CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION NO.: 07-002

TO: Honorable Marc Sarnoff, Commissioner
District 5

FROM: Jorge L. Fernandez, City Attorney

DATE: March 20, 2007

RE: Florida Statutes Section 112.501 – Municipal Board Members
Legal Opinion - Matter No.: 07-507

You have requested a legal opinion on the following question:

> Are members of the City of Miami's Downtown Development Authority (DDA) "municipal board members" as defined in Sec. 112.501 F.S., and if the answer is in the affirmative, is the City Commission required to comply with the removal requirements set forth in that statute?

The answer to your first question is in the affirmative. The answer to your second question is also in the affirmative, *if* the City Commission elects to exercise the right to suspend or remove a DDA board member under Section 112.501, Florida Statutes.

ANALYSIS

Section 112.501, Florida Statutes, defines "municipal board member" as "any person who is appointed or confirmed by the governing body of a municipality to be a member of a board, commission, authority, or council which is created or authorized by general law, special act or municipal charter." The members of the Downtown Development Authority are municipal board members because (i) they are confirmed by the City Commission, Sec. *14-52, Code of the City of Miami, Florida*, and (ii) the DDA was created by general law, *Laws of Florida, Chapter 65-1090* ("Ch. 65-1090").

A Memorandum submitted by the Carroll Law Firm (the "Memorandum") contends that the DDA board members are not municipal board members because Chapter 65-1090 is not a general law but a "general law of local application." The author bases her conclusions on the definition of 'general law of local application' found in City

of Miami Beach v. E.J. Frankle, 363 So.2d 555, 558 (Fla. 1978) ("A general law of local application is a law that uses a classification scheme based on population or some other criteria so that its application is restricted to particular localities") and on the repeal of Chapter 65-1090 by Laws of Florida, Chapter 71-29. We address each argument separately:

1. Is Chapter 65-1090 a general law or a general law of local application?

The difference between a general law and a general law of local application is that the latter is a special or local law, enacted in the guise of a general law, Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc., 731 So.2d 21 (Fla. 1st DCA 1999), *affirmed* 793 So.2d 889 (Fla. 2001), which is invalid unless enacted in accordance with constitutional mandates[1]. Whether a particular law is a general law or a general law of local application is a "pure legal question subject to *de novo* review." Schrader v. Florida Keys Aqueduct Authority, 840 So.2d 1050, 1055 (Fla. 2003); City of Miami v. McGrath, 824 So.2d 143, 146 (Fla. 2002); Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983).

A conclusion that Chapter 65-1090 is a general law of local application because it uses a classification scheme based on population is contrary to case law, which has consistently held that where the population classification is reasonably related to the purposes to be effected and is not merely arbitrary, the statute constitutes a valid general law. Board of Public Instruction of Pinellas County v. County Budget Commission, 90 So.2d 707 (Fla. 1956); Department of Bus. Regulation v. Classic Mile, Inc., 541 So.2d 1155 (Fla.1989); City of Miami v. McGrath, 824 So.2d 824 (Fla. 2002). Conversely, where the statue applies to a particular population size and is tied to a specific date, so that no other entities could ever fall within the confines of the statutes, then the statute constitutes an invalid special act (or general law of local application). Walker v. Pendarvis, 132 So. 2d 186 (Fla. 1961), City of Miami v. McGrath, 824 So.2d 143 (Fla. 2002).

In Walker, the Court considered two statutes that limited their application to the counties which, on the date of enactment of the legislation, had a particular population. ("...all the counties of this State which *now* have a population of not less than..."). The court held that the statutes constituted invalid special laws because the "use of the word "now," to modify the particular population bracket, can have no other reasonable meaning than to restrict application of the act to the counties having the stipulated population at the specific time of the enactment of the law." *Id*, at 195. Therefore, the statues were tantamount to the legislature specifically naming counties in the legislation.

[1] Article III, section 10 of the Florida Constitution permits the passage of special laws generally if "notice of intention to seek enactment thereof has been published in the manner provided by general law.

Chapter 65-1090 was enacted as a general law to authorize the governing body of *every* municipality in the State of Florida, having a population in excess of two hundred fifty thousand (250,000), to create a downtown development authority if it determines that it is necessary for the public health, safety and welfare that property value deterioration in the principal area or areas of the city zoned for business, be halted by the use of means authorized in the act. Unlike the statutes in Walker, the population classification under Chapter 65-1090 is reasonably related to the purposes to be effected and the law, until the date of its repeal, was applicable to all municipalities having a population in excess of two hundred fifty thousand (250,000).

Based on the foregoing, we are of the opinion that the DDA was created pursuant to a general law, and such law has not been found, as a matter of law, to be a general law of local application.

2. Does the repeal of Chapter 65-1090, subsequent to the creation of DDA, by Chapter 71-29, Laws of Florida, converts Chapter 65-1090 into a general law of local application?

Chapter 71-29, Laws of Florida, repealed Chapter 65-1090, Laws of Florida, amongst many other chapters of the Laws of Florida, which it described as general laws of local application, "because of the questionable constitutionality of such legislation." The enactment of Chapter 71-29 was not a response to a judicial finding that Chapter 65-1090 was a general law of local application. Instead, Chapter 71-29 was a proactive act, intended to protect the laws described therein from constitutional challenges.

The repeal of Chapter 65-1090, Laws of Florida, does not invalidate the authorities created by it. In fact, Chapter 71-29 does the exact opposite by converting Chapter 65-1090 into an ordinance of the municipalities affected by it and protecting all contracts executed by such entities from the repeal. The conversion of Chapter 65-1090 into an ordinance does not negate the creation of such authorities pursuant to general law. In fact, in 1999 the legislature enacted Section 166.0497 to establish a procedure for the alteration of the boundaries of downtown development districts "created" pursuant to Chapter 65-1090, Laws of Florida.

Your second question is whether the City Commission must comply with the removal requirements of Section 112.501, Florida Statutes. The language regarding suspension and removal of board members under Section 112.501(2) is permissive rather than mandatory. Therefore, it is our opinion that the City Commission is not required to suspend or remove municipal board members under Section 112.501(2), Florida Statutes, but, if it elects to do so, it must comply with the requirements set forth therein.

CONCLUSION

The DDA was created pursuant to Chapter 65-1090, Laws of Florida[2], which was enacted as a general law. Accordingly, its board members are 'municipal board members' under Section 112.501, Florida Statutes.

If the City Commission elects to exercise the right to suspend or remove a DDA board member under Section 112.501, Florida Statutes, it must comply with the requirements set forth therein.

PREPARED BY:

Olga Ramirez-Seijas, Assistant City Attorney

REVIEWED BY:

Rafael O. Diaz, Division Chief
Division of Contracts

cc: Honorable Mayor and Members of the City Commission
Members of the Board of the Downtown Development Authority
Pedro G. Hernandez, City Manager
Dana Nottingham, Executive Director, DDA

[2] "Sec. 14-51. Downtown development authority created.
Pursuant to Laws of Fla., Ch. 65-1090, there is hereby created the downtown development authority of the city, which authority shall be a body corporate with the power to sue and be sued in all the courts of the state and shall have its own corporate seal. (Code 1967, § 13-5; Code 1980, § 14-25)
State law references: Act authorizing creation of downtown development authorities in certain cities, Laws of Fla., Ch. 65-1090, set forth in Pt. I, Subpt. C, Art. I, of this volume.