

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

TO: Pete Chircut, Treasurer
Finance Department

FROM: Jorge L. Fernandez, City Attorney

DATE: November 12, 2004

RE: Request for Legal Opinion - Waiver of Residence Requirement for Member of Health Facilities Authority Board
(MIA-0400008)

You have requested an opinion on substantially the following question:

CAN A MEMBER OF A BOARD, CREATED BY STATE LAW, SUCH AS THE HEALTH FACILITIES AUTHORITY BOARD ("BOARD"), WHO HAS RELOCATED TO A RESIDENCE OUTSIDE THE CITY OF MIAMI ("CITY"), OBTAIN FROM THE CITY A WAIVER OF THE RESIDENCE REQUIREMENT?

Your question is answered in the negative. The requirement that a Board member be a resident of the City is mandated by State law, and not City ordinance. Therefore, absent a statutory exemption or waiver provision, the City may not contravene Florida law by issuing a waiver of the residence requirement.

The Board is a creation of State law.¹ A condition of serving on the Board is residence within the City limits. Pursuant to statute, the City *shall* designate five (5) persons who are residents as members of the Board.² The use of the term "shall" connotes a mandatory condition rather than a permissive one. Therefore, if the City chooses to establish a Board, it must do so only with members who are residents of the City. There are no other provisions in Chapter 154 allowing the City to exempt or waive the residential requirement.

In addition, the City Code requires notification to the City Clerk in the event a Board member ceases to be a resident of the City.³ Subsequently, the City Clerk is to inform the City Commission of the Board member's ineligibility to serve on the Board, prompting the removal of the Board member.⁴ Accordingly, the vacancy created is to be filled by the City Commission.⁵

¹ See generally Chapter 154, F.S.

² § 154.207(4), F.S. (2004). (Emphasis added).

³ § 2-884 (b), City Code.

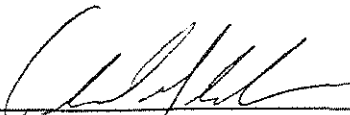
⁴ Id.

⁵ Id.

CONCLUSION


Because the Board is creature of the State, the City must abide by the residential requirements imposed to it by Florida law. In the absence of a statutory provision, the City may not on its own, contravene State law by waiving the residence requirement. Instead, the City Clerk must be notified pursuant to section 2-884 (b) of the City Code, to begin the process of replacing the Board member no longer residing within City limits.

PREPARED BY:



Roland C. Galdos
Assistant City Attorney

REVIEWED BY:



Rafael O. Diaz
Assistant City Attorney

cc: Mayor and Members of the City Commission
Joe Arriola, City Manager
Priscilla Thompson, City Clerk
Scott Simpson, Director