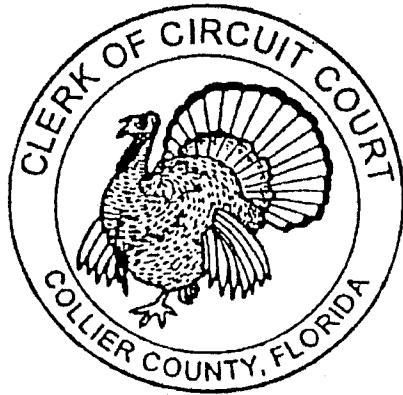


# **Report 2001- 1**

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Special Review of Golf Course Impact Fees

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**County of Collier  
CLERK OF THE CIRCUIT COURT**

COURT PLAZA III  
2671 AIRPORT ROAD, SOUTH  
NAPLES, FL 34101-3044

**Dwight E. Brock**  
Clerk

**INTERNAL AUDIT**

March 6, 2001

Honorable James D. Carter, Ph.D., Chairman  
And Members of the Board of County Commissioners  
3301 Tamiami Trail East  
Naples, Florida 34112

**Re: Special Review of Golf Course Impact Fees  
(Report No. 2001-1)**

Chairman:

The enclosed report discusses the findings of the above captioned review that was undertaken cooperatively by the Clerk of the Circuit Court and the Office of the County Attorney. We thank the staffs of both offices for their efforts in the preparation of this report.

If you have any questions about this report, please feel free to contact the undersigned by telephone or email.

Sincerely,

Dwight E. Brock  
Clerk of the Circuit Court

David C. Weigel  
County Attorney

Enclosure

cc: Thomas W. Olliff, County Manager

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# Memo

**To:** The Honorable Dwight E. Brock, Clerk of the Circuit Court  
David Weigel, Collier County Attorney

**From:** Robert W. Byrne, CMA; Director of Internal Audit

**Date:** 03/06/2001

**Re:** Special Review of Golf Course Impact Fees (Report 2001-1)

*Robert W. Byrne*

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The attached report details the findings of the review requested by the County Manager to determine if there were any improprieties on the part of county staff regarding the failure to collect golf course road impact fees. The Internal Audit Department wishes to thank the Office of the County Attorney for its assistance in this inquiry.

If you need any additional information, please telephone me at 774-8075 or email me at [Robert.Byrne@Clerk.Collier.FL.US](mailto:Robert.Byrne@Clerk.Collier.FL.US).

**Collier County Clerk of the Circuit Court  
Internal Audit Department**

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# **Report 2001- 1**

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Special Review of Golf Course Impact Fees

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# Special Review of Golf Course Impact Fees

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## **Special Review of Golf Course Impact Fees**

### **Background & Procedures**

#### **Background**

The Collier County Manager requested the Collier County Clerk of the Circuit Court and the County Attorney to form an independent review board to review the issue of uncollected transportation impact fees owed by golf course developers in the wake of the attention this issue has received as the result of the April 2000 audit report of golf course impact fees (Audit Report # 2000-5. Audit of Alternative Road Impact Fees - Golf Courses). The purpose of this review was to determine if there were any improprieties on the part of county staff that resulted in uncollected impact fees.

#### **Golf Course Road Impact Fee Audit Report**

The purpose of the golf course road impact fee audit was to review the procedures for Alternative Road Impact Fee calculations and to ensure that those procedures complied with the Road Impact Fee Ordinance. Initially this review was limited to Alternative Road Impact Fee calculations for golf courses approved during fiscal years 1998 and 1999 but was expanded to include all such calculations approved between October 1997 and November 1999 in order to determine if there was anything unusual in the procedures for golf courses compared to other types of land uses.

In summary, the audit found that many Alternative Road Impact Fee calculations did not comply with major provisions of the Road Impact Fee Ordinance (Ordinance 92-22), that golf course road impact fees were not collected consistently (over \$2 million had not been collected), that procedures were not distributed and were incomplete, and that there was a lack of coordination among departments involved in the process. Furthermore, Alternative Road Impact Fees were typically presented to the Board of County Commissioners (BCC) as routine Consent Agenda items rather than with a full discussion on the Regular Agenda. County staff agreed with these findings and has since made attempts to correct the problems and system weaknesses identified in the audit.

#### **Subsequent Events**

Since the release of the audit report in April 2000, county staff has attempted to collect the road impact fees owed by the golf courses identified in the audit, as well as several additional courses that were found to owe as part of follow-up actions by county and internal audit staff. Table I summarizes the payment status of the listed golf courses. As can be seen from the information presented in Table I, only two golf courses have

balances due, both of which are now delinquent and owing delinquency fees as well as being subject to lien by the County. County staff, in conjunction with the County Attorney's Office, is continuing efforts to collect the remaining balances.

**Table I: Current Status of Golf Course Impact Fees**

| Golf Course                  | Impact Fees    | Payments       | Reductions                  | Amount Due                |
|------------------------------|----------------|----------------|-----------------------------|---------------------------|
| Twin Eagles                  | \$187,317.52   | \$187,317.52   |                             | \$0.00                    |
| Cedar Hammock                | \$103,402.00   | \$103,402.00   |                             | \$0.00                    |
| Tiburon                      | \$304,097.82   | \$304,097.82   |                             | \$0.00                    |
| Bay Colony                   | \$173,534.14   | \$173,534.14   |                             | \$0.00                    |
| Pelican Marsh                | \$226,311.80   | \$226,311.80   |                             | \$0.00                    |
| Naples Grande                | \$147,960.80   | \$147,960.80   |                             | \$0.00                    |
| Naples Lakes                 | \$118,539.00   | \$118,539.00   |                             | \$0.00                    |
| Old Collier                  | \$237,398.20   | \$107,772.60   | (\$129,625.60) <sup>1</sup> | \$0.00                    |
| G.C.-Everglades <sup>2</sup> | \$279,078.80   | \$98,072.00    | (\$181,006.80) <sup>1</sup> | \$0.00                    |
| Grey Oaks                    | \$120,202.16   | \$120,202.16   |                             | \$0.00                    |
| Vanderbilt <sup>3</sup>      | \$142,204.40   | \$35,723.03    | (\$106,481.37) <sup>2</sup> | \$0.00                    |
| Naples Heritage <sup>4</sup> | \$110,331.00   | \$83,041.44    | (\$27,289.56) <sup>1</sup>  | \$0.00                    |
| Valencia                     | \$127,920.00   | \$0.00         |                             | \$127,920.00 <sup>3</sup> |
| The Strand                   | \$216,717.80   | \$32,147.00    |                             | \$184,570.80 <sup>3</sup> |
|                              | \$2,495,015.44 | \$1,738,121.31 | (\$444,403.33)              | \$312,490.80              |

Notes:

1. Revised acreage calculation accepted
2. BCC determined that August 1999 Alternative Study included golf course
3. Became delinquent on December 15, 2000

• Source: Collier County Impact Fee Coordinator, 12/15/2000

In the aftermath of the audit report and subsequent collection efforts, it was alleged that County staff had received gratuities, including free golf games at some of the above courses. This raised the question as to whether the golf course road impact fees went uncollected because of county staff members receiving these gratuities. This controversy resulted in the County Manager performing an internal investigation that concluded that there was no *quid pro quo* involved. However, it was confirmed that county employees had received various gratuities, particularly free golf games. In order to verify these findings and ensure public confidence, the County Manager requested this review to be performed.

## Procedures

The review panel used three basic methods to gather the information required to prepare this report. These included the use of personal interviews, telephone interviews, and reviews of various documents and files. The process of gathering information began in mid-September and has continued through the drafting of this report. In the information gathering process, whether the information obtained potentially proved or disproved wrongdoing, care was taken to verify the information before making any conclusions

based upon that information. This was done by verifying statements made in interviews, when possible, with corroborating statements of others and with existing documentary evidence.

Personal interviews of County staff were, whenever possible, conducted with a representative of the County's Human Resources Department present. The interviews typically took no more than one hour and, as the purpose was to gather information, were done in an informal, non-accusatory manner in the Internal Audit Department Offices. In most cases, at the end of the interview, a set of questions was developed from the information obtained in the interview, the questions were then reviewed with the interviewee and finally a recorded, sworn statement was taken.

While personal interviews were initially the primary method of gathering information, telephone interviews and reviews of documentary evidence were also utilized. Telephone interviews were primarily used to follow up a personal interview, or to obtain information from non-employees and from employees with only a remote connection to the impact fee process. A large number of files were reviewed, predominantly county personnel records and golf course development review records. Additional files, emails, and other correspondences were reviewed as was appropriate.

Upon completion of the information gathering process, an exit conference was held to discuss a preliminary draft report that was prepared and provided to the County Manager and his staff for review and comment. The County Manager's written response to the findings has been included in the Conclusions section of this report.

It must be noted that while every effort was made to arrive at the "truth" in this matter, there are limits as to the powers and investigative methods available to be used by this review board in an inquiry such as this. This panel has no power to compel anyone to answer questions in such an inquiry. Any conclusions drawn in this report are therefore limited to the information obtained and such that the information is clear and sufficient to make a conclusion.



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## Special Review of Golf Course Impact Fees

### Findings

#### Free Golf Games and Other Gratuities Were Accepted by County Staff

County staff, on numerous occasions, accepted free golf games and other gratuities, such as lunches, from members of the development community. Those accepting gratuities were from all levels of the organization, from the current County Manager down to line employees. All those interviewed said it was a common practice throughout the organization, prior to the tenure of Robert Fernandez as County Administrator, to accept such gratuities as long as they deemed it did not present the appearance of a conflict of interest.

From the nearly universal recollections of county staff, early into Mr. Fernandez's tenure an order was issued to county staff to stop accepting gratuities and to pay their own way for lunch or golf with members of the development community. In the case of charity golf tournaments where a member of the development community sponsored the foursome, staff was ordered to pay at least the green's fees. However, no documentary evidence could be found to substantiate this policy and the former County Administrator confirmed that the policy was disseminated solely by word of mouth.

Subsequently, by staff's own admissions, the practice of accepting gratuities was severely curtailed but did not cease completely. Most breaches of this policy involved playing in a golf tournament without paying green's fees. Additionally, a number of gift baskets were accepted, especially in the Community Development & Environmental Services Division, during the holidays. In the case of an Engineering Inspector, a number of golf dates were documented in his inspection journal, which included play at a number of private golf courses. Several dates included free golf play but they appear to have arisen from personal acquaintances rather than via county business.

Several employees stated that, although offers for free golf were common, they flatly refused them and any other gratuities. Additionally, during the course of this inquiry, the review board received documentation that a gift was returned. An employee received a \$100 gift certificate to a local restaurant from a builder as a "thank you" for the employee's assistance in explaining to the builder road impact fee calculations. The employee sent a letter politely refusing the gift certificate with the explanation that "This action is typical of how the Transportation Services Division works with the public on a day to day basis." This is also noteworthy in that it occurred before Mr. Fernandez's appointment as County Administrator and his subsequent policy directive.

## Golf Course Road Impact Fees Not Collected Due to Flawed Process

As was noted in the Alternative Road Impact Fee - Golf Courses audit, the process for collecting golf course road impact fees was flawed as there was no clearly understood and uniformly applied control mechanism to ensure collection. The audit noted that golf course construction was the only type of construction subject to road impact fees that does not require a building permit. Golf courses begin construction after the Site Development Plan receives final approval. This distinction is important since all impact fees are due to be collected at the time a *building permit* is issued.

An interesting fact, which was discovered as part of the follow-up to the audit report, is that the Road Impact Fee Ordinance defines the term "Building Permit" slightly different from the Land Development Code. The Land Development Code definition is the one familiar to the Community Development Services staff and the public. However, the definition in the Road Impact Fee Ordinance is "...an official document or certificate issued by the City or the County, under the authority of ordinance or law, authorizing the construction or **siting** [emphasis added] of any Building." Under this definition, the approval of a Site Development Plan (SDP) would qualify as a building permit and, therefore, impact fees would be due at that time.

Sometime about the beginning of the year 1998, the Engineering Review Services Manager, whose staff is responsible for reviewing SDP's, felt that there might be a problem with the collection of golf course road impact fees. This "feeling" arose from problems associated with the permitting of a driving range at an existing golf course. A memorandum was subsequently issued on January 22, 1998 stating to his staff that "... a condition be made that the Road Impact Fees shall be paid prior to our approval." Had this memorandum been followed, the non-collection of golf course road impact fees may not be an issue today.

Unfortunately, two factors likely contributed to the failure of this directive to be followed. First is that, in the LDC sense, SDP approval is not a "Building Permit" and it is common knowledge in the Community Development Division that impact fees are collected at the time a Building Permit is issued. One member of the Engineering Review staff recalled discussing with a co-worker whether impact fees could be collected at the SDP approval stage and their conclusion was, erroneously, "No." However, it is uncertain as to whether this discussion among co-workers and, subsequently, a unilateral decision to ignore a management directive was the primary reason for non-collection in light of other events.

The second factor, and perhaps the prime reason that contributed to the golf course impact fees going uncollected after the 1/22/1998 memorandum, was a memorandum issued January 30, 1998 by the Community Development Division Administrator. In it, the Administrator states " Effective Monday, February 2, 1998, I would like the Building Review and Permitting Department to be responsible to compute road impact fees for all permit applications." The timing and subject of this memorandum was coincidental to, rather than the effect of, the Engineering Review Manager's memo. The Administrator's memo was an attempt to address a finding in a September 1996 audit report of impact fee revenues regarding the lack of control and coordination in the assessment of impact fees and the need to centralize the responsibilities. Another member of the Engineering Review staff recalled this memorandum and felt that this superceded the Engineering Review Manager's memorandum and, thus, the issue was settled.

On March 9, 1998 a procedures manual was issued by the Community Development Administrator, again in response to a finding in the September 1996 audit, which states "The impact fee(s) is due at the time of issuance of a permit for any activity requiring payment of impact fee(s)." To anyone in the Building Department, as well as the entire Community Development Division, the term "permit" referred to a "Building Permit" as defined in the LDC.

Furthermore, beginning about the time his original memorandum was issued, the Engineering Review Manager sent letters to several golf courses inquiring about the payment status of road impact fees. In several cases, the letter was unsuccessfully followed up on a number of times during the next year and a half (through May 1999). On February 11, 1999, the Engineering Review Manager reissued his memorandum of January 22, 1998 to his staff, reminding them that they should collect golf course road impact fees. Additionally, during this period efforts were made by the Engineering Review Manager to coordinate with the Transportation Director those courses that were working to develop an alternative fee calculation and the payment status of those impact fees. Despite these efforts, most golf course road impact fees were not assessed until the Internal Audit Department made a request for information in January 2000.

## Additional Finding

### **Variations Granted Without BCC Approval**

A variance is defined in the Land Development Code (LDC) Section 6.3 as "A relaxation of the terms of this land development code where such variance will not be contrary to the public interest..." and is only permitted for dimensional standards (i.e. height, area, setback, etc.). LDC Section 2.7.5 outlines the procedures to be followed by the applicant in order to be granted a variance. Included in these procedures are mandatory public hearings to be held before both the Planning Commission as well as the Board of County Commissioners, sitting as the Board of Zoning Appeals. During the course of this inquiry information was obtained that indicated that several projects, as part of the development review process, had requirements of the Collier County Land Development Code (LDC) relaxed without gaining approval from the Board of County Commissioners through the variance procedure as outlined in the LDC. This "administrative" action by county staff is not permitted by the ordinance nor is it "administrative" in the context of the county administrator's duties (therefore also county staff) as outlined in Florida Statutes, Chapter 125.74 (See Appendix A).

In fact, Florida law, through F.S. 125.74 (2), specifically prohibits the County Manager (Administrator) or his staff from exercising powers that are anything other than administrative or ministerial in nature. Discretionary decisions, like those discussed below that allowed these so-called "administrative variances," rest solely with the Board of County Commissioners. All county staff would do well to heed the directives of this law.

Following are several specific examples of projects where staff permitted deviations from the LDC without obtaining a variance:

### *Strand Professional Park*

The Strand Professional Park is located in the Pelican Strand PUD and is a grouping of eleven single-story office buildings. During the site development plan (SDP 99-30) review process, county staff noted that the plans for the buildings did not include the LDC required perimeter plantings and therefore required the developer to add the landscape strip to the plans. Subsequently, at a meeting held May 25, 1999 between county staff and representatives of the developer, accommodations were made where the rear and side setbacks were reduced by five feet to fifteen feet from the twenty feet as required by the Pelican Strand PUD (Ordinance 97-75). As this is a change to a dimensional requirement, a variance is required for this change but was not obtained. This meeting also resulted in the reduction of the parking aisle widths from the 24 feet as required in the LDC (Section 2.3.4.12.1) to 22 feet. Again, this was done without obtaining a variance.

It is important to note that most variances are of the "after-the-fact" type and result from an error being made during construction. In this case, construction had not yet begun and the problem was on paper. The site design did not include a required element of the LDC and that item was, appropriately, required to be added to the plans by county staff. However, when the building perimeter landscaping was added to the plans, the total design no longer fit on the site. Instead of redesigning the site plan to comply with the Land Development Code, the setbacks and aisle widths were permitted to be changed without following the variance procedures.

### *Radio Square Commercial Building*

In this case, as in the previous, the problem that was encountered was on paper—the design did not include a landscape buffer along Radio Road. This problem arose as a result of a deceleration lane being required to be added along Radio Road to allow safe access to the property. However, the "administrative variance" granted by staff preceded the submission and review of the site development plan (SDP 99-156). The "administrative variance" was granted in a letter dated April 1, 1999 whereas the site development plan was initially submitted on September 24, 1999. During the review of the site development plan it was noted in comments dated October 27, 1999 that a variance would be required for any reduction in the required landscape buffer. But in review comments dated January 24, 2000 and the subsequent SDP approval letter dated February 29, 2000, it was noted that the buffer was reduced in order to accommodate the turn lane. This did not come about because the applicant applied for and obtained a variance from the Board of County Commissioners, but rather was granted based upon the April 1, 1999 letter from county staff.

### *Addison Reserve*

Addison Reserve is a single-family residential project within Glen Eagle Golf & Country Club. During the development review process, it was noted that the required ten-foot landscape buffer along the eastern property line was not included on the plans. Along this eastern boundary is also a ten-foot drainage easement that the developer requested to coincide with the landscape buffer. The Land Development Code permits an overlap that cannot exceed 50% of the area and 70% of the width at any point. Furthermore, a minimum five-foot wide planting area must be maintained. For lots of record of less than 10,000 square feet, this requirement may be reduced to a minimum three-foot wide

planting area. The plans were approved with the landscape buffer and drainage easement overlapping in their entirety without a variance being obtained.

Furthermore, the site development plans were approved with several house footprints encroaching upon the landscape buffer and drainage easements. These encroachments also require variances with approved from the Board of County Commissioners. No variances were obtained in this case. Again, these were "paper" problems as these reviews are performed before land preparation and building permit issuance.

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## **Special Review of Golf Course Impact Fees**

### **Conclusions**

The following conclusions are made based upon the information obtained and the previously stated limitations of this inquiry.

#### **No Evidence Found of Quid Pro Quo**

Despite the possible appearance of a conflict of interest by county staff accepting a gratuity, no evidence has been found that clearly shows preferential treatment has been granted to members of the development community as a result of a gratuity received by a county employee. County staff also stated that they did not feel any gratuity that was offered, whether accepted or not, was premised upon any action taken, or to be taken by that staff member. Furthermore, no evidence has been found that golf course road impact fees went uncollected due to staff accepting a gratuity.

Concerning the granting of "administrative variances," no evidence was discovered that this was done in return for any type of gratuity. In this case, the responsible county staff member stated that these "administrative variances" were granted based on "professional planning experience and education" despite the lack of authority in the Land Development Code for county staff to take such action.

#### **Insufficient Management Controls Contributed to Problems**

Clearly, hindsight is 20/20, but early on there were signals that a problem existed concerning golf course road impact fees. The actions of the Engineering Review Manager should have been a "red flag" to upper management that such a problem existed. Likewise, timelier follow-up with Engineering Review staff by the Engineering Review Manager may have detected the continuance of the problem sooner. Additionally, staff should have communicated to management any perceived contradiction or ambiguity in management's directives. Any one of these actions could have prevented the problem from being exacerbated.

On a more basic level, the "ownership" of the impact fee ordinances resided in the department that developed the ordinance and that spent the impact fees (Transportation Department for road impact fees, EMS Department for EMS impact fees, etc.). Once an impact fee ordinance was enacted, the responsibility for assessing and collecting the impact fees lay in the Community Development Division and the Revenue Department, respectively. There was little contact between the Community Development Division and

the beneficiary department, either in the drafting of the ordinance, or in the assessment and collection of the impact fees. Had there been more communication and coordination between departments, a problem that was noted in several previous audit reports, the problems associated with collecting golf course road impact fees may have been identified sooner.

## County Manager's Response

We have received and preliminarily read the Special Review of Golf Course Impact Fees provided by the Clerk of Courts and County Attorney. In response, we are very pleased that the investigation found no evidence of any *Quid Pro Quo* regarding the failure to collect golf course impact fees. We will spend more time researching in detail any other issues raised. As committed to earlier, we are continuing to make the necessary changes in law, staffing and procedures to ensure that this problem is corrected not only in this instance, but also for the future. We thank the Clerk, his audit staff and the County Attorney for their professionalism and thorough assistance in providing this review.

Section  
**4**

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## Special Review of Golf Course Impact Fees

Appendix A – Florida Statutes Chapter 125.74

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### The 2000 Florida Statutes

**Title XI**  
COUNTY ORGANIZATION AND  
INTERGOVERNMENTAL RELATIONS

**Chapter 125**  
County  
Government

**[View Entire Chapter](#)**

#### **125.74 County administrator; powers and duties.--**

(1) The administrator may be responsible for the administration of all departments responsible to the board of county commissioners and for the proper administration of all affairs under the jurisdiction of the board. To that end, the administrator may, by way of enumeration and not by way of limitation, have the following specific powers and duties to:

- (a) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board to assure that they are faithfully executed.
- (b) Report to the board on action taken pursuant to any directive or policy within the time set by the board and provide an annual report to the board on the state of the county, the work of the previous year, and any recommendations as to actions or programs the administrator deems necessary for the improvement of the county and the welfare of its residents.
- (c) Provide the board, or individual members thereof, upon request, with data or information concerning county government and to provide advice and recommendations on county government operations to the board.
- (d) Prepare and submit to the board of county commissioners for its consideration and adoption an annual operating budget, a capital budget, and a capital program.
- (e) Establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection with the budget and supervise and administer all phases of the budgetary process.



- (f) Prepare and submit to the board after the end of each fiscal year a complete report on the finances and administrative activities of the county for the preceding year and submit his or her recommendations.
  - (g) Supervise the care and custody of all county property.
  - (h) Recommend to the board a current position classification and pay plan for all positions in county service.
  - (i) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures.
  - (j) Organize the work of county departments, subject to an administrative code developed by the administrator and adopted by the board, and review the departments, administration, and operation of the county and make recommendations pertaining thereto for reorganization by the board.
  - (k) Select, employ, and supervise all personnel and fill all vacancies, positions, or employment under the jurisdiction of the board. However, the employment of all department heads shall require confirmation by the board of county commissioners.
  - (l) Suspend, discharge, or remove any employee under the jurisdiction of the board pursuant to procedures adopted by the board.
  - (m) Negotiate leases, contracts, and other agreements, including consultant services, for the county, subject to approval of the board, and make recommendations concerning the nature and location of county improvements.
  - (n) See that all terms and conditions in all leases, contracts, and agreements are performed and notify the board of any noted violation thereof.
  - (o) Order, upon advising the board, any agency under the administrator's jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he or she deems it necessary for the proper and efficient administration of the county government to do so.
  - (p) Attend all meetings of the board with authority to participate in the discussion of any matter.
  - (q) Perform such other duties as may be required by the board of county commissioners.
- (2) It is the intent of the Legislature to grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to s. 1(e), Art. VIII of the State Constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county.

**History.**--s. 1, ch. 74-193; s. 822, ch. 95-147.

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