

Official

**Escambia County Charter Commission  
Minutes of September 9, 2003 meeting  
Pensacola Campus of Pensacola Junior College  
Baroco Center – Room 2142  
(Twenty-Fifth Meeting)  
(5:35 p.m. – 8:35 p.m.)**

Members

Present: M. J. Menge, Chair  
Rita A. Riffel, Vice Chairman  
Charles F. Beall, Jr  
Johnny W. Blackmon  
Le Roy Boyd  
Barbara Forehand “Bobbie” Brown  
Laurel Dick  
Elbert Jones, Jr.  
Denis McKinnon, Jr.  
Frank Montenes  
E. P. “Ted” Nickinson, Jr.  
Phyllis D. Sims  
Lamar Smith  
Garrett W. Walton

Members

Absent: Lucy Rentz (conflict in schedule)

**AGENDA NUMBER**

1. Call to Order – Chairman Menge at 5:35 p.m.
2. Approval of the Agenda

**Motion made by Mr. Nickinson and seconded by Mr. Boyd to approve the agenda with the additions of 1) County Attorney, Janet Lander and David Tucker to speak upon their arrival at this evening’s meeting to clarify their individual opinions and viewpoints on the districting issue and 2) under items added to the agenda, add discussion regarding the proposed date of the election. Motion passed 14 – 0.**

3. Approval of the minutes of the September 4, 2003 meeting.

**Motion made by Mr. Jones and seconded by Mr. Blackmon to approve the minutes with a change in wording on page four. Garrett Walton’s comment will now read as follows: “policy making board with close oversight of the County Administrator.” Motion passed 14 – 0.**

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

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4. Communications

- 1) Salaries of Escambia County Commissioner's aides
- 2) Mr. Menge announced that WSRE-TV will be holding a panel discussion on Thursday, September 25, 2003 in the Pensacola Junior College, Main Campus, Hagler Auditorium at 8 p.m. on the pros and cons of charter government. He would like for the Charter Commission to attend if possible. Even though there has not been a charter written, commission members can be available to answer questions.

5. Committee Reports

No committee reports at this time.

6. Discussion of Issues

Mr. McKinnon voiced his concern over how the staggered elections would work because there is a possibility of two representatives being elected at the same time from the same district if one of the positions is vacated prior to the end of one's term. This is a conceivable situation, but it does not mean that the election would be for the same position.

The first issue for discussion is item #8, page 3 - Should the charter contain any specific provisions relating to meetings of the BCC, e.g., should the charter prohibit the BCC from acting on non-agenda items except in the case of an emergency?

Charles Beall – yes, but should address minimal provisions

Johnny Blackmon – yes

LeRoy Boyd - yes

Bobbie Brown – yes, emergency needs to be defined and specific

Laurel Dick – everyone has their own definition of an emergency

Elbert Jones – yes & yes

Denis McKinnon – yes, public needs adequate notice of special meetings

M.J. Menge – yes, read what was in the 1995 charter for ideas, prefers a macro charter versus a micro charter.

Frank Montenes – yes & yes, citizens want more direct access to local government, citizens could go to the sub-committees in the past but these sub-committees were eliminated several years ago. If we go to 10 Commissioners, then

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

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they better get used to meeting as a committee of the whole.

Ted Nickinson, Jr. – yes & yes  
Rita Riffel – sometimes  
Phyllis Sims – yes & yes  
Lamar Smith – yes & yes, likes ideas from 1995 charter  
Garrett Walton - yes

**Motion made by Mr. Boyd and seconded by Mr. Montenes that the charter should contain specific provisions relating to meetings of the BCC. Motion passed unanimously.**

The second part of the question will be referred to Mr. Walton's committee for specific wording.

The second item for discussion is item #9, page 3 - Should the charter contain language establishing separation between the legislative and administrative functions of the local government?

Charles Beall – yes  
Johnny Blackmon – yes, with a non-interference clause  
LeRoy Boyd - no  
Bobbie Brown – yes, likes the wording in Clay County charter  
Laurel Dick – no, the functions are not separate  
Elbert Jones – yes  
Denis McKinnon – yes  
M.J. Menge – yes, read the wording from the 1995 charter  
Frank Montenes – no, should be defined and tasked to work together as an integrative team  
Ted Nickinson, Jr. – yes  
Rita Riffel – yes  
Phyllis Sims – yes  
Lamar Smith – yes  
Garrett Walton – yes, there needs to be some degree of separation

**Motion made by Mr. McKinnon and seconded by Mr. Smith that the charter does not need to contain separate language establishing separation between the legislative and administrative functions of the local government, the separation will be done by the definition of their job duties. Motion carried 9 – 5 with Mr. Beall, Mr. Jones, Mr. Menge, Ms. Sims, and Mr. Walton voting against.**

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

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The third issue for discussion is item #10, page 3 - Does the charter need to address the office space and administrative support provided to the county commission? If so, what provisions should be contained in the charter regarding these matters?

Charles Beall – no

Johnny Blackmon – yes

LeRoy Boyd – yes and the offices should not be allowed to exceed certain sizes

Bobbie Brown – no

Laurel Dick – no

Elbert Jones – yes, limit the clerical support to a pool

Denis McKinnon – need space to get the job done and should not be a 1:1 ratio

M.J. Menge – yes

Frank Montenes – no, should focus on salary, can not take away the dignity of the Commission office, does not think that the commission can say whether the job is part – time or not, bureaucracies in the county need to be re-aligned in the county for the citizens to get better service

Ted Nickinson, Jr. – no

Rita Riffel – yes, need to address what rights the Commissioners would have

Phyllis Sims – clerical pool

Lamar Smith – administrative support staff needs to be addressed in the charter

Garrett Walton – yes, a work space needs to be provided

**Motion made by Mr. Montenes and seconded by Mr. Blackmon for the charter to address the office space, administrative support, and support personnel salary provided to the county commission. Motion passed 10 – 4 with Mr. Beall, Ms. Brown, Mr. Dick, and Ms. Riffel voting against.**

This matter was referred to Mr. Walton’s committee to draft the specific language to be inserted in the charter.

BREAK – 7:35 p.m. – 7:42 p.m.

The fourth issue for discussion is item # 11, page 3 - Should the charter contain a non-interference clause? If so, what specific language should be inserted in the charter?

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Charles Beall – yes, city charter can be a reference  
Johnny Blackmon – yes  
LeRoy Boyd - yes  
Bobbie Brown – yes, likes the wording in Clay County charter  
Laurel Dick – yes  
Elbert Jones – yes  
Denis McKinnon – agrees with Mr. Walton  
M.J. Menge – yes  
Frank Montenes – agrees with Mr. Walton  
Ted Nickinson, Jr. – agrees with Mr. Walton  
Rita Riffel – yes  
Phyllis Sims – agrees with Mr. Walton  
Lamar Smith – agrees with Mr. Walton  
Garrett Walton – yes, the BCC should not be able to interfere with the discharge of duties of subordinates of the County Administrator or maybe top level staff and however the BCC should be able to make inquires.

**Motion made Mr. Dick and seconded by Mr. Beall that the charter contain a non-interference clause that also contains language in it that the BCC be allowed to contact employees for the purpose of information gathering and inquiry. Motion passed unanimously.**

The matter was referred to Mr. Walton's committee to draft the specific language to be used in the non-interference clause.

The fifth issue for discussion is item #12, page 3 - Should the charter contain specific limitations on the taxing authority of the Board of County Commissioners? If so, what limitations should be written into the charter?

Charles Beall – no, believes the limitations are already in place  
Johnny Blackmon – yes, needs to be specific, can not look at it as a way to raise taxes  
LeRoy Boyd – agrees with Mr. Blackmon  
Bobbie Brown – yes, should be voted on by the board and pass by a super majority  
Laurel Dick – no  
Elbert Jones – yes  
Denis McKinnon – yes  
M.J. Menge – yes  
Frank Montenes – yes  
Ted Nickinson, Jr. – yes and have it subject to voter approval  
Rita Riffel – yes

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

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Phyllis Sims – yes  
Lamar Smith – yes  
Garrett Walton – yes

**Motion made by Mr. Jones and seconded by Mr McKinnon that the charter will contain specific limitations on the taxing authority of the Board of County Commissioners. Motion passed 12 – 2 with Mr. Beall and Mr. Dick voting against.**

This matter was referred to Mr. Walton’s committee to draft the language regarding the specific limitation to be placed on the BCC’s taxing authority.

The sixth issue for discussion is item # 13, page 3 - Should a Citizens Advisory Board be established which would make recommendations to the Board of County Commissioners?

Charles Beall – no  
Johnny Blackmon – no  
LeRoy Boyd - no  
Bobbie Brown – no  
Laurel Dick – no  
Elbert Jones – yes  
Denis McKinnon – no  
M.J. Menge – no  
Frank Montenes – no  
Ted Nickinson, Jr. – no, not as a standing committee  
Rita Riffel – no  
Phyllis Sims – yes  
Lamar Smith – no  
Garrett Walton – no

**Motion made by Mr. Dick and seconded by Ms. Brown that the charter will not mandate the creation of a Citizen’s Advisory Board. Motion passed 12 – 2 with Mr. Jones and Ms. Sims voting against.**

The seventh issue for discussion is item # 14, page 3 - Should the charter provide for the creation of a “Strategic and Advance Programs Planning Office” that reports directly to the BCC?

Charles Beall – no  
Johnny Blackmon – no  
LeRoy Boyd – yes

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Bobbie Brown – no  
Laurel Dick – no  
Elbert Jones – no  
Denis McKinnon – no  
M.J. Menge – no  
Frank Montenes – yes, county needs a strategic plan  
Ted Nickinson, Jr. – no  
Rita Riffel – no  
Phyllis Sims – no  
Lamar Smith – no  
Garrett Walton – no

**Motion made by Mr. Dick and seconded by Mr. Jones that the charter should not mandate the creation of a “Strategic and Advance Programs Planning Office” that reports directly to the BCC. Motion passed 12 – 2 with Mr. Boyd and Mr. Montenes voting against.**

The eighth issue for discussion is item #15, page 3 - Should the charter require the BCC to develop a three year “County Strategic Plan,” which would be updated each year as appropriate?

Charles Beall – yes, leave the time limit out of it  
Johnny Blackmon – yes, more than 3 yrs  
LeRoy Boyd - yes  
Bobbie Brown – yes  
Laurel Dick – yes  
Elbert Jones – yes  
Denis McKinnon – yes, needs to be a 10- yr plan  
M.J. Menge – yes, more than 3 yr  
Frank Montenes – yes  
Ted Nickinson, Jr. – yes  
Rita Riffel – yes, needs to more than 3 yr  
Phyllis Sims – yes  
Lamar Smith – yes  
Garrett Walton – yes

**Motion made by Mr. McKinnon and seconded by Mr. Montenes that the charter should mandate that the county develop a strategic plan. Motion passed unanimously.**

The following Commission members were in favor of a 5 year plan: Mr. Blackmon, Ms. Brown, Mr. Dick, Mr. Jones, Mr. McKinnon, Mr. Menge, Mr. Montenes, Mr. Nickinson, Ms. Sims, and Mr. Smith. The 5 year plan

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passed 10 – 5.

The following Commission members were in favor of a long-term plan:  
Mr.Beall, Mr. Boyd, Ms. Riffel, and Mr. Walton.

The ninth issue for discussion is item #16, page 3 - Should the charter require the BCC to perform annual performance reviews of both the County Administrator and the County Attorney?

Charles Beall – yes  
Johnny Blackmon – yes  
LeRoy Boyd - yes  
Bobbie Brown – yes  
Laurel Dick – no  
Elbert Jones – yes  
Denis McKinnon – yes  
M.J. Menge – yes  
Frank Montenes – yes  
Ted Nickinson, Jr. – yes  
Rita Riffel – yes  
Phyllis Sims – yes  
Lamar Smith – yes  
Garrett Walton – yes

**Motion made by Mr. Beall and seconded by Mr. Blackmon that the charter require the BCC to perform annual performance reviews of both the County Administrator and the County Attorney. Motion passed unanimously.**

7. Public Forum

No one addressed the Commission.

8. Unfinished Business

There was no unfinished business.

9. Items added to the Agenda

Janet Lander, Escambia County Attorney appeared before the Commission to inform the Commission of her legal interpretation of the districting situation.

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Mr. Menge informed Ms. Lander of the Commission's vote to keep the five districts with two representatives elected from each district on a staggered basis if that system were legally valid.

Ms. Lander stated that the multiple member districts are a modern concept and does exist in places in the United States but, does not believe that it can be done in Florida. Her decision is based on the current structure that Florida has; the closest thing to multiple member districts are a combination of single member and at-large districts. There is no case law to support her opinion. Her opinion is based on the Florida Constitution, Art. 8, Sec. 1, paragraph E that addresses County Commissioners, and General Law in Ch. 124 Florida Statutes which cross references back to Art. 8, Sec.1-8. Only one commissioner can reside in each district as allowed by law. She expressed her opinion of going to ten members from five districts that the charter would be blazing a new path that does not exist anywhere in Florida at the current time. Whenever something is done that has not been done before, it will be vulnerable and susceptible to challenge. She does not see where this idea can be accomplished given the present governmental structure of Florida. This may have to be pursued at a state level to find the proper answer.

Mr. Menge asked Ms. Lander whether a savings clause that would provide for the five districts to be divided in half and one commissioner elected from each of the ten districts if the proposed plan of having two commissioners elected from each of the existing five districts on a staggered basis was held invalid would be feasible. Ms. Lander was unsure how the Courts would view such a savings clause. Mr. Montenes reminded the Commission that Bonnie Jones had stated District Three could be divided into two districts that would contain a majority/minority population over 18 years of age and a majority/minority of registered voters. Mr. Montenes stated he believed having ten Commissioners elected from five districts would be held invalid.

The Commission discussed the idea of obtaining the Attorney General's opinion on the districting issue. Mr. Tucker explained that dividing District Three into two separate districts may result in an impermissible fracturing of the balance that presently exists. For example, if District Three is divided into two districts and one of the new districts contain a minority population of 60% and the other new district contains a minority population of only 51%, such redistricting may be attacked as being in violation of Section 2 of the Federal Voting Rights Act. He disagreed with Ms. Lander's legal analysis based on his understanding of home rule and charter government. What you have to look at is: is it pre-empted or is it prohibited? Is there a state law that states you can not do it one way or another? He has not been able to find a law stating that you can not elect two commissioners from

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each of the five districts.

Mr. Tucker states that there is a rule known as Judge Dillon's rule, that holds unless something is expressly authorized by the legislature that a municipality can not do it. Dillon states that in terms of defining a municipal territory such as the City of Pensacola, there can not be two municipal corporations occupying the same physical space. Subdivisions are political units designed to serve the political convenience of a municipality. Unlike a special district (ECUA), these political wards have no special power. They exist purely to divide the voters into areas for election purposes.

There are three requirements that have to be followed when dividing districts: 1) equal protection, 2) federal voting rights act, and 3) no inconsistency with state law in regard to districts.

Under state law it is easier to go to ten single districts, but you have to be careful if you divide District Three into two separate districts to ensure that you do not violate the Federal Voting Rights Act.

The 1968 Florida Constitution states: Except when otherwise provided by county charter, the governing body of each county shall be a Board of County Commissioners composed of five or seven members serving staggered terms of four year periods. In the same paragraph, it says that after each decennial census, the BCC shall divide the county into districts of contiguous territory, nearly equal in population as practical. One Commissioner residing in each district shall be elected as provided by law.

Mr. Tucker is of the opinion that the first sentence of this provision allows a charter to determine how many commissioners will be elected and from what districts, so long as the districts meet the legal criteria he discussed earlier. Ms. Lander believes the next two sentences of this provision applies to both chartered and non-chartered counties and only one commissioner can be elected from a district.

**Motion made by Mr. Beall and seconded by Mr. Blackmon to seek the opinion of the Attorney General on the districting issue while still keeping the five districts with two Commissioners being elected on a staggered basis and having a savings clause as suggested by Mr. Menge in the charter. Motion passed 9 – 5 with Mr. Boyd, Ms. Brown, Mr. Dick, Mr. Montenes, and Mr. McKinnon voting against.**

**Motion made by Mr. Montenes and seconded by Mr. Beall to have Bonnie Jones give the Charter Commission a conceptual analysis and plan for re-districting the five districts into ten districts. Motion passed unanimously.**

Mr. Menge reviewed the dates for the 2004 elections: March 9, 2004 – presidential primary, August 31, 2003 – first primary election, September

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28, 2003 – second primary election, and November 4, 2003 – general election. Based on these dates, the Charter Commission had agreed to attempt to write the charter in time to have it placed on the March 9, 2004 ballot.

Mr. Menge stated he had been contacted by some concerned citizens who felt the turn out of voters for the March 9<sup>th</sup> election would be low because there would probably not be a Republican contest. The election will be primarily a Democratic one and the turn out will be low. Mr. Menge is concerned with putting off the election until August 31, 2004, because the commissioners will already have qualified to run by that date. He does believe that the charter can be ready for the March 9<sup>th</sup> election, due to the work pace. If we do not make the March 9 election, then we may desire to consider a special election by mail or some other means between March 9 and August 31.

Mr. Boyd felt as if the deadline was well established in advance and agreed to, and the Charter Commission should not delay putting the charter on the March 9<sup>th</sup> ballot because of a fear the Republicans will not show up to vote. Mr. Smith stated that the charter election has to be held by April so that the people running for office know what kind of government is in place.

Chairman Menge suggested we continue with our plan to have a charter written by December and determine at a later date whether it is desirable to have the charter voted on at a date later than March 9<sup>th</sup>.

10. Announcement regarding the next meeting

**The next meeting will be held at Pensacola Junior College, Baroco Center, Room 2142 on Thursday, September 18, 2003 at 5:30 p.m.**

11. Adjournment

The meeting was adjourned at 8:35 p.m.

**Action Items:**

- 1) **Mr. Menge to contact Bonnie Jones to obtain a breakdown of the districts if each of the five districts were to be divided in half, with a further breakdown of District Three with regard to the majority/minority population of the two new districts that would be created. Mr. Menge is also to obtain an estimate from Bonnie Jones on the cost of conducting a county wide election by mail.**
- 2) **Mr. Menge to request David Tucker, as counsel for the Charter Commission, to seek an opinion from the Attorney General on the districting issue.**

MINUTES OF THE CHARTER COMMISSION MEETING – Continued

**APPROVED BY:**

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**THE CHARTER COMMISSION**

**PREPARED BY:**

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**UNIVERSITY OF WEST FLORIDA WHITMAN CENTER FOR PUBLIC  
SERVICE**