

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #06-004

TO: LeeAnn Brehn, Director
Department of Risk Management
FROM: Jorge L. Fernandez, City Attorney
DATE: July 31, 2006
RE: Settlement Authority

This serves to address the issues that we have recently discussed concerning the authority of the City Attorney with respect to the Settlement of claims and lawsuits.

Specifically, this memorandum was prepared to provide you with the relevant legal authority surrounding the following question:

Who is vested with the authority to settle claims and suits on behalf of the City of Miami?^{1/}

The analysis logically begins with the City Charter, which sets forth the City's powers and privileges, and the means for exercising same.^{2/}

The City's form of government is known as the "mayor-city commissioner plan."^{3/} Charter § 21 designates the city attorney as the City's "legal advisor of and attorney and counsel for the city". This section further charges him^{4/} with the duty^{5/} to "prosecute and defend all suits," and when required by the city commission, resolution or ordinance, "shall prosecute and defend for and in behalf of the City *all complaints, suits and controversies* in which the city is a party, and such other *suits, matters and controversies*."^{6/} This broad designation of authority encompasses the

^{1/} As a preliminary matter, you should note that a corporation cannot represent itself in court, but must appear by an attorney. *Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So.2d 247 (Fla. App. 3rd DCA 1985) The same rule applies to municipal corporations. See generally, *Quinn v. Housing Authority of the City of Orlando*, 385 So.2d 1167 (Fla. App. 5th DCA 1980) (housing authority could not maintain eviction action because complaints were signed by the director, not an attorney, and therefore, the judgment entered by the trial court in the government's favor was void and quashed.)

^{2/} Charter preamble, citing to Laws of Florida, Chapter 10847.

^{3/} Charter § 4.

^{4/} Masculine references including, "him," "he" or "his" are used because the current City Attorney is male, but should be read to equally include and contemplate the inclusion of females.

^{5/} This duty is initiated by a resolution of the City Commission.

^{6/} City Charter § 21 (emphasis added).

ability to initiate an action, defend or defeat a claim or demand, and follow it to an ultimate end.^{7/} This authority was intended to apply to all legal suits and claims, as evidenced by the inclusion of the terms: “complaints,” “suits,” “controversies,” and “matters.”^{8/}

The analysis then turns to the City Code which addresses the issue of settlements, allocation of reserves, and further elaborates on the city attorney’s authority. This involves a bifurcated process. Chapter 18, Art. VI, of the City Code, establishes the Self-Insurance and Insurance Trust Fund, as the depository for the “payment of claims and judgments against the city.”^{9/} This same source requires that the city attorney “perform or supervise the performance of all legal services required to accomplish the purposes of the program, and further designates the “city attorney and such of his assistants and claim adjusters as he may designate” to “compromise, settle and pay all claims which may be discharged by payment of an amount not to exceed \$25,000.”^{10/} However, this section also reserved the authority to settle claims in excess of \$25,000, to the City Commission. (“Settlements in excess of \$25,000 shall be submitted to the City Commission for approval.”)^{11/} Once a settlement has been approved, the city attorney is required to authorize the payment of the claim by the finance director.^{12/}

The Code also establishes the creation of a board of trustees and a Self-Insurance and Insurance Committee.^{13/} The board is composed of the city manager, the director of finance and the insurance manager.^{14/} The committee consists of three members, who are appointed annually by the City Manager from the officers and employees of the city. The City Manager also designates one of the committee members to serve as the chairman.^{15/} While the board of trustees is permitted to make purchases, sales, exchanges, investments and reinvestments on behalf of the

^{7/} See BLACK’S LAW DICTIONARY, 6th Ed. 1990, (defining “prosecute” and “defend”).

^{8/} Charter § 21.

^{9/} City Code § 18-221(a)(1).

^{10/} Code §§ 18-232(a) and 18-232(b).

^{11/} Code § 18-232(c).

^{12/} Code § 18-232(c).

^{13/} Code § 18-221(a)

^{14/} Code § 18-223.

^{15/} Code § 18-229.

fund, they are required to disburse money from the fund to the director of finance upon his requisition and certification that the expenditure of the funds is to accomplish the purpose of the program.^{16/} This is notable because it is the city attorney who initially authorizes the payment of the settlement claim by the finance director, who then in turn certifies and requests the payment from the board of trustees.

The Self-Insurance and Insurance Committee determines and recommends to the city commission the amount of reserves to be accumulated and maintained and the amount to be appropriated annually to finance the Self-Insurance and Insurance Program.^{17/} As with the board of trustees, the committee is not granted the authority to settle claims. That authority is granted to the city attorney.^{18/}

No authority was found that contradicts the sources identified above. It has been noted that the Professional Services Agreement with Gallagher Bassett Services, Inc., permits that entity to settle pre-suit Workers' Compensation claims up to \$10,000, and non-Workers' Compensation^{19/} pre-suit claims up to \$3,000.^{20/} This document prohibits settlements above those amounts, and the settlement of any claims after litigation has commenced, "without the written authorization of the City Attorney."^{21/} No sources were found that would authorize any other single individual to authorize settlements on behalf of the City.^{22/}

Conclusion

The Charter designates the City Attorney to represent the City in all legal matters. The City Code authorizes the City Attorney to settle claims and suits, within the parameters of the Code, in amounts that do not exceed \$25,000. The authority to approve settlements in excess of

^{16/} Code § 18-223; 226.

^{17/} Code § 18-229.

^{18/} Code § 18-232(b)

^{19/} However, the limited authority regarding non-Workers' Compensation claims specifically excludes labor and employment claims; *see* Paragraph 4(D) of the Scope of Services.

^{20/} Paragraph 4(B) of the Scope of Services. This agreement was approved by the City Commission by resolution.

^{21/} Paragraph 4(B) and (D) of the Scope of Services.

^{22/} The job description for the position of Risk Management Administrator was also reviewed, however the responsibilities listed therein only include the reviewing and recommending of Risk Control and Claims policies. There is no mention of the authority to settle actual claims or suits.

that amount remains vested with the City Commission. Because the controlling sources specifically authorize the City Attorney to exercise settlement authority up to \$25,000, and no other controlling document contradicts this authority, this authority is not granted to any other individual.