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SECOND DISTRICT COURT OF APPEALS UPHOLDS CLERK OF COURT'S FISCAL WATCHDOG FUNCTION

Ruling affirms Clerks authority to investigate and audit county expenditures

NAPLES -- Florida's Second District Court of Appeals this week upheld the authority of Florida's Clerks of Court to investigate the status of county funds not in the actual custody of the Clerks and to conduct postpayment internal audits of county expenditures, reversing a trial court ruling.

The decision, capping a five-year legal battle between Collier Clerk of Court Dwight Brock and the Collier County Commission, affirms that the Florida Constitution establishes the Clerk of Court as the "ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."

"This important ruling underscores the important watchdog function that Clerks of Court play over county revenues and expenditures," said Fred Baggett, general counsel for Florida's Clerks of Court. "The court found that this authority emanates from the Constitution and is further implemented by statute."

The legal battle started when Brock initiated an audit after discovering that certain county revenues had been deposited into accounts outside the custody of the Clerk, such as fire department auxiliaries and support groups for museums. The county commission claimed Brock overstepped his authority and the trial court initially agreed, prompting Brock's appeal to the second DCA.

In its opinion, issued Wednesday, the Second DCA found that Brock had authority to conduct the audit, stating "if a statute imposes a duty upon a public officer to accomplish a stated governmental purpose, it also confers by implication every particular power necessary or proper for complete exercise or performance of the duty, that is not in violation of law or public policy."

The opinion goes on to say: "We conclude that the trial court's ruling prohibiting the Clerk from investigating county funds that have not been placed in his custody unduly limits the Clerk's ability to carry out his responsibilities as the custodian of all county funds. A public officer with the right and responsibility to maintain custody of public funds necessarily has the authority both to investigate circumstances in which public funds have wrongfully been withheld from the officer's custody and to seek to obtain custody of the withheld funds. Restricting the Clerk's authority to do so is inconsistent with the goal of protecting public funds from misappropriation, and it is inconsistent with the effectual and complete exercise of the Clerk's authority as custodian of all county funds."

The Second DCA also upheld the Clerks' authority to conduct postpayment audits, stating: "Postpayment audits to verify the legality of payments that have been made are necessary to effectively carry out the Clerk's duty to ensure that county funds are expended only as authorized by law."