. The issue of the inter-local agreements in regard to Centralized Purchasing is OK and is very clear that they are allowed to participate.

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Chris Jones, Property Appraiser stated that he does not believe that the voters of Escambia County view them as outsiders and he takes exception to the word ‘outsiders.’ The analogy used was that we are all in the same canoe but, during the last situation with the BCC, if they had all been in the same canoe then they would have sunk. We do serve as a system of checks and balances and that is why the Governor’s system of appointing the Constitutional Officers is important. He sees a possible conflict with the BCC appointing a Property Appraiser who controls the values and his job is obligated to the appointing BCC when the appointing authority has the millage and value rate control. There is reasoning and rationale when the framers of the Constitution stated that it was a good thing for the Governor to appoint and it is only on an interim basis.

Motion made by Ms. Cannada-Wynn and seconded by Mr. Boyd to have the offices of the Sheriff, Tax Collector, Clerk of the Circuit Court, Property Appraiser, and the Supervisor of Elections remain as independently elected Constitutional Officers and the status powers, duties, and functions of such offices shall not be altered by this home rule charter, except the auditing functions of the Clerk of The Circuit Court shall be performed in the manner prescribed in the finance article of this charter. The Constitutional Officers shall perform their executive and administrative functions as provided by law. The motion failed due to a tie with Mr. Blackmon, Mr Menge, Mr. McKinnon, Mr. Nickinson, Ms. Rentz, and Mr. Smith voting against.

Motion made by Mr. Dick and seconded by Mr. Boyd to have the offices of the Sheriff, Tax Collector, Clerk of the Circuit Court, Property Appraiser, and the Supervisor of Elections remain as independently elected Constitutional Officers and the status powers, duties, and responsibilities of such offices shall remain as provided for in general law. The motion passed 8 – 4 with Mr. Blackmon, Mr. Menge, Ms. Rentz, and Mr. Walton voting against.

Motion made by Mr. Walton and seconded by Mr. Nickinson that the Commission move to public forum and then adjourn due to the time. The motion passed unanimously.

7. Discussion regarding districting for County Commissioner elections

This topic was delayed until the next meeting due to lack of sufficient time to discuss the issue.

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

AGENDA NUMBER-Continued

8. Discussion regarding the formation of a Citizens' Investigative Board

This topic was delayed until the next meeting due to lack of sufficient time to discuss the issue.

9. Public Forum

No one addressed the Commission.

10. Unfinished Business

There was no unfinished business.

11. Items added to the Agenda

There were no items added to the agenda.

12. Announcement regarding the next meeting

The next meeting is on Tuesday, November 18, 2003 in the PJC Baroco Center, Rm. #2142 at 5:30 p.m.

13. Adjournment

The meeting was adjourned at 8:45 p.m.

APPROVED BY:

THE CHARTER COMMISSION

PREPARED BY:

UNIVERSITY OF WEST FLORIDA WHITMAN CENTER FOR PUBLIC SERVICE

