

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Commissioner Tomas Regalado
FROM: Alejandro Vilarello, City Attorney
DATE: October 3, 2003
RE: Request for Legal Opinion: (MIA 98-0015)
Relative Powers and Duties of the City Commission, Mayor and City Manager
under the City's Mayor-City Commissioner Form of Government

This is in response to your request for a legal opinion on substantially the following:

WHAT ARE THE RELATIVE POWERS AND DUTIES OF
THE CITY COMMISSION, MAYOR AND CITY MANAGER
UNDER MIAMI'S *MAYOR-CITY COMMISSIONER* FORM
OF GOVERNMENT?

Under the City of Miami's Mayor-City Commissioner form of government, the City Commission serves as the governing body with powers and duties to pass ordinances, adopt regulations and exercise all powers conferred upon the City, except as limited by the Charter. Section 4 (a), City Charter. The City Manager serves as the "Chief Administrative Officer" of the City and is appointed by the Mayor, subject to Commission approval. Section 4(g)(6), City Charter. The Mayor is the "Chief Executive Officer" and can dismiss the City Manager, subject to the Commission overriding such action within ten days upon a four-fifths (4/5) vote. Additionally, said section provides that the City Manager may be terminated without cause as an at-will employee and unilaterally removed from office by the City Commission upon a four-fifths (4/5) vote. See *MIA-98-11, Opinion of the Miami City Attorney*.

Although the powers of the City Commission, the Mayor and the City Manager are numerous, this opinion will focus, generally, on how the three entities interact pursuant to the City Charter. The relevant portions of the Charter of the City of Miami ("Charter") are attached as Exhibit "A" to this memorandum.

Section 4(a) of the Charter limits the power of the Mayor to that specifically set forth in the Charter, and Section 16 sets forth the power and duties of the City Manager. Consequently the Mayor and City Manager are absolutely restrained in the exercise of any power in excess of that specifically set forth in those sections. On the other hand, Section 4(a) of the Charter provides that:

The city commission shall constitute the governing body with powers (as hereinafter provided) to pass ordinances adopt **regulations and exercise all powers conferred upon the city except as hereinafter provided.** (Emphasis added).

As a consequence of Section 4(a) the Commission has all the power conferred upon the City by Florida's Constitution and Statutes and the County's Charter, **except those specifically proscribed or redirected by the City's Charter**. In other words, all the corporate and political powers not specifically delegated to the Mayor or City Manager by the Charter are vested in the City Commission, which may act accordingly through the adoption of ordinances and regulations. See, e.g., *Alsop v. Pierce*, 19 So.2d 799 (Fla. 1944); *McQuillin Mun. Corp.* § 13.03 (3rd Ed).

The government of the City of Miami is divided *de jure* into two (legislative and executive) divisions but *de facto* into three divisions (legislative, executive and administrative), and no person belonging to one of the divisions can lawfully exercise power exclusive to the other except as expressly provided by the Charter. The legislative or "governing body" of the City consists of the five City Commissioners. The Executive body consists of the Mayor and the Chief Administrative Officer ("City Manager"). The Administrative Division consists of the departments and agencies of the City that fall under the City Manager, and the employees therein.

As noted, technically the City Manager, as the Chief Administrative Officer, is an appendage of the Executive Division. Black's Law Dictionary defines "administrative officer" as follows:

Politically, and as used in constitutional law, an officer of the **executive department of government**.... (Emphasis added).

Inasmuch as the Charter specifically delineates the Mayor as the "Head of the Government" and "The Chief Executive Officer," it follows that the "Chief Administrative Officer" is also a component of the Executive Division. However, specific provisions of the Charter that prohibit the Mayor from "dictating appointments" or in any manner interfere with the Manager's appointment of officers and employees, temper such a conclusion, as all interaction by the Mayor with the Administration is required to be "solely" through the City Manager.

Similarly the Commission and Mayor are prohibited from giving orders to the staff and other subordinates of the City Manager, City Attorney, City Clerk and the Independent Auditor General.

There are exceptions to the aforementioned prohibition: (a) the Mayor or the City Commission can investigate financial transactions of officers and departments of the City and issue subpoenas (Section 14); (b) and of even greater import, the Mayor and Commission have the ability to make "inquiry" (Section 4(d)), which is, of course, the asking of questions regarding matters of concern.

The City Commission is empowered to override the Manager's suspension of the Police or Fire Chiefs pursuant to Section 26 of the Charter. And as the "Governing body" of the City, the Commission has the ultimate power to determine the City's policies and control its activities, which may be exercised by all divisions only in a manner prescribed in the Charter and City Code. See e.g., *Turk v. Richard*, 47 So.2d 543 (Fla. 1950); *McQuillin Mun. Corp.* § 12.43.05 (3rd Ed); BLACK'S LAW DICTIONARY.

It is well settled that the City Commission, jointly, can delegate specific authority to other entities and even individual commissioners acting on behalf of the Commission. Such delegation is subject to general laws and regulations, as well as Charter restrictions. An explicit example of authorization for such solitary commissioners' action can be found in the provisions of § 48(c) of the Charter, which specifically authorize individual members of the Commission to assign duties to the Independent Auditor General. On the other hand, the actions of the City Commission are generally required to be collegial in nature and it can only validly act when it sits as a joint body at an authorized and properly noticed meeting. *Nash v. Richard*, 166 So.2d 624 (Fla. 3rd DCA 1964); *12A Fla. Jur. 2d, Counties and Municipal Corporations* § 189 (1998). And in exercising their sphere of operation and representing the city and their respective districts it is clearly implied by a fair reading of the Charter that individual Commissioners have the right to request and the City Manager is obligated to provide any information a Commissioner deems necessary to make informed decisions or cast informed votes in fulfilling their official duties.

Although it may appear impolitic to state herein, the paramount authority bestowed upon the Mayor by the Charter is the appointment of the City manager. Yet, even that power is subject to City Commission approval, as is the Mayor's removal of the Manager. Consequently, as one appellate court opined regarding a somewhat analogous mayoral appointment process involving another municipality's City Attorney, a grant of the power to appoint which is subject to approval by the City Commission "amounts to nothing more than the power to nominate." *Blake v. Partyka*, 731 So.2d 749 (Fla. 5th DCA 1999); *Rev. Den.*, 744 So.2d 456 (Fla. 1999). Conversely, the City Commission may unilaterally dismiss the City Manager, may override a Mayoral veto, and can restore to office a suspended Police or Fire Chief.

In conclusion, the City Commission, as the Governing Body, sets policy for the City, promulgates and adopts laws and regulations and gives directions that the City Manager must follow. The Mayor, as the Head of Government, participates in setting policy for the City, participates in the adoption of laws and regulations and gives directions that the City Manager must follow. Nearly every provision of the City Charter mandates the Commission's participation and input, if not outright concurrence, except to the extent that the City Commission has, by ordinance, delegated its authority. The City Manager is responsible for implementing the policies and/or directives of the City Commission, Commissioners and Mayor, as the case may be, and performs such duties as they may require. §§ 15 and 16(g) City Charter. Consequently, the Manager is subordinate to the Mayor and the City Commission, but exercises sole supervisory power over the City's administrative officers and employees in the performance of their duties.

Attachments

c: Mayor and Members of the City Commission
Joe Arriola, City Manager
Priscilla A. Thompson, City Clerk
Victor I. Igwe, Independent Auditor General

Exhibit "A"

Charter ^{1/}

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Section 4. Form of government; nomination and election.

(a) *General description.* The form of government of the City of Miami, Florida, provided for under this Charter shall be known as the "mayor-city commissioner plan,".... The city commission shall constitute the governing body with powers (as hereinafter provided) to pass ordinances adopt regulations and exercise all powers conferred upon the city except as hereinafter provided. The mayor shall exercise all powers *conferred herein* and shall appoint as provided in section 4(g)(6) of this Charter a chief administrative officer to be known as the "city manager."

* * *

(d) *City commission to be judge of its own elections; neither mayor nor city commission nor any committees nor members thereof to dictate appointments by or interfere with city manager....* Neither the mayor nor the city commission, nor any committees nor members thereof shall direct, request, take part in or dictate the appointment or removal of any person in office or employment by the city manager or subordinates or in any manner interfere with the city manager or prevent the city manager from exercising his/her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry AND as may be necessary as provided in section 14, the mayor, the city commission, any committees and members thereof shall deal with the administrative service solely through the city manager, and neither the mayor nor the city commission, nor any committees nor members thereof shall give orders to any of the subordinates of the city manager, city attorney, city clerk and independent auditor general, either publicly or privately....

(e) *Election of officers by city commission; rules of city commission; quorum.* The city commission shall elect a

^{1/} Asterisks indicate omitted and unchanged material.

city clerk and a city attorney. No member of the city commission or the mayor shall be chosen as city manager or as a member of the civil service board or appointed to any other city office or employment. The city commission may determine its own rules of procedure, may punish its own members for misconduct and may compel attendance of members. A majority of all the members of the city commission shall constitute a quorum to do business, but a smaller number may adjourn from time to time.

* * *

(g) Powers and duties of mayor. The mayor shall serve as the chief executive officer and head of the city government with the following specific powers and duties:

- (1) The mayor shall be the presiding officer of the city commission with the authority to designate another member of the city commission to serve as presiding officer.
- (2) The mayor shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for military purposes.
- (3) In time of public danger or emergency, the mayor may declare a state of emergency as provided in state law and **may with the consent of the city commission**, take command of the police and maintain order and enforce the laws.
- (4) **During the temporary absence of disability, the mayor shall appoint a member of the city commission to perform the duties of the mayor. However, in the event that the mayor does not or is unable to make such designation, the city commission shall designate a member of the city commission to perform the duties of the mayor during the temporary absence or disability of the mayor by a four-fifths vote of the city commissioners then in office.**
- (5) The mayor shall, within ten days of final adoption by the city commission, have veto authority over any legislative, quasi-judicial, zoning, master plan or

land use decision of the city commission, including the budget or any particular component contained therein which was approved by the city commission; provided, however that if any revenue item is vetoed, an expenditure item in the same or greater dollar amount must also be vetoed. **The city commission may, at its next regularly scheduled or special meeting after the veto occurs, override that veto by a four-fifths vote of the city commissioners present.**

- (6) When one person succeeds another in the position of mayor, the successor shall have the right to appoint the city manager, subject to the approval within 14 days of a majority of the city commissioners then in office. In the event of a vacancy in the office of city manager, the mayor shall appoint the city manager, subject to the approval within 14 days of a majority of the city commissioners then in office. The mayor may remove the city manager subject to the city commission's conducting a hearing within 10 days of said removal and the city commission's overriding the mayor's action by a four-fifths vote of those city commissioners then in office. Additionally, the city commission by a four-fifths vote of those city commissioners then in office shall be able to remove the city manager.**

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- (8) The mayor shall prepare and deliver a report on the state of the city to the people of the city between November 1 and January 31 annually. Such report shall be prepared after consultation with the city commissioners and the city manager.**

- (9) The mayor shall prepare and deliver a budgetary address annually to the people of the city between July 1 and September 30. Such report shall be prepared after consultation with the city manager.**

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Section 14. Commission may investigate official transactions, acts and conduct.

The mayor, city commission, or any committee thereof may investigate the financial transactions of any office or department of the city government and the official acts and conduct of any city official, and by similar investigations may secure information upon any matter. In conducting such investigations the mayor, city commission, or any committee thereof, may required the attendance of witnesses and the production of books, papers and other evidence, and for that purpose may issue subpoenas which shall be signed by the presiding officer of the city commission of the chair of such committee, as the case may be, which may be served and executed by any police officer.

Section 15. City manager - Qualifications; appointment; term; salary; sickness or absence; removal.

The city manager shall be the head of the administrative branch of the city government. The city commission shall fix the city manager's compensation, and the city manager shall serve as provided in section 4(g)....

The mayor, subject to the approval of the city commission, may designate a qualified administrative office of the city to assume the duties and authority of the city manager during periods of temporary absence or disability of the city manager.

The city manager shall be responsible for the administration of all units of the city government under the city manager's jurisdiction, and for carrying out policies adopted by the city commission. The city manager or designee shall execute contract and other instruments, sign bonds and other evidences of indebtedness.

Section 16. Same - Powers and duties.

The powers and duties of the city manager shall be to:

- (a) See that the laws and ordinances are enforced.
- (b) **Appoint and remove, except as otherwise provided in this Charter, all directors of the departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments and**

removals to be subject to the civil service provisions of this Charter.

- (c) **Exercise control over all departments and divisions created herein of that may be hereafter created by the city commission.**
- (d) Attend all meetings of the city commission with the right to take part in the discussion but having no vote.
- (e) Recommend to the mayor **and city commission** for adoption such measures as the city manager may deem necessary or expedient.
- (f) Keep the mayor **and city commission** fully advised as to the financial condition and needs of the city; and
- (g) Perform such other duties as may be prescribed by this Charter or be required by the mayor or ordinance or resolution of the city commission.

Section 17. Same - Examination of affairs of departments, officers or employees.

The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person or persons appointed by the city manager to examine the affairs of any department or the conduct of any officer or employee shall have the same right to require the attendance of witnesses and production of books and papers and other evidence as is conferred upon the mayor and city commission by this Charter.

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Section 19. Creation of new departments; discontinuance of departments.

The city commission may, by ordinance adopted by vote of at least three members of the city commission, create new departments or discontinue any department and determine, combine, and distribute the functions and duties of departments and subdivisions thereof.

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Section 20. Directors of departments.

The city manager shall appoint a director for each department and, in the city manager's discretion, may consolidate two departments under one director. Each such director shall serve until removed by the city manager or until a successor has been appointed and qualified, shall conduct the affairs of his or her department in accordance with rules and regulations made by the city manager, shall be responsible for the conduct of the officers and employees of his or her department, for the performance of its business, and for the custody and preservation of the books, records, papers and property under its control, and, subject to the supervision and control of the city manager in all matters, shall manage the department. **None of the provisions of this section, however, shall be applicable to the department of law, city clerk or office of independent auditor general.**

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Section 26. Suspension and removal of chief of police and fire chief.

The city manager shall have the exclusive right to suspend the chief of police and fire chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If either of such chiefs be so suspended the city manager shall forthwith certify the fact, together with the cause of suspension, to the commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.

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Section 27. Finance, department of finance.

(a) *Department director.* **Subject to the supervision and control of the city manager, the director of finance** shall have charge of the department of finance and shall administer the financial affairs of the city, including the keeping and supervision of all accounts, the levy, assessment and collection of revenues, the making and collection of special assessments, the custody and disbursement of city funds and monies, the control over expenditures, and such other duties as the city manager may direct....

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Section 29-A. Contracts for, unified development projects, and real property; safeguards.

The commission may accept any recommendation of the city manager by an affirmative vote of a majority of its members. In the event the commission does not accept a proposal recommended by the city manager or does not reject all proposals, the commission shall seek recommendations directly from the aforementioned review committee, which shall make a recommendation or recommendations to the commission taking into account the report of the aforementioned certified public accounting firm and the evaluation criteria specified for the review committee in the request for proposals.

After receiving the direct recommendations of the review committee, the commission shall, by an affirmative vote of a majority of its members:

- (1) Accept any recommendation of the review committee; or
- (2) Accept any previous recommendations of the city manager; or
- (3) Reject all proposals.

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Section 37. Pension funds.

(a) **The city commission shall establish** a fund or funds for the relief or pension of persons in the classified service of the city. The city commission, on behalf of the city, may receive gifts, devises, and bequests of money or property for the benefit of such fund or funds; may make contributions of public money thereto on such terms and conditions as it may see fit; and shall make rules and regulations for the management, investment, and administration of such fund or funds.

(b) **The city commission shall have power** to make contracts of insurance with any insurance company authorized to transact business in this state, insuring its employees or any class or classes thereof under a policy or policies of group insurance covering life or health or accident insurance or any two or more of

such classes of insurance and may contract with any company granting annuities or pensions and authorized to transact business within the state for the pensioning of such employees or any class or classes thereof; for any and all such purposes the city commission may appropriate the funds necessary to pay premiums or charges incident to the carrying on of such policies or contracts.

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Section 38. City planning and zoning board.

(a) *Comprehensive planning.* The city commission is empowered to plan for the future development of the city and, as an integral part of the planning process, to take all lawful actions necessary to implement plans made.

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Section 48. Office of Independent Auditor General.

(a) *Created; responsibility.* **There is hereby created the Office and position of Independent Auditor General (IAG) to provide the City Commission with independent oversight of audit and analytical functions of the City. The Office of the Independent Auditor General shall report directly to the City Commission.**

(c) *Duties and powers.* The IAG shall be responsible to provide independent oversight of audit functions, and for the performance of such other duties as may be assigned by the city commission or any member of the city commission.

* * *

[Emphasis added].