

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION # 07-009**

TO: Honorable Mayor and Members of the City Commission
FROM: Jorge L. Fernandez, City Attorney
DATE: May 18, 2007
RE: Legal Opinion – Interpretation of Charter Section 14, and the City’s Disclosure Policy
Matter ID No.: 07-940

You ask for a legal opinion on the following question:

WHETHER UNDER THE PROVISIONS OF SECTION 14 OF THE CITY CHARTER THE CITY COMMISSION HAS THE AUTHORITY TO REQUEST THAT THE CITY ADMINISTRATION AND THE CITY ATTORNEY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER OR NOT AN APPLICANT FOR A ZONING CHANGE VIOLATED THE CITY’S DISCLOSURE RESOLUTION.

On March 8, 2007, the City Commission passed and adopted Resolution R-07-0130, thereby requiring each person or entity requesting approval, relief or other action from the Commission or any of its boards to disclose at the commencement of the hearing any consideration provided or committed to any person for an agreement to support or withhold objection to the request (the “Disclosure Resolution”). You indicate that allegations exists that this policy was violated at the City Commission meeting held on April 26, 2007, related to the application for rezoning regarding land owned by Mercy Hospital. The City Clerk has been provided a copy of an affidavit submitted for the record at the City Commission meeting of May 10, 2007, containing such allegation. Also, at said meeting, a Resolution was introduced requesting that an investigation be undertaken by the administration and the City Attorney pursuant to Section 14 of the City Charter. The vote was deferred pending the issuance of this legal opinion.

I. Analysis of Section 14 of the City Charter.

Section 14 of the City Charter provides:

Sec. 14. Commission may investigate official transactions, acts and conduct.

The mayor, city commission, or any committee thereof may investigate the financial transactions of any office or department of the city government and the official acts and conduct of any city official, and by similar investigations may secure information upon any matter. In conducting such investigations the mayor,

city commission, or any committee thereof, may require the attendance of witnesses and the production of books, papers and other evidence, and for that purpose may issue subpoenas which shall be signed by the presiding officer of the city commission or the chair of such committee, as the case may be, which may be served and executed by any police officer.

Charter Section 14 specifies that the *Mayor*, the *City Commission*, or *any Committee thereof* may investigate official transactions, acts and conduct of any official, office or department of the City. Accordingly, an investigation may be initiated by *resolution* of the City Commission or by the Mayor. Section 14 identifies specific matters subject to investigation; specifically, financial transactions of any office or department of the City government and the official acts and conduct of any City official. Section 14 also states that the Mayor, Commission or a Committee thereof *by similar investigations may secure information upon any matter*. The clause "*and by similar investigations may secure information upon any matter*" limits the investigatory authority of the Mayor and the Commission to matters concerning the entities and individuals listed.

This reasoning is supported by the canon of statutory construction *ejusdem generis*, which states that when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed. See Fayad v. Clarendon Nat'l Ins. Co., 899 So.2d 1082, 1088-89 (Fla.2005). Therefore, the general phrase "*and by similar investigations may secure information upon any matter*" should be interpreted to authorize investigations only as to any office or department of the City government or City official.

Under Section 14 of the City Charter only the Mayor, the City Commission, or any Committee thereof is expressly granted the power to require the attendance of witnesses and the production of books, papers and other evidence, and to issue subpoenas. The Charter does not authorize the Mayor or the City Commission to delegate the subpoena power to a non-elected official. Florida law provides that there must be a clear authority to either issue a subpoena by municipal officials in the first instance or for them to delegate this power to non-elected persons. Barry v. Garcia, 573 So.2d 932 (Fla. 3d DCA) (City Commission had no authority to grant subpoena power to independent investigatory body), review denied, 583 So.2d 1034 (Fla.1991). Thus, a *committee* appointed to conduct an investigation pursuant to the authority granted under Section 14 of the City Charter can only be comprised of the individuals named therein; specifically, *elected officials*.

II. Commission authority to investigate a violation of the Disclosure Resolution.

The Disclosure Resolution, adopted on March 8, 2007, required each person or entity requesting approval, relief or other action from the City Commission or any of its Boards, authorities, agencies, councils or committees to disclose at the commencement or continuation of the hearing any consideration provided or committed, directly or on its behalf, for agreement to support or withhold objection to the requested approval, relief or action. The penalties provided in the Disclosure Resolution for a violation includes nullification of the application or order. The Disclosure Resolution requires the City commission to determine whether the disclosure was timely satisfied. Subsequently, the City Commission adopted an Ordinance providing for

substantially the same disclosure requirement that was contained in the Disclosure Resolution (the "Disclosure Ordinance"). The Disclosure Ordinance becomes effective thirty (30) days after May 10, 2007.

At the May 10, 2007, a Commissioner submitted for the record an affidavit raising the issue that a potential violation of the Disclosure Resolution occurred on April 26, 2007, at City Commission meeting when the application for rezoning of a parcel of land owned by Mercy Hospital was acted on by the commission. The Disclosure Resolution does not describe the procedure that the City Commission must employ to *determine* whether a violation has occurred. However, legislative bodies have inherent power to make full and complete investigation on any matters coming within its operative function, even though the subject of the inquiry may also be the proper concern of the courts and grand juries in the enforcement of criminal laws. Section 4 of the Charter describes the form of government of the City of Miami as a "mayor-city commissioner plan" and clearly designates the City Commission as the governing body with powers to legislate. In other words, the City Commission has the power to investigate in furtherance of its legislative function. 4 McQuillin Mun. Corp. § 13.05 (3rd ed.).

Florida law establishing municipal home rule guarantees for municipalities the broad exercise of home rule powers granted by the constitution and extends to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter. Art. VIII, § 2(b), Fla. Const.; § 166.021(1), (3)(c), (4), Fla. Stat. (2006). Likewise, under Section 3 of the City Charter the City Commission is granted broad governmental, corporate and proprietary powers to perform municipal functions and render municipal services.

Thus, the City Commission may vote to conduct a *public hearing* concerning the issues raised in the affidavit. However, the Commission would not have the subpoena powers granted in Section 14, which is expressly granted by the Charter only for investigations concerning city officials, office or departments.

Finally, the Disclosure Ordinance was not in effect at the time that the alleged violation occurred, instead at the commencement of the meeting the City Commission announced the "policy" that had been adopted by the Disclosure Resolution. Here, the violation allegedly occurred prior to the effective date of the Disclosure Ordinance. Because only the Disclosure Resolution was in effect the disclosure requirement was not a regulation of a general and permanent nature enforceable as a local law, but rather it represented the City Commissions' policy regarding the issue of disclosure.

A resolution is defined as "an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body." Fla.Stat. § 166.041(1)(b) (2006). It is well established law in Florida that legal actions which are required to be accomplished by ordinance may not be accomplished by resolution. Carlton v. Jones, 158 So. 170, 170 (1934); see Brown v. City of St. Petersburg, 153 So. 141, 142 (1933).

CONCLUSION

In conclusion, based on the foregoing discussion and analysis of Section 14 of the City Charter, a violation of the Disclosure Resolution by an applicant requesting a zoning change would not be a matter which is subject to a Section 14 investigation because such individual or entity is not an official, office or department of the City. Additionally, neither the Mayor nor the City Commission may delegate to the administration or the City Attorney the investigatory authority granted under Section 14 of the City Charter which includes the power to issue subpoenas.

As to the Disclosure Resolution, under the facts discussed herein, the City Commission may conduct a public hearing, and take testimony and evidence regarding the alleged violation, but the hearing would be merely *fact finding*, and could not result in any action taken against the applicant by the City Commission because Florida law explicitly provides that an ordinance, and not a resolution is "enforceable as a local law." Fla.Stat. § 166.041(1)(a) (2006).

PREPARED AND REVIEWED BY:



Julie O. Bru
Deputy City Attorney

c: Pedro G. Hernandez, City Manager