MUNICIPAL AUTHORITY

Municipal Authority: City Charters

Guetzloe v. City of Daytona Beach,
901 So. 2d 415 (Fla. 5th Dist. App. 2005)

A city is not required to place proposed amendments to the city charter on a ballot unless the person or organization submitting the petition pays the statutorily required signature verification fees.

FACTS AND PROCEDURAL HISTORY

Douglas Guetzloe, as Chairman of "Ax the Tax," delivered 6,843 petitions to the City of Daytona Beach, seeking to have the City place proposed amendments to the city charter on the ballot at the City's next general election. Guetzloe did not pay the statutorily required fees for signature verification to the Volusia County Supervisor of Elections prior to submission of the petitions to the City. The City sought a declaration as to whether it was required to place the amendments on a ballot when the signature verification fees had not been paid. Dennis Pirlo subsequently petitioned for a writ of mandamus requesting that the court "compel the City to place . . . [the] proposed amendments on the ballot." *Guetzloe*, 901 So. 2d at 415. The trial court consolidated Pirlo's petition with the City's case and granted the City's motion for summary judgment, holding that a city is not required to place proposed amendments on a ballot when the person or organization filing the petition fails to pay statutorily required petition verification fees.

ANALYSIS

A city may submit charter amendments to its electors on receipt of a "petition signed by [ten] percent of the registered electors as of the last preceding municipal general election." Fla. Stat. § 166.031(1) (2005). Any person or organization submitting a petition for a proposed amendment must pay a signature verification fee in advance to the Supervisor of Elections to determine whether the proper number of appropriate signatures has been collected. Fla. Stat. § 99.097(4) (2005). In *Guetzloe*, the Fifth Dis-

trict Court of Appeal, after reviewing the relevant statutory language, agreed with the trial court, concluding that any other interpretation would "reject basic rules of statutory construction which require the courts to give statutory language its plain and ordinary meaning." *Guetzloe*, 901 So. 2d at 416. Additionally, the court stated that to find otherwise would countermand the intent of the statute, which was to place the financial burden of signature verification on the petitioning entity.

SIGNIFICANCE

This case confirms that the statutorily required signature verification fees must be paid before a local government is required to place a proposed amendment on the ballot. The burden of establishing that the statutorily required number of petition signatures has been obtained falls on the petitioning entity and not the local government.

RESEARCH REFERENCE

- 16 Am. Jur. 2d *Constitutional Law* § 32 (1998 & Supp. 2005).

Frances Shefter

Municipal Authority: Code Enforcement

Sarasota County v. National City Bank of Cleveland,
902 So. 2d 233 (Fla. 2d Dist. App. 2005)

Municipal and county code enforcement actions brought under Florida's Local Government Code Enforcement Boards Act, Part I, are administrative actions and, as such, are not subject to the four-year statute of limitations articulated in Section 95.11(3)(c) of the Florida Statutes. However, it is possible that equitable doctrines, such as laches and estoppel, would prevent a municipality or a county from taking action against a violation.

FACTS AND PROCEDURAL HISTORY

Dorothy Hinchcliff purchased a home in Sarasota County in 1996, subsequently placing the home in a trust, for which National City Bank of Cleveland (Bank) was the trustee. After Ms.

Hinchcliff's death in 1998, her grandson and his children moved into the residence.

When the home was originally constructed, FEMA's Insurance Rate Map indicated that the property was in the A-12 flood zone. This designation required that the residence have a base flood elevation of at least eleven feet. As a result, the ground level of the home was not fit for use as a living area.

The owners that preceded Hinchcliff had renovated the home twice, once between 1980 and 1990, and again in 1990. The first renovation was allegedly completed without a building permit and involved the installation of electrical outlets and an air conditioning unit to the bottom floor of the residence. The second renovation converted the garage into office space, again completed without a permit. However, during the second renovation, the prior owner did obtain a building permit to rehabilitate the structure's stairway. The construction of the stairway was inspected by county building officials, and the County subsequently assessed a portion of the ground floor as a habitable structure.

In 2001, the County initiated code enforcement proceedings against the Bank. Pursuant to Florida's Local Government Code Enforcement Boards Act, Sections 162.01–13 of the Florida Statutes, the County alleged two violations of the Sarasota County Code: (1) prior renovations were done without permits; and (2) the residence contained habitable space in a flood zone. A special master conducted a public hearing on the matter.

At the administrative hearing, the special master found that the alleged violations existed and the code could be enforced. The Bank argued that the enforcement action was barred by the statute of limitations included in Section 95.11(c)(3) of the Florida Statutes. The special master reasoned that the statute of limitations in Section 95.11(c)(3), which requires action within four years of initial construction, did not bar the County's claim in 2001 because the statute did not begin to run until Hinchcliff's grandson began to occupy the residence in 1999.

The Bank appealed the administrative decision. Relying heavily on *Latorre v. Monroe County*, 2000 WL 34509018 (Fla. 16th Cir. Oct. 6, 2000), the trial court agreed that Section 95.11(c)(3) applied, but disagreed as to when the statute of limitations began to run. The trial court held that the statute began to run in the early 1990s when the prior owner made renovations.

As a result, the trial court ruled that the County's enforcement action was barred.

The County sought certiorari review in the Second District Court of Appeal.

ANALYSIS

On appeal, the Second District determined that the statute of limitations did not bar the enforcement sought by the County because the statute of limitations did not apply. The provisions of Chapter 95 of the Florida Statutes apply to civil, rather than administrative, actions. Enforcement actions initiated under part I of the Local Government Code Enforcement Boards Act are administrative proceedings and, therefore, are not subject to Chapter 95. The Second District noted that while the issues in *Latorre* were similar to those in *National City Bank*, the *Latorre* court incorrectly equated administrative with civil actions. The court further noted that had the enforcement action been brought under part II of the Local Government Code Enforcement Boards Act, which provides a supplemental, judicially enforced, method of code enforcement, the Chapter 95 statutes of limitation would have presumably applied. Finally, the Second District commented that, upon remand, the trial court could appropriately require the special master to consider common law time bars of equity, such as laches and estoppel, when reconsidering whether the County should be permitted to enforce the restrictions against the Bank.

SIGNIFICANCE

National City Bank clarifies when the statute of limitations may bar county or municipal enforcement actions brought under Florida's Government Code Enforcement Boards Act. Generally, if a county or municipality seeks enforcement under part I of the Act, the Chapter 95 statutes of limitations will not apply. However, if the county or municipality uses the supplemental civil enforcement measures under Part II, the statute of limitations would presumably attach.

Additionally, *National City Bank* reminds practitioners and special masters that though the statute of limitations in Section 95.11(c)(3) of the Florida Statutes may not apply, the courts will be receptive to arguments of additional equitable time bars, such as laches and estoppel.

RESEARCH REFERENCE

- 7 Fla. Jur. 2d *Building, Zoning and Land Controls* § 7 (Westlaw database updated 2006).

Philip A. McCormick
Nicole Guillet