STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GOOD FELLA'S ROLL-OFF WASTE DISPOSAL, INC.,

Appellant,

vs. Case No. 15-2826

CITRUS COUNTY, BOARD OF COUNTY COMMISSIONERS,

Appellee.
_____/

FINAL ORDER

Pursuant to notice, oral argument was held in this case on July 17, 2015, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge, in Inverness, Florida.

APPEARANCES

For Appellant: Clark A. Stillwell, Esquire
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Inverness, Florida 34450

For Appellee: Denise A. Dymond Lyn, Esquire
Citrus County Attorney
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PRELIMINARY STATEMENT

Pursuant to section 82-77, Citrus County Code (C.C.C.), Appellant Good Fella’s Roll-Off Waste Disposal, Inc. (Good Fella’s or Appellant), seeks review of the Order on Administrative Hearing (Order) entered by the county

administrator of Citrus County on March 27, 2015. Appellant filed its request that the case be referred to the Division of Administrative Hearings (DOAH) for appellate proceedings with both the county administrator and the Citrus County Board of County Commissioners (Board) on April 16, 2015, accompanied by a Notice of Appeal that outlined Appellant's objections to the Order. The Board voted on May 13, 2015, to refer the case to DOAH. The DOAH case was initiated on May 20, 2015.

The Order was entered following a March 23, 2015, hearing on allegations by the director of the Citrus County Division of Solid Waste Management, acting as the coordinator under section 82-77, that Good Fella's violated section 82-101, C.C.C., regarding the certification of collectors of solid waste and section 82-78, C.C.C., regarding the transportation of solid waste out of the county. The county administrator, acting as the hearing officer under section 82-77, found that Good Fella's had transported 253.29 tons of solid waste outside of the county in violation of section 82-78 and that Good Fella's had failed to submit a properly completed and executed hauler certification in violation of section 82-101(a). The Order required Good Fella's to pay $6,078.96 in lost revenue to the county, a fine of $40,000 ($500 per violation, with each of 80 loads of solid waste transported out of the county counted as a violation), and administrative costs of $52.10, for a total of $46,131.06.

The Record of the underlying proceeding was filed at DOAH by Appellee on May 20, 2015. At the undersigned's request, Appellee filed a second copy of the Record with numbered pages on June 29, 2015. The Record consists of 143 pages and includes the Order; the Notice of Appeal; the transcript of the hearing below; chapter 82, C.C.C., and the exhibits filed at the hearing below.

## ISSUES

Good Fella's raises four issues on appeal. Two of those issues involve the administrative hearing process that resulted in the Order: (1) whether the county administrator should have recused himself from acting as the hearing officer in the case below; and (2) whether the Board improperly denied Good Fella's a hearing on its asserted request to transport solid waste outside of the county. For the reasons explained below, Good Fella's contentions as to these issues lack merit. Two of the issues raised by Good Fella's are substantive; (3) whether, by virtue of its contract with the Citrus County School Board (School Board), Good Fella's is not subject to the restrictions of section 82-78 when disposing of the solid waste generated by the School Board; and (4) whether the findings of fact in the Order were based on competent substantial evidence. Because issue (3) is dispositive of the merits of the case, there is no need to reach issue (4).

## BACKGROUND

Citrus County owns and operates the Citrus County Landfill. Good Fella's is a commercial waste hauler that was certified to collect and haul waste in Citrus County. Good Fella's was certified pursuant to a solid waste disposal agreement it entered with Citrus County on February 22, 2011. The agreement provided that Good Fella's would haul the solid waste it collects within the boundaries of Citrus County to the Citrus County Landfill.

In August 2014, Good Fella's was awarded a contract to haul the School Board's solid waste from its facilities in Citrus County. In September 2014, the County became aware that the contract called for Good Fella's to transport the School Board's solid waste to a Class I licensed landfill outside of Citrus County.

The County objected to Good Fella's disposing of solid waste generated within Citrus County anywhere other than the Citrus County Landfill. On December 2, 2014, the Board took up an agenda item calling for a discussion of Good Fella's taking waste out of county in apparent violation of section 82-78. The discussion resulted in the Board's voting to allow Good Fella's to take the School Board's solid waste out of the county without penalty, while Citrus County staff reviewed the validity of

section 82-78. This waiver of section 82-78 ran from December 2, 2014, through January 29, 2015.

Following the staff review of the ordinance, the Board voted on January 27, 2015, to rescind the temporary waiver of section 82-78 and to send Good Fella's a cease-and-desist letter as regards hauling solid waste outside the county. The letter was sent on January 29, 2015, over the signature of Charlie Gatto, the interim director of the Citrus County Division of Solid Waste Management.

In a letter dated February 6, 2015, Good Fella's general manager, Marilyn F. Connell, requested that Good Fella's be placed on the agenda for the Board's February 24, 2015, meeting to address the disposal of municipal solid waste (MSW) related to its contract with the School Board, as well as disposal of "other MSW collected in Citrus County to be removed from Citrus County." In an email to Ms. Connell dated February 9, 2015, the Board's second vice chairman, Scott Carnahan, stated, "Thank you for the letter but we will not allow your company or any other company to remove any garbage from our county. I'm willing to sit down and come to some form of an agreement. Our policy has been in place for many years and we will not change it for any reason. I hope you understand our position because it's has [sic] been tested and we have prevailed."

In a certified letter to Good Fella's dated March 2, 2015, titled "Status on Certification Upgrade/Continued Compliance," Mr. Gatto wrote, "On Thursday February 19th, Good Fella's and their attorney met with County Administration and at that time they informed the County that they would not execute the hauler's affidavit, nor bring the School District waste to the County's Landfill. They further stated that all of their other commercial account waste is being disposed at the County's Landfill." Mr. Gotto's letter informed Good Fella's as follows:

> The Citrus County Division of Solid Waste has scheduled a public hearing before Randy Oliver, County Administrator, to hear evidence as to why the County should not assess fines and revoke the certification of Good Fella's Roll-Off Service to collect solid waste in the County.

As noted above, the hearing was held on March 23, 2015. County Administrator Charles Randy Oliver presided at the hearing and entered the Order.

The hearing was conducted pursuant to section 82-77, titled "Penalties for violation of article," which provides as follows, in relevant part:

> (a) The coordinator may, upon probably [sic] cause to believe that a collector has violated the terms of this article,[1/] schedule a hearing before the county administrator on the question of whether a collector may be subject to fines, payment of lost revenue and/or whether the certification shall be suspended or revoked. Prior to a hearing, at least ten days' notice shall be

given by registered or certified mail, to the certification holder at his last known address. After a hearing, the county administrator may levy fines up to $500.00 per violation, require payment of revenue lost to the county due to such acts of the collector, suspend or revoke any such certification for committing acts in violation of this article, gross incompetency or negligence in conducting work in the trade, misrepresentation of any sort, financial irresponsibility, conviction of a felony, or for permitting a certification to be used by any other person for the purpose of conducting business pursuant to this article. The severity of such suspension or revocation shall bear a reasonable relation to the severity of the offense. Upon petition of the aggrieved certification holder, the board of county commissioners shall review any order that may have been given by the county administrator levying fines, requiring payment of lost revenue, suspending or revoking any certification and the evidence submitted in support thereof, provided that notice of petition shall have been given by the person who has been subject to penalties, to the county administrator and the board of county commissioners within 30 days after the entry by the county administrator of the order of penalties. In lieu of a hearing before the board of county commissioners, the board may appoint a hearing officer to hear the appeal. The hearing officer shall be a member of the Florida Bar for at least five years. In no case should the hearing before the board of county commissioners or a hearing officer be held no later than 45 days from the filing of the notice of appeal. If the penalties should be affirmed by the board of county commissioners, the aggrieved certification holder may appeal from any such order of affirmance to the county circuit court within 30 days after entry of such order of affirmance. The appeal shall be certiorari and be governed by the rules of appellate

> procedure. Failure to petition for review within the 30-day limits imposed by this section shall forever bar the review action . . . .

DISCUSSION

Procedural Due Process Issues

The first issue raised by Good Fella's is that the county administrator should have recused himself from acting as the hearing officer. Good Fella's acknowledges that section 82-77 contemplates a quasi-judicial hearing before the county administrator acting as the hearing officer. However, Good Fella's argues that the Board's prior involvement in the case, and the county administrator's presence at the meetings in which the Board voted to take action against Good Fella's, should have led to the appointment of an outside hearing officer who was not compromised by his proximity to and employment by the Board. Good Fella's alleges no direct conflict of interest on the part of the county administrator beyond the fact that he is an employee of the Board.[2/]

In Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991), the court sets forth the standard regarding the quantum of due process required in a quasi-judicial hearing:

> [W]e note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to full judicial hearing is entitled. See Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975); Hadley v. Department of

> Admin., 411 So. 2d 184 (Fla. 1982). Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. See Astore v. Florida Real Estate Comm'n, 374 So. 2d 40 (Fla. 3d DCA 1979); Woodham v. Williams, 207 So. 2d 320 (Fla. 1st DCA 1968). Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. See Hadley, 411 So. 2d at 184; City of Miami v. Jervis, 139 So. 2d 513 (Fla. 3d DCA 1962). Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied. See Morgan v. United States, 298 U.S. 468, 480-81, 56 S. Ct. 906, 80 L. Ed. 1288 (1936); Western Gillette, Inc. v. Arizona Corp. Comm'n, 121 Ariz. 541, 592 P.2d 375 (Ct. App. 1979). A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard . . . .

In Seiden v. Adams, 150 So. 3d 1215, 1219 (Fla. 4th DCA 2014), the court noted that in a quasi-judicial hearing, due process is "flexible and calls for such procedural protections as the particular situation demands." Citing Jennings, the court stated that notice and an opportunity to be heard generally satisfy due process in a quasi-judicial proceeding, which must be "essentially fair." 150 So. 3d at 1219 (quoting Carillon Cmty. Residential v. Seminole Cnty., 45 So. 3d 7, 10 (Fla. 5th DCA 2010)).

In Koehler v. Florida Real Estate Commission, 390 So. 2d 711 (Fla. 1980), a real estate agent challenged the constitutional validity of the statute under which the Florida

Real Estate Commission sought to impose discipline on the agent's license. Specifically, the agent asserted that the infirmity in the statute was "that it provides for the commission, through its staff, to have investigative and prosecutorial functions as well as final adjudicative functions in disciplinary proceedings." Id. at 711. The court relied largely on Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975), in rejecting the agent's claim that the mixed investigative, prosecutorial, and adjudicative functions denied due process in the absence of specific evidence establishing prejudice. The court quoted the following passage from Withrow v. Larkin:

> The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication . . . must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Koehler, 390 So. 2d at 713 (quoting Withrow v. Larkin, 421 U.S. at 47, 95 S. Ct. at 1464).

The Seiden court noted that, given the "presumption of honesty and integrity in those serving as adjudicators," the

mere appearance of bias that might disqualify a judge does not require disqualification in a quasi-judicial proceeding. Seiden, 150 So. 3d at 1220.[3/]

Based on the standard described in the cited cases, Good Fella's did not demonstrate grounds for recusal of the county administrator from performing the role expressly provided for him by section 82-77.

The second issue raised by Good Fella's is that the Board improperly denied Good Fella's request, pursuant to section 82-78, for a hearing on its request to transport solid waste outside of the county.

Section 82-78, titled "Transportation of solid waste out of county," provides as follows:

> It shall be unlawful to dispose of solid waste generated within the county outside of the county. All solid waste shall be disposed of at a sanitary landfill, except that construction waste and land-clearing debris may be disposed of at a C & D landfill. A collector, with prior approval of the board of county commissioners, may be allowed to transport solid waste outside of the county to a state-approved solid waste management facility, as defined in F.S. § 403.703. Prior to granting approval for such out-of-county transport, the board of county commissioners must determine that the quantity of solid waste being transported will not adversely impact the financial ability of the county to operate its resource recovery, management program and solid waste management program. Nothing in this section shall be construed to prohibit the out-of-county transport of solid waste, the portion

> of which is separated at the point of generation or after collection and intended for purposes of recycling or the controlling or disposing of hazardous waste.

The record does not establish that Good Fella's ever clearly requested prior approval of the Board to transport solid waste outside of the county. The temporary approval from December 2, 2014, through January 29, 2015, was granted on the Board's own initiative. Good Fella's did submit a letter dated February 6, 2015, requesting to be placed on the Board's agenda to "address" the disposal of solid waste outside the county. This request did not expressly state that Good Fella's was seeking the Board's approval, and the Board reasonably read the letter in light of Good Fella's prior statements that it did not need the Board's approval to transport and dispose of the School Board's solid waste outside of Citrus County. Good Fella's contention that it was denied an opportunity to request approval pursuant to section 82-78 is without merit.

Substantive Law Issues

The third issue is Good Fella's contention that the Board lacked jurisdiction to enforce section 82-78 against Good Fella's, because the company was hauling solid waste out of the county pursuant to its contract with the School Board, an entity whose home-rule powers render section 82-78 unenforceable against it.

Citrus County's authority to adopt section 82-78 is derived from section 403.713, Florida Statutes, titled "Ownership and control of solid waste and recovered materials," which provides as follows:

> (1) Nothing in this act or in any local act or ordinance shall be construed to limit the free flow of solid waste across municipal or county boundaries provided such solid waste is transported or disposed of pursuant to the provisions of this part. However, any local government that undertakes resource recovery from solid waste pursuant to general law or special act may control the collection and disposal of solid waste, as defined by general law or such special act, which is generated within the territorial boundaries of such local government and other local governments which enter into interlocal agreements for the disposal of solid waste with the local government sponsoring the resource recovery facility.
>
> (2) Any local government which undertakes resource recovery[4/] from solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction. Such authority shall not extend to recovered materials, whether separated at the point of generation or after collection, that are intended to be held for purposes of recycling pursuant to requirements of this part; however, the handling of such materials shall be subject to applicable state and local public health and safety laws.

Section 125.01(1), Florida Statutes, provides as follows, in relevant part:

> (1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:
>
> * * *
>
> (k)1. Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.
>
> 2. The governing body of a county may require that any person within the county demonstrate the existence of some arrangement or contract by which such person will dispose of solid waste in a manner consistent with county ordinance or state or federal law. For any person who will produce special wastes or biomedical waste, as the same may be defined by state or federal law or county ordinance, the county may require satisfactory proof of a contract or similar arrangement by which such special or biomedical wastes will be collected by a qualified and duly licensed collector and disposed of in accordance with the laws of Florida or the Federal Government.

Citrus County takes the position that, pursuant to the cited statutes, its flow control ordinance applies to all persons[5/] in the county, including the School Board. Good Fella's argues that the ordinance does not apply to the School Board because the School Board's home-rule powers include the power to control the manner in which it disposes of its solid waste.

Section 7 of chapter 83-324, Florida Laws, first provided for what became known as the "home rule" powers of county school boards. That provision, currently codified at section 1001.32, Florida Statutes, provides:

> The district school system must be managed, controlled, operated, administered, and supervised as follows:
>
> * * *
>
> (2) DISTRICT SCHOOL BOARD.--In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution,[6/] district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.

In the first of many consistent opinions construing the home rule provision, the attorney general wrote as follows:

> Section 7 of Ch. 83-324, Laws of Florida, in amending s. 230.03(2), F.S., [current s. 1001.32(2)] removed the definitional limitations upon the exercise of the district school board's authority and clearly provides that a district school board "may exercise any power except as expressly prohibited by the State Constitution or general law." (e.s.) The word "expressly" is defined as meaning definitely, explicitly, in direct or unmistakable terms, directly, distinctly, not by implication. 35 C.J.S. Expressly p. 342. See also definitions of the adjective "express" in 35 C.J.S. p. 338; Pierce v. Division of Retirement, 410 So.2d 671, 672 (2 D.C.A. Fla., 1982). Language of a statute must be construed in its plain and ordinary sense unless a different connotation is expressed in or necessarily

implied from the context of the statute. See, e.g., Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950); Maryland Casualty Co. v. Sutherland, 169 So. 679 (Fla. 1936). Where the legislative intent is clearly manifested by the language used, considered in its ordinary grammatical sense, rules of construction and interpretation are unnecessary and inapplicable. See, e.g., Clark v. Kreidt, 199 So. 333 (Fla. 1940); A. R. Douglass, Inc. v. McRainey, 137 So. 157 (Fla. 1931). Neither this office nor the courts may add anything to the statute and the legislative intent must be ascertained from the plain meaning of the words used in the statute. See, e.g., State ex rel. Harris v. King, 188 So. 122 (Fla. 1939). Thus, I am constrained to conclude that unless expressly prohibited by the State Constitution or general law, a district school board may exercise any power for school purposes in the operation, control, and supervision of the free public schools in its district.

* * *

The type of "home-rule" power granted to district school boards by the enactment of s. 7 of Ch. 83-324, Laws of Florida, can be analogized to the grant of home rule powers to municipalities for purposes of analyzing the powers, duties and functions of district school boards. The Municipal Home Rule Powers Act, Ch. 166, F.S., granted to municipalities broad home rule powers. For example, s. 166.021(1), F.S., of the act, among other things, provides that municipalities "may exercise any power for municipal purposes except when expressly prohibited by law." Compare this language to that of s. 7 of Ch. 83-324 vesting in school boards the authority to "exercise any power except as expressly prohibited by the State Constitution or general law." Thus, the rules of law applicable to the exercise of municipal home rule powers may well be

> analogous and applicable to the exercise of a power by a district school board pursuant to s. 230.03(2), as amended. The problem of direct conflict between a statutory provision and a local municipal enactment has only recently been directly discussed by the Florida courts. In City of Miami v. Rocio Corp., 404 So.2d 1066, 1069, 1070 (3 D.C.A. Fla., 1981), petition for review denied, 408 So.2d 1092 (Fla. 1982), the court stated that "[o]ne impediment to constitutionally derived legislative powers of municipalities occurs when the municipality enacts ordinances which conflict with state law. . . . Municipal ordinances are inferior to state law and must fail when conflict arises." The court went on to reason that "[a]lthough legislation may be concurrent, enacted by both state and local governments in areas not preempted by the state, concurrent legislation enacted by municipalities may not conflict with state law." See also Campbell v. Monroe County, 426 So.2d 1158 (3 D.C.A. Fla., 1983); Edwards v. State, 422 So.2d 84 (2 D.C.A. Fla., 1982); State v. Redner, 425 So.2d 174 (2 D.C.A. Fla., 1983). While it is obviously impossible to definitely predict how the Florida courts will deal with this issue, I am inclined to the view that, pending legislative or judicial clarification, a district school board may exercise any power for school purposes except as expressly prohibited by the State Constitution or general law; however, in the case of a direct conflict between a state statute and a rule, policy or other form of legislative action taken by a district school board, the state statute would prevail.

Op. Att'y Gen. Fla. 83-72 (1983).

It is noted that while section 1001.32(2) states that a district school board "may exercise any power except as

expressly prohibited by the State Constitution or general law," the attorney general has interpreted that language to mean "any power for school purposes in the operation, control, and supervision of the free public schools in its district." The limitation indicated by the underscored language is a sensible reading of the statute's implicit meaning. The attorney general has found that this limitation allows a school board to determine whether a "school purpose" would be served by providing insurance for its non-employee school board attorney and his or her assistants. Op. Att'y Gen. Fla. 2003-40 (2003).

However, the attorney general has also found that the "school purpose" limitation cannot be stretched to allow a school board to donate school funds to a private organization for the purchase of a projected historical museum and park. Op. Att'y Gen. Fla. 84-95 (1984). The Attorney General has also found that "school purposes" cannot be interpreted as a grant of general law enforcement powers to a school board so as to permit a school board to grant arrest powers to its special officers for violations of law not occurring on school district property. Op. Att'y Gen. Fla. 95-14 (1995). The attorney general has further opined that a school board may not simply go into business for itself on the premise that an "educational purpose" would be served by the deposit of the profits into the district's budget. Op. Att'y Gen. Fla. 2007-45 (2007)(section

1001.32(2) does not authorize school districts to receive funds as a quid pro quo for services rendered merely because such funds would be deposited into the school budget; question was whether school districts could enter contract with municipality to construct a vehicle maintenance facility to be used by the municipality.).

In the instant case, the means and methods of solid waste disposal appear to fall broadly within the concept of a "school purpose" as regards the School Board's control of its own physical plant and property. District school boards are given the statutory authority to "exercise all powers and perform all duties" relating to the school plant, including the approval of plans "for locating, planning, constructing, sanitating, insuring, maintaining, protecting, and condemning school property as prescribed in chapter 1013." § 1001.42(11), Fla. Stat. More specifically, the school board is required to

> Provide adequately for the proper maintenance and upkeep of school plants, so that students may attend school without sanitary or physical hazards, and provide for the necessary heat, lights, water, power, and other supplies and utilities necessary for the operation of the schools.

§ 1001.42(11)(c), Fla. Stat. District school boards have the power to contract, sue, and be sued. § 1001.41(4), Fla. Stat.

It is further noted that these statutes specifically granting powers to a school board may not be construed as a

limitation on the school board's powers under section 1001.32(2), in the absence of a statute that "expressly prohibits" the exercise thereof. School Bd. of Collier Cnty. v. Fla. Teaching Profession Nat'l Educ. Ass'n, 559 So. 2d 1197, 1198 (Fla. 2d DCA 1990). There is no legal impediment to the School Board's contracting with Good Fella's to haul the School Board's solid waste outside of Citrus County.

Section 403.713(1), Florida Statutes, gives any local government that undertakes resource recovery from solid waste the authority "to control the collection and disposal of solid waste . . . which is generated within the territorial boundaries of such local government." The question is whether this statutory grant of control to Citrus County over the collection of solid waste "expressly prohibits" the School Board from exercising its home rule powers in a contrary manner by contracting to have its solid waste transported outside of Citrus County.

In deciding cases under the Florida Municipal Home Rule Act, section 166.021, Florida Statutes, Florida courts have identified two situations in which local government action is "expressly prohibited": "(1) where state law expressly preempts the action, or (2) where there exists a literal incompatibility or direct conflict between the local ordinance and a state statute." D'Agastino v. City of Miami, 2013 Fla. App. LEXIS

820, *5 (Fla. 3d DCA 2013)(citing Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996)). "Express pre-emption requires a specific statement; the pre-emption cannot be made by implication nor by inference." City of Hollywood v. Mulligan, 934 So. 2d 1238, 1243 (Fla. 2006)(quoting Fla. League of Cities, Inc. v. Dep't of Ins. & Treasurer, 540 So. 2d 850, 856 (Fla. 1st DCA 1989)). While section 403.713(1) grants control of collection and disposal of solid waste to local government, it does not specifically state that a school board thereby forfeits its home rule authority to control the solid waste generated on its premises.

Preemption is implied when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature." Phantom Clearwater, Inc. v. Pinellas Cnty., 894 So. 2d 1011, 1019 (Fla. 2d DCA 2005), approved, Phantom of Brevard, Inc. v. Brevard Cnty., 3 So. 3d 309 (Fla. 2008). The Phantom Clearwater court explained implied preemption as follows:

> Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive. Courts are understandably reluctant to preclude a local elected governing body from exercising its local powers. As well explained by Judge Wolf

> in Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996), if the legislature can easily create express preemption by including clear language in a statute, there is little justification for the courts to insert such words into a statute. In the absence of express preemption, normally a determination based upon any direct conflict between the statute and a local law, as discussed in the next section, is adequate to solve a power struggle between existing statutes and newly created ordinances.

894 So. 2d at 1019.

In the instant case, there is no ground to find an implied preemption in section 403.713(1). The County's flow control ordinance and the School Board's home rule powers are capable of co-existing. The mere fact that the School Board is exempt from the ordinance does not affect the ordinance's applicability to all other non-exempt persons. Good Fella's has recognized this compatibility by delivering the solid waste it collects from all sources, other than the School Board, to the Citrus County Landfill.

Subsumed within the third issue is the question of Good Fella's failure to submit its annual certification papers pursuant to section 82-101. The president of Good Fella's, Charles Dean, testified that he did not submit the application because it required him to attest in an affidavit that his company did not haul any locally produced solid waste outside of

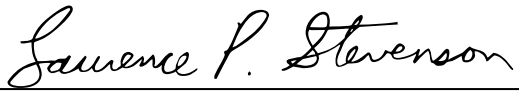
Citrus County. Mr. Dean was, of course, aware that Good Fella's was taking the School Board's waste out of Citrus County and dumping it in Sumter County. The form of the affidavit placed Mr. Dean in an untenable position, requiring him to either swear falsely or breach his contract with the School Board. Given the holding of this Order, it is suggested that Good Fella's be presented with a customized affidavit that recognizes its right to haul the School Board's, and only the School Board's, solid waste outside of Citrus County.

As noted above, the fourth issue raised by Good Fella's contends that the findings of fact in the Order were not based on competent substantial evidence. Given the conclusions reached as to the third issue, it is not necessary to address the sufficiency of the findings in the Order below.

## DECISION

Based on the foregoing, the Order on Administrative Hearing (Order) entered by the county administrator of Citrus County on March 27, 2015, is reversed. Good Fella's Roll-Off Waste Disposal, Inc., is entitled, under its contract with the Citrus County School Board, to transport the solid waste generated by the Citrus County School Board for disposal outside of Citrus County, notwithstanding section 82-78 of the Citrus County Code. Good Fella's lawful actions are not subject to penalty by Citrus County.

DONE AND ORDERED this 4th day of September, 2015, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of September, 2015.

ENDNOTES

[1/] The reference is to Article III of the C.C.C., which includes section 82-101.

[2/] Good Fella's does allege a conflict on the part of Commissioner Carnahan, who made the motion to send the cease and desist letter at the January 27, 2015, Board meeting and who sent the February 9, 2015, email to Ms. Connell. The alleged conflict is that Commissioner Carnahan holds a mortgage from FDS Disposal, Inc., a competitor of Good Fella's in Citrus County. Even if Good Fella's allegation were accepted as establishing a conflict on the part of Commissioner Carnahan, the mere fact that the county administrator is employed by a Board with one conflicted member does not establish a conflict on the part of the county administrator. In any event, the undersigned concludes that section 82-77 does not endow this tribunal with the authority to rule on alleged voting conflicts on the part of the Board members themselves.

[3/] The undersigned is mindful that the cited cases deal with the situation in which a member of a body such as a School Board or a county commission, or the body as a whole, sits as the adjudicator in a quasi-judicial hearing. In the instant case, it could be argued that the county administrator's subordinate

position to the Board introduces an additional element of possible bias. Nonetheless, the tenor of the case law appears to require more than mere suspicions of potential bias to disqualify the county administrator as an adjudicator, particularly in a situation where the governing ordinance expressly calls for him to decide the case.

[4/] The record indicates that at some point during this dispute, Good Fella's questioned whether Citrus County was undertaking "resource recovery" as defined in section 403.703(28), Florida Statutes, or, more precisely, whether it was operating a "resource recovery facility" as contemplated by section 403.713(2) and whether its alleged failure to do so negated its authority to adopt or enforce section 82-78. It appears to the undersigned that the definition of "resource recovery" is flexible enough to cover Citrus County's solid waste efforts. It is also noted that Good Fella's did not press this issue in its appeal.

[5/] The parties argued extensively over whether the applicable definition of "person" is that found in section 403.703(28), Florida Statutes, which would clearly include the School Board within its ambit, or that found in section 1.01(3), Florida Statutes, which does not expressly encompass government bodies. Because the question of the scope of the School Board's home rule powers is not dependent on the statutory definition of "person," it is unnecessary to decide this issue.

[6/] Section (4)(b) of Article IX provides: "The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs."

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NOTICE OF RIGHTS

Section 82-77, Citrus County Code, provides that if the penalties are affirmed, the aggrieved certification holder may appeal from any such order of affirmance "to the county circuit court within 30 days after entry of such order of affirmance. The appeal shall be certiorari and be governed by the rules of appellate procedure. Failure to petition for review within the 30-day limits imposed by this section shall forever bar the review action."