

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #06-006

TO: Priscilla S. Thompson, City Clerk
FROM: Jorge L. Fernandez, City Attorney
DATE: September 29, 2006
RE: Membership Requirements for the Community Relations Board

You have asked substantially the following question:

Whether one appointed to serve as a member of the Community Relations Board who does not possess the necessary legal qualifications can continue to serve on the board until a new member is appointed?

In your request you make reference to the fact that it has recently been determined that several members of the Community Relations Board (hereinafter the "CRB") were appointed without having met the qualifications required by the Code of the City of Miami, Florida (hereinafter referred to as the "City Code"). Thus, these individuals were "ineligible" for appointment.

At this point it would be helpful to discuss the qualifications for membership to the CRB. The specific qualifications for membership to the CRB are found in Section 2-1152 of the City Code as follows:

Section 1152 (b) *Qualifications*

(1) *Board.* The members of the board shall be broadly representative of the social, racial, religious, linguistic, cultural, and economic groups comprising the population of the city. Each member shall be a resident of the city, with an outstanding reputation for community pride, interest, integrity, responsibility, and business or professional ability. (emphasis supplied)

This Office has been informed that three (3) individuals were appointed to the CRB who are not residents of the City. Apparently it was known at the time of their appointment that they were not residents of the City. They were appointed to the CRB nonetheless because the Office of the Clerk interpreted the residency waiver requirement found in Section 2-884 of the City Code to be applicable to the CRB.

This interpretation was unfortunately made notwithstanding the existence of Section 2-881 which reads in pertinent part: "All of the requirements contained in this division shall apply to all boards of the City of Miami unless there is any statutory or City Charter provision to the contrary, or unless otherwise specifically provided in this article." Thus the provisions of Section 2-884 of the City Code, including the residency waiver, are inapplicable to the CRB since the CRB ordinance sets forth its own independent membership requirements.

Having established that several CRB members are not qualified to serve has led to a new issue with respect to the status of those members who are currently serving on boards without possessing the required qualifications. Additionally, we have also been informed that one (1) member has recently moved out of the City and is consequently no longer qualified to serve on the CRB.

Pursuant to the legislative scheme under which city boards are created and appointments thereto are undertaken, an individual who does not possess the requisite eligibility requirements to serve on a board is to be immediately removed from the respective board. Specifically, Section 2-884 (b) of the City Code states in pertinent part that the city clerk shall inform the city commission whenever a board member has ceased to be in compliance with said eligibility requirements for board membership and said board member shall be automatically removed from the board, and the position is declared vacant.

Similarly, Section 2-886 *Attendance requirements*, which is applicable to the CRB because there is not a conflicting provision in the CRB ordinance, provides that:

- (a) Notwithstanding any other provision of this Code, any board member shall be automatically removed if, in a given calendar year:
 - (1) He or she is absent from three consecutive meetings; or
 - (2) He or she is absent from four of the board's meetings;

Therefore any member of the CRB who has excessive absences must also vacate their position.

Please note that Section 1152 (c) of the City Code provides that "All members shall continue to serve until their successors have been appointed and qualified." This provision may not be used to authorize the continued membership of an "ineligible individual" or an individual who ceased to maintain the legal qualifications.

JLF/GKW