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April 14, 2026

Clerk of Court and Comptroller For Escambia County  
Pam Childers  
190 W Government Street  
Pensacola, FL 32502

## **Re: Demand for Payment of Funds or Return of Funds to Escambia County**

Ms. Childers:

This firm was retained by the Greater Pensacola Junior Golf Association, Inc. ("First Tee Gulf Coast") and the Warrington Emergency Aid Center ("WEAC"). In 2025, your office notified First Tee Gulf Coast that, despite the unanimous vote of the Escambia County Commission to provide \$4,500 to First Tee Gulf Coast to support their operations, your office would not sign the warrant for payment ("payment") as directed by the Escambia County Board of County Commissioners. Likewise, on March 9<sup>th</sup>, 2026, your office notified Commissioner Mike Kohler that, despite WEAC's submission of expenses for reimbursement related to its \$2,500 appropriation by the Commission, your office would not be issuing payment to WEAC. *Email Attached.*

Please allow this letter to serve as notice of First Tee Gulf Coast and WEAC's demand that the funds be paid. Alternatively, understanding that First Tee Gulf Coast and WEAC are not the only organizations for which your interpretation of the Commission's funding decisions has dramatically changed, we are requesting you conduct a review of all payments you have made to similar programs and charities that you now claim should not have been paid, and submit a personal refund to Escambia County for all amounts you paid that you now deem unlawful.

The basis for this demand is twofold as set out below:

### **I. YOUR ISSUANCE OF LAWFUL PAYMENTS IS A MINISTERIAL ACT**

#### **a. The County Commission's decisions to issue payments to First Tee Gulf Coast and WEAC were lawful**

Fla. Stat. § 125.01(1)(f) explicitly grants county commissions the power to "provide parks, preserves, playgrounds, recreational areas... and other recreation and cultural facilities

and programs.” Fla. Stat. § 125.01(1)(e) explicitly grants county commissions the power to “provide hospitals, ambulance service, and health and welfare programs.”

The statute further provides that the county commission possesses “all implied powers necessary or incident to carrying out such powers enumerated, including, specifically, authority to employ personnel, expend funds, [and] enter into contractual obligations.” Fla. Stat. § 125.01(3)(a). The provisions of Fla. Stat. § 125.01(1)(f) “shall be liberally construed” in order to effectively carry out the purposes of the statute and to “secure for the counties the broad exercise of home rule powers authorized by the State Constitution.” Fla. Stat. § 125.01(3)(b).

A local government has the power to provide funds to nonprofits to deliver services that constitute a valid public purpose, such as providing recreational and food security programs. *City of Boca Raton v. Gidman*, 440 So.2d 1277 (Fla. 1983). The Florida Supreme Court in *Gidman* laid out a two-part inquiry for such expenditures: (1) Was the action undertaken for a valid public purpose? and (2) was the action expressly prohibited by the constitution, general or special law, or county charter?

In *Gidman*, the Court broadly interpreted “municipal purpose” as comprehending “all activities essential to the health, morals, protection and welfare of the municipality.” *Id.* In that circumstance, the Supreme Court upheld a municipality’s contribution of funds to a day care center serving disadvantaged children and found that the “provision of day care educational facilities... is indeed a valid municipal purpose which is rationally related to health, morals, protection and welfare of the municipality.” *Id.*

In *Speer v. Olson*, 367 So.2d 207, 211 (Fla.1978), the Florida Supreme Court construed Fla. Stat. § 125.01(1) and held that its first sentence grants to the governing body of a county the full power to carry on county government. Moreover, the Court held that unless the Legislature has preempted a particular subject concerning county government by either general or special law, the county governing body, by reason of the first sentence of Fla. Stat. § 125.01(1) has full authority to act through the exercise of home rule power.

In 1983, Florida’s Attorney General concluded that a local government could “contribute, directly or indirectly through the purchase of equipment, to a nonprofit, quasi-public corporation's football program if such a program is open to the public and satisfies a need for a public recreation program.” *Mr. Terence M. Brown*, Fla. AGO 1983-10.

In 1986, Florida’s Attorney General concluded that a county commission could donate revenue sharing monies to a nonprofit senior citizens organization for field trips. The opinion concluded that the board of county commissioners was authorized to do so, “provided that the program is open to the public and is determined by the board of county commissioners to serve a valid public purpose and provided that proper safeguards are implemented to assure accomplishment of the public purpose.” *Mr. Conrad C. Bishop Jr.*, Fla. AGO 1986-102.

In 2000, Florida's Attorney General concluded that a board of county commissioners, so long as they made requisite findings that the use of county assets by a school district would also "serve a county purpose as well as a school purpose," could provide county assets to a school district for the construction of a recreational facility. *Mr. Jonathan Walker*, Fla. AGO 2000-58.

The analysis of all the Attorney General Opinions on expenditure questions has been spelled out best by the opinion issued in AGO 1986-87, where Florida's Attorney General laid out his analysis to determine whether a payment should issue:

1. Is there a general or special law which specifically authorizes the payment?
2. Is there a general or special law which specifically restricts the payment?
3. Is the payment pursuant to some power that has been preempted to the state?
4. Does the payment conflict with state law or Florida's Constitution?
5. Has the commission made a legislative finding as to the purpose of the payment and its benefit to the county?<sup>1</sup>

Based upon that analysis, the Escambia Board of County Commissioners can provide county funds to First Tee Gulf Coast and WEAC to support their missions of providing recreational programs and food security resources to the community by virtue of their powers as outlined in Fla. Stat. § 125.01.

**b. When payment is lawful, a county clerk is obliged to issue payment**

Florida courts have consistently described the clerk as a ministerial officer. As the Supreme Court of Florida recognized as early as 1923, "the clerk of the circuit court is merely the ministerial officer of the board of county commissioners, and has no authority whatever to bind the county" in matters outside statutorily prescribed functions. *Clark-Ray-Johnson Co. v. Schultz*, 86 Fla. 291 (Fla. 1923).

Florida appellate courts have reiterated this ministerial characterization across a wide range of clerk duties. "In the performance of his duties as the court's record keeper, the clerk is a ministerial officer of the court devoid of discretion." *Phillips v. Pritchett Trucking, Inc.*, 328 So.3d 380 (Fla. 1st DCA 2021).

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<sup>1</sup> "I am not aware of any general or special law which specifically authorizes or restricts a noncharter county to make an expenditure of the type under consideration nor has any such statutory provision been brought to the attention of this office. Therefore, in light of the holding of *Speer v. Olson*, supra, and the provisions of s. 1(f), Art. VIII, State Const., and s. 125.01, F.S., authorizing noncharter counties to exercise such powers as they deem necessary to carry on county government, provided that the exercise of such powers has not been preempted to the state and does not conflict with state law or the Constitution, it appears that Brevard County may expend public funds to publicly advertise its position in a referendum, provided that prior to making such an expenditure, the Brevard County Commission makes appropriate legislative findings as to the purpose of the expenditure and the benefits which would accrue to the county therefrom. See AGO 83-5, supra." Fla. AGO 1986-87.

A mandamus writ is appropriate to compel a ministerial act, and Florida courts have repeatedly held that the clerk's core functions are ministerial duties that leave no room for the clerk's own judgment or refusal. *see Collins v. Taylor*, 579 So.2d 332 (Fla. 1st DCA 1991), *Phillips v. Pritchett Trucking, Inc.*, 328 So.3d 380 (Fla. 1st DCA 2021), *G.W. v. Rushing*, 22 So.3d 819 (Fla. 2nd DCA 2009).

In its capacity as the county auditor, a county clerk's pre-audit review of county payments begins and ends with the clerk's analysis of whether a payment is for an unlawful purpose, explicitly prohibited by statute. *Alachua County v. Powers*, 351 So.2d 32 (Fla. 1977).

The scenarios where a clerk is prohibited from making a payment are established in Fla. Stat. § 129.09 – the clerk, “acting as county auditor” is prohibited from making any payment “in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance.”

After confirming that a payment is not authorized by law, the question of whether or not to issue a payment “...would appear to be a ministerial act requiring no further action by the board of county commissioners.” *Mr. Gary E. Eckstine*, Fla. AGO 2001-29.

While I cite several Attorney General Opinions (“AGO”) and understand that the Escambia County Commission has requested an AGO regarding your change in perspective on the matter, I note that every AGO I’ve reviewed exhibits Florida’s Attorney Generals giving far more deference to the role of the county commission than you yourself exhibit.

Not a single AGO available supports your contention in your letter to the Escambia Commission, dated April 23<sup>rd</sup>, 2025, that you are authorized to refuse to issue payment should you simply “not agree that the mission of County government will be served through the expenditure...”<sup>2</sup>

**c. A clerk does not possess a veto over a county commission’s legislative finding**

The Florida Attorney General has consistently maintained that a county clerk cannot substitute their own judgment for that of its county commissioners on questions related to policy or public purpose. The initial determination of whether an expenditure serves a county purpose is reserved exclusively to the county commission and “may not be delegated to the clerk of court.” *Mr. Gary E. Eckstine*, Fla. AGO 2001-29. “Although an express power duly conferred may include the implied power to use the means to make the express power effective, such implied authority does not warrant the exercise of a substantive power not conferred.” *R.H. Hackney, Jr.*, Fla. AGO 1980-93.

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<sup>2</sup> “Should I not agree that the mission of County government will be served through the expenditure, the payment will be denied.” Post-Payment Review of Discretionary Fund Expenditures, April 23<sup>rd</sup>, 2025.

A county clerk, as a constitutional officer, has no power that is not conferred by the Florida Constitution or general law. *Escambia County v. Bell*, 717 So.2d 85 (Fla. 1st DCA 1998) (citing *White v. Crandon*, 156 So. 303 (Fla. 1934)). A constitutional officer such as a county clerk “only has such authority as is clearly conferred by statute or is necessarily implied from express statutory powers or duties.” *Id.* (citing *White* at 305). In *Escambia County*, the court recognized that “while an express power duly conferred may include implied authority to use means necessary to make the express power effective, such implied authority may not warrant the exercise of a substantive power not conferred.” *Id.* at 88 (quoting Fla. AGO 82–95). “[W]here there is doubt as to the existence of authority, it should not be assumed.” *Id.* (quoting *White* at 305).

The determination of whether an expenditure serves a county purpose belongs to the commission subject solely to the clerk’s pre-audit requirement to determine whether the expenditure constitutes an “illegal charge against the county” or is “not authorized by law.” *Mr. Gary E. Eckstine*, Fla. AGO 2001-29, *Mr. Fred W. Baggett*, Fla. AGO 1988-202.

Simply put, absent the authority to refuse to issue a payment pursuant to Fla. Stat. § 129.09, a county clerk does not have the authority to refuse to issue a payment directed by a county commission for any other reason.

Your analysis in your email, dated March 9<sup>th</sup>, 2026, is a subjective analysis of what is and is not an appropriate expenditure of taxpayer funds and bears no relation to your powers, or lack thereof, in this circumstance. The County is not prohibited from making payments to charities, and the County Commission has the power to expend funds to support charities that assist in meeting the recreational and food security needs of Escambia’s citizens. Your email illustrates a deep misunderstanding of your role related to the Escambia County Commission.

The determination of what serves a county purpose is one which the county’s elected commissioners, as “the legislative body of the county” must make. *Mr. Randy Ludacer*, Fla. AGO 1988-52. You do not possess a discretionary veto over funding decisions in the same way Florida’s Governor possesses a veto over state funding decisions.

Florida’s Legislature provides funding to charitable organizations and non-governmental programs annually. After issuing specific vetoes of various line items, Florida’s Governor then signs the annual budget subject to the Legislature’s power to override any vetoes.

Your current position is akin to Florida’s CFO deciding he also possesses a veto, absent any Constitutional or statutory provision giving him such authority. The CFO does not possess the authority to refuse payments he subjectively does not support, and neither does a county clerk.

Because the \$4,500 payment to First Tee Gulf Coast and the \$2,500 payment to WEAC were not in excess of any expenditure allowed by law, or county ordinance, were not illegal

charges against Escambia County, and were authorized by law, the Escambia County Clerk has a ministerial, non-discretionary obligation to issue the payments.

## II. FLA STAT § 129.09 IMPOSES STRICT PERSONAL LIABILITY ON COUNTY CLERKS FOR UNLAWFUL PAYMENTS

As stated above, it is well established that a county commission has the authority to contribute funds to a charity providing recreational or food security programs. If you maintain that you have the authority to refuse to issue the payments to First Tee Gulf Coast and WEAC, we will be forced to assume that you have a good faith belief that the payments to First Tee Gulf Coast and WEAC constitute either “claim[s] against the county not authorized by law” or they are an “illegal charge against the county” pursuant to Fla. Stat. § 129.09.

Fla. Stat. § 129.09 states:

Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, ***shall be personally liable for such amount***, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

The clear language of Fla. Stat. § 129.09 establishes a civil cause of action for personal liability for the full amount of any unlawful payment you have made. The statute requires no finding of intent to make you personally liable. The statute is self-executing and requires only evidence that you issued a payment that violated one of the four prohibited categories.

We need only establish three elements to prevail at trial in this circumstance:

1. Pam Childers is the Clerk of the Circuit Court acting as the county auditor;
2. Pam Childers signed a warrant for payment of county funds; and
3. The payment fell within one of the three prohibited categories under which Pam Childers is authorized to refuse to issue such payment
  - a. Exceeding expenditures allowed by law or county ordinance,
  - b. Paying an illegal charge against the county,
  - c. Paying any claim not authorized by law, or county ordinance.

Courts have recognized a county clerk’s personal liability when weighing issues related to a clerk’s auditing functions. *Brock v. Board of County Com'rs of Collier County*, 21 So.3d 844

(Fla. 2nd DCA 2009)(“Section 129.09... imposes both personal civil liability and criminal liability on any clerk of the circuit court acting as county auditor who signs a warrant for any illegal or unauthorized payment of county funds.”).

In addition to the payments you have previously made to recreational and food security charities, you have acknowledged that you have made payments to other organizations, as directed by the Escambia County Commission, that you now subjectively deem unlawful. You stated in the Pensacola News Journal that “[f]or years, discretionary spending has been improperly used for golf tournaments, charity fundraising events, galas and other expenditures that appear to be currying favor.”<sup>3</sup>

Similarly, in your Post-Payment Review of Discretionary Fund Expenditures, you state: “Public dollars should not be spent to gain favor, to deliver a seat at an event, to show support for someone else’s cause or mission, to provide Christmas gifts to children, to add to the funding for a school softball team’s travel to the championship, to assist the mission of the church to feed their parishioners and other community guests, or provide a donation to a fund raiser hosted by the not-for-profit.” While you cite no law or ordinance for this general statement of your personal opinion, the fact remains that you issued payments for such items.

Pursuant to Fla. Stat. § 129.09, if you prevail in your argument that the payments to First Tee Gulf Coast and WEAC were somehow unlawful, you are obligated to pay back to Escambia County every dollar related to the County’s “discretionary funds” that you previously paid to similarly situated charities. The contributions to charities like First Tee Gulf Coast and WEAC have either always been unlawful, or you are obliged to pay them as a ministerial act. If they have always been unlawful, as you now contend, you are personally liable to the County for their repayment.

To that end, and pursuant to Florida Chapter 119, we request you provide to our office an accounting of every payment you have authorized related to the Escambia County Commission’s “Discretionary Funds” and “Community Support Funds” since January 8<sup>th</sup>, 2013, so that we may review whether your current analysis of legality would render those payments “reimbursable” to the County upon a finding of your personal liability.<sup>4</sup>

Based upon your current position, your April 23<sup>rd</sup> letter to the Commission contains admissions that you are liable to the County for the following “sample” of payments you issued that you deemed unlawful:

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<sup>3</sup> Whether the County Commission’s expenditures engender good will in the community is, frankly, irrelevant as it relates to your role. If you believe the County Commission’s lawful expenditures should not be made, your recourse, like that of every other citizen in Escambia County, is to vote in your next election or run for a seat on the Commission, yourself.

<sup>4</sup> For your convenience, we are simultaneously submitting a more detailed request for public records to your designated custodian of public records at [PublicRecords@EscambiaClerk.com](mailto:PublicRecords@EscambiaClerk.com)

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01-31-2024	WSRE	\$3,000
08-28-2023	Jubilee Church	\$5,000
08-31-2023	Impact 100	\$8,500
01-05-2024	Escambia Public Schools	\$5,250
02-04-2025		
02-13-2025		
02-18-2025	Escambia Sheriff Foundation	\$2,500
11-08-2023	Gonzalez Baptist Church	\$1,000
	<b>TOTAL</b>	<b>\$25,250</b>

A further analysis is required to determine whether any of the other “over \$600,000 in public funds” that you paid “from the public treasury for Commissioner’s (sic) discretionary spending” were also unlawful, based upon your current legal position.

### III. CONCLUSION

The question of whether or not the Escambia County Commission’s Community Support Grant program is the highest and best use of taxpayer funds is the sole purview of the Escambia County Commission and the electors who voted them into office. Your perspective as a voting resident of the County is valid, but it does not impart powers you do not possess as its Clerk. Your public rhetoric to date has exhibited your intent to invade the legislative purview of the Escambia County Commission, beyond your role as the County’s Clerk.

Aside from my clients’ immediate concerns, the residents of Escambia County deserve clarity as to whose subjective discretion dictates the use of their tax dollars. Charities have relied for years on the issuance of these payments being lawful, in part because you’ve issued the payments after (we’d assumed) fulfilling your pre-audit functions pursuant to Fla. Stat. § 129.09. Under our analysis, your office has either abdicated its pre-audit functions for nearly a decade or is exceeding its authority today. Only one of those scenarios can be true.

It is our sincere hope that the parties can resolve this matter promptly and amicably, without the need for legal proceedings. Please contact my office if you have any questions related to this matter.

If we do not receive a response from you by April 24<sup>th</sup>, 2026, we will be forced to proceed with a lawsuit seeking mandamus and, in the alternative, declaratory relief and your personal reimbursement of all similarly situated payments which you have issued since at least 2016.

Yours most cordially,  
**MOORE, HILL & WESTMORELAND, P.A.**  
/s/ R. Alexander Andrade  
R. ALEXANDER ANDRADE

ATTACHMENTS

2026-03-09 Email Denying Payment to WEAC

2025-04-23 Post-Payment Review of Discretionary Fund Expenditures

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**From:** Pam Childers (COC) <[PCHILDERS@escambiaclerk.com](mailto:PCHILDERS@escambiaclerk.com)>  
**Sent:** Monday, March 9, 2026 2:59 PM  
**To:** District2 <[District2@co.escambia.fl.us](mailto:District2@co.escambia.fl.us)>  
**Subject:** Warrington Emergency Aid Center - Denied

Late last week (March 4, 2026) the Clerk's Disbursements Department received a request for payment to Warrington Emergency Aid Center (WEAC), a Board of County Commissioner's Agenda item dated October 16, 2025. The funding request is for \$2,500 of which monies are to be spent on various food items to have on hand for the hungry in times of crisis. This type of generous giving comes voluntarily from the people of Escambia Count and not from our government deciding to gift or donate tax revenues unconnected with County programs. When the county levies and collects property taxes for county purposes it must also spend the revenue for county purposes. There must be a clearly identified and concrete public purpose as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished.

I did not expect to see a request for payment for a food pantry given I have previously addressed the topic in writing, again during a short conversation with the Commissioner in Tallahassee and also directly in a meeting with a member of the County Attorney's office. I assumed the topic and the request was understood as a denied request. Given that the Clerk's office has received backup from WEAC whereby requesting reimbursement, I am reaching out to communicate that the payment is denied and reimbursement will not take place.

Please refer to the Clerk's Post-Payment Review of Discretionary Fund Expenditures dated April 23, 2025 and presented to the Board of County Commissioners. If you would like to talk through this denial with me, feel free to reach back.

**PAM CHILDERS**

***Clerk of the Circuit Court & Comptroller***

First Judicial Circuit, Escambia County

"Before you are a leader, success is all about growing yourself. When you become a leader, success is all about growing others" – Jack Welch

Florida has a very broad public records law. Under Florida law, both the content of emails, email addresses and IP addresses are public records. If you do not want the content of your email, your email address, or your IP address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in person.

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# Pam Childers

Clerk of the Circuit Court and Comptroller, Escambia County

Clerk of Courts • County Comptroller • Clerk of the Board of County Commissioners • Recorder • Auditor

April 23, 2025  
(delivered via e-mail only)

Commissioner Mike Kohler  
Chairman of the Escambia County  
Board of County Commissioners  
213 Palafox Place, 2<sup>nd</sup> Floor  
Pensacola, Florida 32502

Alison Rogers  
Escambia County Attorney

Re: Post-Payment Review of Discretionary Fund Expenditures

Chairman Kohler,

Attached you will find a detailed report on Discretionary Funds – Aid to Private Organizations. The report begins with the history of discretionary allocations, discusses the public purpose doctrine, and includes examples of prior expenditures to illustrate the law. It should be noted that “discretionary” allocations of Local Option Sales Tax (LOST) revenues by district is not the same as “discretionary funds” discussed here. LOST allocations are not given to aid a private organization, they are spent on public projects needed within the community that follow established procurement practices and in accordance with specific statutory requirements. Law Enforcement Trust Fund (LETTF) revenues and expenditures are touched on as they resemble “discretionary funds” but are governed by a different statute. The Discretionary Funds spending at issue here are those paid to private organizations and whether taxes assessed and revenues collected by the County are expended, under this method, for a county public purpose.

It was not until October 2016 (Fiscal Year 2017) that the concept of Discretionary Funds spent from General Fund revenues was allocated in the Escambia County annual budget. As Escambia’s Clerk and Comptroller, I turned to the County Attorney, Alison Rogers, to create a policy and a form wherein commissioners could review and understand the law before deciding to allocate funds as a “give” of

taxpayer dollars to a private organization. Without proper guidance in the form of a written descriptive policy or legal research, new commissioners are at a disadvantage when voting on hundreds of items placed before them on a consent agenda which includes discretionary requests from fellow commissioners. When discretionary funding became a budgeted line item, conversations started with Ms. Alison Rogers as a phone call regarding the creation of a discretionary spending policy and as time went on there were occasional emails to request status updates on a written policy or form that would aid the commissioners and ensure the expenditure was legally sound. The last email was in May 2021 and by June 2021 the County and the Clerk were at odds on the funding of a lucrative private pension for elected officials; consequently, the dialogue regarding discretionary spending was halted. There was no policy established, no known written guidance provided to commissioners, and therefore the request to give money to private organizations currently resembles more of a generosity handout by a commissioner as opposed to identifying a need to be met by county government.

Taxpayer dollars must be spent by the Escambia County Board of County Commissioners on a “county public purpose.” Commissioners’ approval to spend their discretionary allotment have all resembled a noble cause; however, when you spend ad valorem revenues (property taxes) the law requires more than a noble cause. Taxpayer dollars should be used for the common interests of the people of Escambia County. Public dollars should not be spent to gain favor, to deliver a seat at an event, to show support for someone else’s cause or mission, to provide Christmas gifts to children, to add to the funding for a school softball team’s travel to the championship, to assist the mission of the church to feed their parishioners and other community guests, or provide a donation to a fund raiser hosted by the not-for-profit. These are all good reasons to make a personal donation. Funding from the General Fund coffers, the people’s money, should be for the mission of County government. Before giving public money to private organizations Commissioner’s should ask themselves: Is there a common need to be met by County government? Is there a clearly identified and concrete County public purpose as the primary objective? Is there a reasonable expectation that such County public purpose will substantially and effectively be accomplished through the expenditure?

It is with this research and communication that I recommend that the Board of County Commissioners cease with budgeting and expending General Fund dollars by way of a “discretionary” method. The post-payment review demonstrates that the risk level for misuse is very high. If the practice continues, I as the County’s

Auditor, will heavily scrutinize the expenditure to ensure that it meets an identified County public purpose and is otherwise in compliance with the law. Should I not agree that the mission of County government will be served through the expenditure, the payment will be denied. Section 129.09 states that “[a]ny clerk, acting as county auditor, who shall sign any warrant for the payment... or to pay any claim against the county not authorized by law...shall be personally liable...” This statute was emphasized time and time again by the County during the three-year litigation in the 401A/Private pension litigation.

I offer this research and guidance in an effort of collaboration on a topic that has had no structure nor formal review since the inception in October 2017. In my pre-audit responsibilities for reviewing these types of expenditures, I will rely on this legal research, relevant statutes, existing AGOs, and any other research provided by the County Attorney’s office. I look forward to an open discussion regarding discretionary spending.

A handwritten signature in cursive script that reads "Pam Childers". The signature is written in black ink and is positioned above the typed name and title.

Pam Childers  
Escambia County Clerk and Comptroller

Enclosed: Post-Payment Legal Review by Codey Leigh, General Counsel



# Pam Childers

Clerk of the Circuit Court and Comptroller, Escambia County

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## POST-PAYMENT LEGAL REVIEW

To: Pam Childers, Escambia County Clerk and Comptroller

From: Codey Leigh, General Counsel

Date: April 23, 2025

Re: Post-Payment Review of Discretionary Fund Expenditures

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## Commissioner's Discretionary Funds & Aid to Private Organizations

Each year during the budget appropriation process, the Escambia County government (the "County") allocates public funds in the amount of \$50,000 to each of the five County Commissioners. These funds are labeled and referred to as "Discretionary Funds" and are recorded in the County's financial records under an account called "Aid to Private Organizations." (Exhibit A). Funds not expended within the County fiscal year rollover and are added to the following year's \$50,000 discretionary allocation.

Discretionary Fund expenditures from the account Aids to Private Organizations can be traced back to 2013. At that time, discretionary allocations were expended from Tourist Development Tax revenues and used for events like the Snowball Derby. (Summary Exhibit B). It was not until October 1, 2016, that Discretionary Funds were budgeted and expended using General Fund revenues. (Summary Exhibit C). Before that time, no records were located that show requests from the General Fund of the type that are now seen from out of Discretionary Funds. The Clerk's office reached out via email to County staff on September 21, 2020, January 14, 2021, and May 8, 2021 requesting to establish a written policy and forms for the allocation of Discretionary Funds. (Exhibit D).

Discretionary Fund allocations in Escambia County tend not to be larger expenditures for items such as sidewalks, lighting, and stormwater improvement within a commissioner's district. Instead, public funds budgeted in the account Aid to Private Organizations are usually expended in smaller increments of \$1,000 to \$5,000. From October 1, 2020 through present over \$600,000 in public funds have been expended

from the public treasury for Commissioner's discretionary spending. (Exhibit E). Below is a sampling of Discretionary Fund expenditures:

- \$3,000 to the WSRE-TV Foundation, Inc. to purchase wine glasses, run advertisements, and secure the appearance of chefs for the 33<sup>rd</sup> WSRE PBS Wine and Food Classic (Exhibit F);
- \$5,000 to Jubilee Church for Back to School Backpack Giveaway (Exhibit G);
- \$8,500 to Impact 100 Pensacola Bay Area, Inc. for a 20<sup>th</sup> Anniversary Celebration to pay for beverages, hor d'oeuvres, cocktail supper, and food vendor staff (Exhibits H & I);
- \$2,500 to Escambia County Sheriff Foundation, Inc. to help fund the Fallen memorial Plaza (Exhibit J); and
- \$1,000 to Gonzalez Baptist Church for a community picnic. (Exhibit K).

Discretionary Funds are allocated out of the General Fund where the concentration of revenues are derived from property taxes collected from Escambia County property owners. For summary, the General Fund budget for 2024-25 was \$282 million, of which property taxes accounted for \$203 million. (Exhibit L). While Discretionary Funds are a small percentage of the overall budget, the expenditures are still legally controlled by the Florida Constitution because the County is utilizing its spending authority connected with the revenue it raises through its taxing authority. When public funds are allocated to private organizations, the County is drawing upon the revenue generated from thousands of property owners in Escambia County. Disbursement of funds not meeting the legal requirements under Florida law become a slow leak of taxpayer dollars.

## The Public Purpose Doctrine and County Public Purpose

### Public Purpose

The County's power to expend taxpayer money from the public treasury must be within the bounds of article VII, section 10 of the Florida Constitution. This section provides:

Neither the state **nor any county**, school district, municipality, special district, or agency of any of them, **shall** become a joint owner with, or stockholder of, or **give, lend or use its taxing power or credit to aid any corporation, association, partnership or person...**

Art. VII, § 10, Fla. Const.

In short, article VII, section 10 of Florida Constitution prohibits the County from using its taxing and spending power to give, lend, or use public money to aid corporations, associations, partnerships, or persons. When public funds are being given to aid a private organization, such as the case with expenditures or donations from Commissioner's Discretionary Funds, then there must a "clearly identified and concrete

public purpose as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished.” *O’Neill v. Burns*, 198 So. 2d at 4 (1967). The bar may seem high, but it is necessary because public funds are being given to private persons or organizations.

Both the Clerk and the Board determine public purpose, with the five County Commissioner’s that sit on the Board making the first determination. *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1977) (explaining that the Clerk has auditing functions to determine the legality of the expenditure, including public purpose). This dual-auditing function provides a check and balance system to ensure the proper expenditure of public funds from the County treasury. Op. Att’y Gen. Fla. 58-236. In day-to-day government operations, the Clerk gives deference to the Board’s legislative determination of public purpose, unless such determination appears to be unreasonable or clearly erroneous.

## County Public Purpose

But more specifically, as it relates to the County expenditures subject to this review, there must be a *County* public purpose served. Relevant here is that the County levies and collects taxes “...both for **county purposes** and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness.” § 125.01(r), Fla. Stat. (2024). It is an elemental principle that when the government levies and collects taxes for a purpose it must also spend that revenue for the same purpose. *Dickinson v. Stone*, 251 So. 2d 268 (Fla. 1971) (citing *Oven v. Ausley*, 143 So. 588 (Ala. 1932); *Supreme Forest Woodmen Circle v. Hobe Sound Co.*, 189 So. 249 (Fla 1939); *Taylor v. Williams*, 196 So. 214 (1940)) (“It is a violation of an elemental principle in the administration of public funds for one who is charged with the trust of their proper expenditure not to apply those funds to the purposes for which they are raised.”). Consequently, when the County levies and collects taxes for *county purposes* it must also spend the revenue for *county purposes*.

Determining what is a valid county public purpose can be challenging as there is no specific definition in the Florida Constitution or Florida Statutes. However, the Florida Statutes, in section 125.01, do provide a *non-exhaustive* list of County powers that may help to provide some guidance when determining public purpose in county government. Some of those powers are:

1. Provide and maintain county buildings;
2. Provide fire protection;
3. Provide hospitals, ambulance service, and health and welfare programs;
4. Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commission, and other recreation and cultural facilities and programs;

5. Provide and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, and air pollution control; and
6. Perform other acts not inconsistent with law, which act are in the *common interest* of the people of the county.

Further, reviewing some of the reoccurring expenditures of the County can also help demonstrate County public purpose. Although this retrospective analysis is instructive, some caution should be used because prior expenditures may not necessarily imply full compliance. A sampling of expenditures that have historically been allocated from the General Fund are:

1. Wages and benefits for county employees;
2. Building and maintaining parks; animal shelters; community centers; and other county owned facilities;
3. Operating jail facilities;
4. Paying for equipment such as computers, copiers, and phones;
5. Purchasing and maintaining a fleet of vehicles for County business; &
6. Providing public safety (e.g. sheriff & firefighters)

Other common expenditures are provided in Exhibit M.

## No-Aid Provision in Article 1, Section 3 of the Florida Constitution

Separately, the Florida Constitution also prohibits the use of public funds in aid of any church, sect, or religious denominations or in aid of any sectarian institution. Article I, section 3 of the Florida Constitution states:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. **No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.**

This is commonly referred to as the no-aid provision and is stricter than the establishment clause found in the United States Constitution. The no-aid provision in our State's Constitution does not create a blanket ban to expending County funds to religious or faith-based institutions to furnish necessary County services. The First District Court of Appeal provides some criteria that may be used.

In determining whether such [social service] programs violate the no-aid provision, the inquiry necessarily will be case-by-case and will consider

such matters as whether the government-funded program is used to promote the religion of the provider, is significantly sectarian in nature, involves religious indoctrination, requires participation in religious ritual, or encourages the preference of one religion over another.

*Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 120 (2010).

Thus, giving money (i.e. aid) directly to a church in order to promote the religious work of the church would violate the no-aid clause. A donation to a church for that church's picnic, without more, is likely aiding the church in its work and would likely run afoul of article I, section 3 of the Florida Constitution. Determination of whether an expenditure violates the no aid-provision, like the public purpose determination, must be made on a case-by-case basis.

## Law Enforcement Trust Fund

Separate from Commissioner's Discretionary Funds is the Law Enforcement Trust Fund. Funds in this trust fund do not originate from property tax collections or from a special revenue source like sales tax. Instead, these funds are assets seized or proceeds from the sale of forfeited property carried out by, in this case, the Sheriff's Office. Statutory guidance regarding these funds is found in Chapter 932 of the Florida Statutes. Section 932.7055(5)(a) provides an overview of the Law Enforcement Trust Fund and its uses.

If the seizing agency is a county or municipal agency, the remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use in the law enforcement vehicles, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

§ 932.7055(5)(a), Fla. Stat. (2024).

As required in the first sentence of this statute, the proceeds from the sale of forfeited property are deposited in an account established by the Board. The statute then enumerates the permissible uses of funds from the Law Enforcement Trust Fund. Those permissible uses are:

1. School resource officers;
2. Crime prevention;
3. Safe neighborhood;

4. Drug abuse education and prevention programs;
5. Other law enforcement purposes.

The last sentence of 932.7055(5)(a) clarifies that the funds should not be used for normal operating expense of the law enforcement agency. Finally, the statute provides that Law Enforcement Trust Funds may be given to an organization to accomplish one or more of the five purposes set forth above. If given to a private organization the organization shall provide an accounting for the trust fund money and furnish reports. § 932.7055(5)(c), Fla. Stat. (2024).

The process by which Law Enforcement Trust Fund monies are appropriated is also set forth in statute and implemented through local forms developed by the Sheriff's Office and approved by the County Attorney. Before a check is cut to release funds, the Board must approve the Sheriff's Office request at one of their public meetings. There are two different types of requests. The first is a request directly from the Sheriff's Office for that agency to spend trust funds for one of the purposes set forth in statute. The second is received in the form of an application that requests funds be disbursed to private organizations other than the Sheriff's Office, again for one of the purposes set forth in statute. Because funds from the Law Enforcement Trust Fund are also disbursed to private organizations the expenditures are briefly covered in this review.

Some of the expenditures that the Board has approved from the Law Enforcement Trust Fund to private organizations include:

1. \$2,500 to Aldersgate United Methodist Church for Boy Scouts of America;
2. \$8,000 to Covenant Hospice Foundation to partner with Escambia Search and Rescue to provide radio technology and specially trained search and rescue teams;
3. \$3,000 to Brownsville Assembly of God Church to provide groceries and toys.
4. \$5,234 for the Sheriff's Office to operate the Blazer Academy;
5. \$500 for the Sheriff's Office to purchase ESCO Narcotics Hats; and
6. \$1,000 to Marine Corps League Pensacola as a sponsor for their Vehicle and Cycle Show.

A sampling of records received by the Clerk's office after approval by the Board include a detailed accounting of trust fund monies. (Exhibit N). Other records, however, do not include an accounting to detail how the funds were spent. (Exhibit O). It is my recommendation that the County review the applicable statutes to ensure that the requests approved by the Board are in accordance with the enumerated purposes set forth in section 932.7055 of the Florida Statutes. As for the detailed accounting, the Clerk's office is working directly with the Escambia County Sheriff's Office to ensure that payment records are received to facilitate a more complete pre and post payment audit of expenditures.

# Discretionary Funds Post-Payment Audit Analysis

A review of Discretionary Fund expenditures from the account Aid to Private Organizations was conducted. Post payment reviews, like the review conducted here, help to "...verify the legality of payments that have been made..." and "...are necessary to effectively carry out the Clerk's duty to ensure that county funds are expended only as authorized by law." *Brock v. Board of County Commissioners*, 21 So. 2d 844 (Fla. 2d DCA 2009).

A post-payment sample review of expenditures from commissioner's "Discretionary Funds" recorded as "Aid to Private Organization" was examined. Below are observations and, should the Board decide to continue its practice, some recommendations from that review.

## Observation and Recommendation # 1

**Discretionary Fund donations to a private organization were used to purchase 552 wine glasses.**

**Observation:** On October 5, 2023, former Commissioner Bergosh requested the Board to approve funding in the amount of \$3,000 for the 33<sup>rd</sup> WSRE PBS Wine and Food Classic. The funding request at the time of Board approval did not provide detail regarding the specific expenditures. The detailed backup for the expenditures, received on January 31, 2024 after the expenditure was approved by the Board, demonstrates that \$1,236 of the \$3,000 allocation was used to purchase wine glasses. (Exhibit F). The remaining amount was used for advertising and for the appearance of two chefs. At the time of approval, the Board did not identify the public purpose served through the \$3,000 expenditure nor was it clear that the funds would be used to purchase wine glasses.

**Recommendation:** The Board should require greater detail regarding the items purchased or the services provided through the expenditure of public funds. This improvement will help ensure that the expenditure of public funds serves County public purpose and that the expenditure will accomplish the County public purpose identified by the Board.

## Observation and Recommendation # 2

**Individual sponsorship recognition and the use of public funds.**

**Observation:** On May 18, 2023, former Commissioners Bergosh and Bender both brought forth items to donate money to Pensacola Bay Area Impact 100's 20<sup>th</sup> Anniversary Celebration. Former Commissioner Bender's item was for \$1,000 whereas former Commissioner Bergosh's agenda item was for \$7,500. (Exhibits H & I). Both

items were approved by the Board with unanimous votes. Records provided by the County to the Clerk connected with payment of the item includes correspondence from Impact 100 indicating that event sponsors receive: (1) recognition at the event as an event sponsor; and (2) event tickets for 2 people. (Exhibit I). The payment records also demonstrate that former Commissioner Bergosh was denoted as a “Major Sponsor” whereas former Commissioner Bender was an “Event Sponsor.” (Exhibits H & H).

Online records from Impact 100’s official Facebook page indicate that Commissioner Bergosh was recognized as a sponsor and the Escambia County logo was used in connection with former Commissioner Bergosh’s recognition. (Exhibit P). Other media also advertised Jeff Bergosh as a sponsor. (Exhibit Q). No evidence was found that Commissioner Bender was individually recognized.

As for the event tickets, the backup for former Commissioner Bender’s item indicates that Commissioner Bender returned the two tickets given. (Exhibit I). However, the backup for former Commissioner Bergosh lacks any evidence concerning event tickets.

**Recommendation:** Based upon this post-payment review and the apparent connection between use of public funds for individual recognition, the Clerk’s office recommends that the County’s policy prevent receipt of tickets, individual campaign like advertisements, or other individual benefits connected with the expenditure of public funds from the County’s treasury. Furthermore, the public purpose for donations should be clearly defined in the County records because it appears the disbursement of public money was used for a ticketed celebration event only.

## Observation and Recommendation # 3

### Discretionary Funds using County tax revenues were expended for a “school purpose.”

**Observation:** Florida Courts have found that it is an elemental principle that if the government levies and collects taxes for a purpose it must also spend that revenue for the same purpose. *Dickinson v. Stone*, 251 So. 2d 268 (Fla. 1971) (citing *Oven v. Ausley*, 143 So. 588 (Ala. 1932); *Supreme Forest Woodmen Circle v. Hobe Sound Co.*, 189 So. 249 (Fla 1939); *Taylor v. Williams*, 196 So. 214 (1940)) (“It is a violation of an elemental principle in the administration of public funds for one who is charged with the trust of their proper expenditure not to apply those funds to the purposes for which they are raised.”).

Both the County government and the Escambia County School District levy taxes. The County levies taxes for “county purposes.” § 125.01(r), Fla. Stat. (2024) (The County has the power to “[l]evy and collect taxes...for county purposes.); Art. VII, Sec. 9, Fla. Const. (“Counties, school districts, and municipalities shall, and special districts may, be authorized *by law* to levy ad valorem taxes and may be authorized by general law to

levy other taxes, *for their respective purposes*, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.”) On the other hand, the Escambia County School District levies taxes for “school purposes.” § 1011.71, Fla. Stat. (2024).

A post-payment review of Commissioner’s Discretionary Funds reveals expenditures that are school related and thus more properly categorized as “school purposes” as opposed to “county purposes.” A sampling of those expenditures are:

- \$250 requested from Booker T. Washington High School and expended on uniforms and equipment for the softball team;
- \$4,000 requested from Tate High School and expended on umpires for baseball games; and
- \$1,000 requested from Booker T. Washington High School and expended on shoes.

(Exhibit R).

**Recommendation:** Taxes levied for a “county purpose” should not be expended for a “school purpose.” The Board should more closely inspect Discretionary Fund expenditures before approval.

## Observation and Recommendation # 4

### Discretionary Funds were used to pay for a church event with “gospel presentations.”

**Observation:** On April 20, 2023, Commissioner Barry requested and the Board approved the expenditure of Discretionary Funds in the amount of \$1,000 to Gonzalez Baptist Church for a Cantonment Community Picnic. (Exhibit K). The background summary on the agenda item stated: “On July 8, 2023, Gonzalez Baptist Church will be hosting our Cantonment Community Picnic. They are partnering with other non-profits and Gulf Winds Credit Union to make citizens aware of resources in the community of various kinds. Gulf Winds is providing lunch. All activities and food will be free for all who attend.” When the expenditure detail for the \$1,000 was received from the County by the Clerk’s office on November 8, 2023, it revealed that a stage trailer was rented and used for an “Evangelistic Community Picnic.” The trailer was used for “gospel presentations” with “church members having multiple gospel conversation.” While the precise use of public funds went towards a tent rental, donating to a church to purchase equipment for an evangelistic picnic likely runs afoul of article I, section 3 of the Florida Constitution that prevents expending public funds to aid any religion.

**Recommendation:** The Board should require greater specificity before the Board approves an expenditure to ensure that public funds expended serve a sufficient County public purpose and do not otherwise violate Florida law.

## Observation and Recommendation # 5

Public information is not available to inform all citizens of the process by which to request allocations of Discretionary Funds.

**Observation:** A search of Escambia County's official government website for the term "discretionary funds" results in zero search results. (Exhibit S). Each Commissioner's district page on the MyEscambia.com website was reviewed and revealed no information regarding Discretionary Funds. Currently, there are no known publicly available forms that would apprise citizens that Discretionary Funds can be requested. The lack of forms leads to less public participation and less transparency in the process.

**Recommendation:** Should this process continue, the County should create forms to request Discretionary Funds/Aid to Private Organizations and host those forms in a conspicuous place on their official website. Discretionary Fund requests submitted to the County or its Commissioners should be centrally maintained by the County pursuant to the retention schedules issued by the Florida Department of State, Division of Library and Information Services. Centrally maintained request forms will lead to greater transparency allowing the public to inspect records related to such expenditure requests.

## Observation and Recommendation # 6

The Board's public approval process does not adequately apprise the public that public funds are being donated to private organizations.

**Observation:** The Board's agenda process does not separate essential governmental finance items from those that are ostensibly non-essential like Discretionary Funds. Non-essential Discretionary Fund agenda items appear on the County Administrator's Budget and Finance Consent Agenda along with all other essential governmental items.

Consent agendas are usually moved and passed in one motion without individual deliberation. At Board meetings the County Administrator will explain how many items are on the Budget and Finance Consent Agenda and, unless there are speakers or items individually held aside by a Commissioner, then all items on the Budget and Finance Consent Agenda will be moved in one motion. An observer of the Board's public meeting would not know that County Administrator's Budget and Finance Consent Agenda item contains agenda items to donate public funds to private organizations. Only the written agenda available online demonstrates the detail regarding the individual agenda items.

Further, there is a routine practice of adding agenda items after publication of the electronic agenda. To explain, for Board meetings on Thursday the electronic agenda is

published for public review the Friday before. For Board meetings held on Tuesday, the electronic agenda is published on the preceding Wednesday. Items added to the agenda *after* publication, but before the meeting, simply show up as part of the overall electronic agenda and not as an “Item Added to the Agenda.” Thus, a member of the public who views an agenda after publication would not be aware that items have been added unless that citizen reviews the entire agenda again to determine if there were any changes.

**Recommendation:** Items for donations to private organizations should be pronounced in the Board agenda. Commissioner’s Discretionary Fund Agenda items could have a separate section on the Board’s Agenda. Alternatively, or in addition, items added after initial publication should clearly be identified by placing those items under the “Items Added to the Agenda” section of the agenda.

## Observation and Recommendation # 7

**Each Commissioner should identify if there is a public necessity to be met when using tax dollars as a private donation.**

**Observations:** Logically to serve a public purpose expenditures of public funds to private organizations should be meeting some County need or necessity. It was not until October 1, 2016, that Discretionary Funds were budgeted and expended using General Fund revenues. (Exhibit C). Before that time, there is no record of regularly occurring expenditures from the General Fund of the type that are now seen from Discretionary Funds. Thus, there must have been a County need or necessity that was not identified or that did not exist prior to 2016.

**Recommendation:** In AGO 83-06 the Attorney General opined that a municipality may contribute to a nonprofit corporation for a sports program if the program is open to the public and satisfies a public need for such a program. The Board should reevaluate if there is first a County necessity or need that exists. Then the County should determine whether the County need identified by the Board is being met through the expenditure to the private non-profit entities in receipt of Discretionary Funds.

## Conclusion

Only a small sample of expenditures were reviewed. Based on that small sampling, it is my opinion that the risk of misuse of Discretionary Funds is high. In addition to the above observations, I have also discovered that Discretionary Funds were used as a bargaining chip to garner support to continue litigation in *Escambia County v. Gannett MHC Media, Inc.*, Case No. 2023 CC 006519. Assistant County Attorneys Steve West and Kristin Hual both opined to the Board in a confidential (now public) meeting on May 2, 2024, that the risks of going forward this case outweighed the benefits. The risks

were sanctions in the form of attorney fees against the County. Had the Board heeded the opinion of their attorneys, the taxpayers would have avoided the monetary sanctions. However, in the confidential meeting Commissioner Bergosh pledged use of his Discretionary Funds to pay for sanctions and so the litigation continued. ([Transcript](#)). This decision resulted in attorney's fees against the County totaling \$102,209. This example and others, such as the attempted use of Discretionary Funds to pay for personal fines against an individual, demonstrates the trouble that arises over time through the individual allocation of "Discretionary Funds." (Exhibit T).

Furthermore, prior expenditures of public funds to private organizations are no justification to continue the practice of "discretionary" spending methods. Just because the government has done something in the past does not mean the practice should continue. Thus, based upon my post-payment review, I recommend the County cease the practice of allocating public money per district for donations to private entities. If the County continues this practice, the recommendations above should be considered, and a more thorough examination of each expenditure should occur. Finally, relabeling Discretionary Funds to Community Support Funds, as the County has proposed most recently, will likely not alleviate the type of waste discovered in this sampling.

/s/ Codey Leigh  
General Counsel