

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

TO: Commissioner Jeffery L. Allen

FROM: Jorge L. Fernandez, City Attorney (FOB)

DATE: September 21, 2005

RE: Legal Opinion – Authority to Grant Pay Increases and Bonuses to Staff Members of the Mayor and City Commission

You have requested a legal opinion on the following question:

WHETHER THE MAYOR AND MEMBERS OF THE CITY COMMISSION HAVE AUTHORITY TO GRANT PAY INCREASES AND BONUSES TO STAFF MEMBERS.

For the reasons set forth below, your question is answered in the negative.

RELEVANT AUTHORITIES¹

Charter Section 4(d) states that “Neither the Mayor nor the City Commission, nor any committees nor members thereof shall direct, 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.”

Charter Section 15 provides that the City Manager shall be the head of the administrative branch of the City government. As head of the administrative branch, the City Manager is “responsible for the administration of all units in the City government under the City Manager’s jurisdiction, and for carrying out policies adopted by the City Commission.”

Charter Section 16 establishes the powers and duties of the City Manager. Specifically, Section 16(b) states that the City Manager shall “appoint and remove, except as otherwise provided in this Chapter, all directors of the departments and all subordinate officers and employees in the departments² in both the classified and unclassified service; all appointments to

¹ In providing a response to the question presented, all relevant provisions of the City of Miami Charter and Code were analyzed. When the Charter was enacted in 1921, the population needs and business climate of the City of Miami were different from the present environment. Where the City's structure has evolved to meet the changing needs of the City's burgeoning interests. At one time the Mayor and Commission may have shared an assistant or administrative staff, but now Commission members need full-time support. The applicable provisions of the Charter and Code of the City of Miami may not reflect or encompass the needs of the current Commission.

² In analyzing this issue, it was noted that the offices of the City Commissioners and the Mayor are not recognized as departments. This appears to be an anomaly not addressed by Code Section 40-61.

be upon the merit and fitness alone, and in the classified service all appointments and removals to be subject to the civil service provisions of this Charter.”³

In 1979, the City Commission adopted Ordinance No. 8977, codified in Section 40-61, et seq., of the City Code, which authorized that “the City Manager’s ‘assistants and secretarial staff’ shall include all members of the City Manager’s personal staff. Such positions also shall include assistants and secretarial staff positions authorized in the City budget for the Mayor and Members of the City Commission, provided that employees of such positions shall be nominated by the Mayor or Commissioner and shall be appointed by the City Manager.”

ANALYSIS

The City’s workforce is divided into the “classified” and “unclassified” service as per Section 36 of the Charter.⁴ The Mayor’s and Commissioners’ assistants/staff are members of the “unclassified service,” because of their organizational placement under the Office of the City Manager, per City Code Section 40-61.

Florida case law recognizes that local government bodies may exercise powers that are necessarily or fairly implied in those powers that are expressly established.⁵ Furthermore, general agency principles recognize that expressly delegated powers carry with them the implied authority reasonably necessary to accomplish the ultimate purpose.⁶ Similarly, in the Civil Service context, express authority to “remove” is not a limitation on the employer’s remedies

³ Charter Section 36 identifies those positions which are unclassified.

⁴ Section 36(c) of the City of Miami Charter states: Unclassified and classified service. The civil service of the city is hereby divided into the unclassified and the classified service.

(1) The unclassified service shall include:

(A) The city manager, his or her assistants, and secretarial staff;
(B) The heads of departments, members of appointive boards, judges of the city court, the city clerk, chief of police, chief of fire division, and the superintendent of communications division;

(C) Assistants to department heads:

Assistant chiefs of the police division;

All ranks in the police division above the classified position of police captain;

Assistant chiefs of the fire division;

Chief of fire prevention;

Director of training in the fire division;

Battalion chiefs;

Chief of fire rescue;

Assistant to the superintendent of the division of communications;

Director of corrections...

Personnel with permanent civil service rights appointed by the city manager to unclassified positions shall retain said civil [service] rights in the position from which selected as may have accrued.

(2) The classified services shall include all positions not specifically included by this Charter in the unclassified service.

⁵ *Barry vs. Garcia*, 573 So. 2d 932 (Fla. 3 DCA 1991)

⁶ *Neches vs. Alridge*, 992 S.W. 2d 684 (Tex. Ct. App. 1999)

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when faced with employee performance issues, but rather provides authority enabling the public employer to efficiently rectify performance problems.⁷

Nonetheless, this authority is tempered by the Charter requirement that all appointments be based on “merit and fitness alone.”⁸ There is a wide range of possible actions that fall between “appointment” and “removal,” which logically incorporate the lesser-included actions, such as rewarding good behavior and correcting poor performance.⁹ To ensure consistency and fairness, and withstand scrutiny, such actions should be based on standards of performance. Salary increases and bonuses are examples of some lesser-included reward systems that are based on performance standards commonly used in the employment context.¹⁰ Therefore, the City Manager’s authority to approve such payments is logically derived from the Charter provision empowering him to “appoint and remove.”

As a balance, the City Commission, as a collegial body, retains the ultimate authority to exercise the City’s municipal powers. To this end, the Charter and Code include a system of checks and balances and, if the City Commission is dissatisfied with the City Manager’s administrative oversight of the City, then the City Commission may elect to replace the City Manager, as explained by the Florida Supreme Court in *State vs. Bloodworth*.¹¹

CONCLUSION

Based on the applicable Charter and Code provisions mentioned above, authority to issue pay increases and bonuses lies with the City Manager. In recognition of the changes that the City of Miami has experienced since 1921, the City Commission may consider amending the City Code to include a different process for its respective staff members.

Should you require additional information, please contact me. Thank you for your attention in this matter.

C: Mayor Manuel A. Diaz
Commissioner Angel Gonzalez
Commissioner Tomas Regalado
Commissioner Joe Sanchez
Commissioner Johnny L. Winton
City Manager Joe Arriola

⁷ *Department of Insurance vs. Smith*, 449 So. 2d 925 (Fla. 1 DCA 1984)

⁸ City of Miami Charter § 16.

⁹ See generally, *Barry v. Garcia*, 573 So.2d 932 (Fla. 3 DCA 1991)

¹⁰ On a related issue, when considering additional compensation for municipal employees you need to take into account Section 166.021(7) of the Florida Statutes which states: “Notwithstanding the prohibition against extra compensation set forth in s. 215.425, the governing body of a municipality may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.” Similarly, Section 215.425, Florida Statutes, sets forth the requirement of a contract, resolution or ordinance to permit the payment of any such additional compensation. Charter Sections 16 and 17 provide the necessary authority.

¹¹ *State vs. Bloodworth*, 184 So. 1 (Fla. 1938)