


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #09-004

TO: Honorable Mayor and Members of the City Commission
FROM: Julie O. Bru, City Attorney 
DATE: November 16, 2009
RE: Filling a temporary vacancy on the Commission by appointment

You have requested a legal opinion on the following question:

Does Section 12(a) of the city charter provide a manner for filling a temporary vacancy in the commission caused by the suspension of a city commissioner, when in the absence of a quorum, the remaining commissioners will not be authorized to fill the appointment?

Your question has been restated to include some pertinent facts.

As of November 14, 2009, there is a temporary vacancy in the city commission caused by the suspension of the District 5 commissioner. As of November 17, 2009, there will be yet another, but permanent, vacancy in the city commission caused by the resignation of the District 1 commissioner. Additionally, there is an empty seat on the commission that is the subject of a run-off election. The commissioner who is elected to fill the District 4 office holds office as of noon November 25, 2009. Thus, under these specific and limited circumstances, you ask whether there is authority in Section 12(a) of the Miami Charter to fill by temporary appointment the temporary vacancy caused by the suspension of the District 5 commissioner?

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

The District 5 Commissioner was suspended by the Governor under the authority of Section 112.51 F.S. which also provides that the suspension of such official by the Governor creates a temporary vacancy in such office during the suspension. Section 112.51 further mandates that such temporary vacancy be filled by a temporary appointment to such office for the period of the suspension and that the temporary appointment be made in the same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law. Finally, this statutory provision states that if no provision for filling a permanent vacancy in such office is provided by law, the temporary appointment shall be made by the Governor.

The Miami Charter contains such a provision for filling vacancies in office. Miami Charter Section 12(a) describes the manner of filling such vacancy by appointment as follows:

- (a) A vacancy on the city commission or in the office of mayor caused by death, resignation, forfeiture or other action or causes shall be filled within ten days after such vacancy occurs by a majority of the remaining city commissioners. The person appointed must meet the qualifications of the office as required in section 4 of this Charter.

Although, not expressly stated in Section 12(a) of the Miami Charter, it is also well established that Section 12(a) of the Miami Charter provides the manner by which a *temporary vacancy* on the commission caused by the suspension of a city commissioner by the Governor pursuant to Section 112.51 of the Florida Statutes, is filled. See Resolution R-06-0377. (Resolution of the City Commission where the remaining commissioners appointed Linda Haskins to fill vacancy created by the suspension of Johnny Lee Winton).

However, the facts at this time establish that there will be no quorum as of November 17, 2009, and quorum will not be achieved until the commissioner from District 4 holds office which might be as late as noon November 25, 2009. Thus, the remaining city commissioners, under these unique and unprecedented circumstances, are not authorized to fill the vacancy by appointment.

CONCLUSION

Accordingly, in my opinion, a majority of all members being necessary for quorum,¹ and in light of the absence of quorum as of November 17, 2009, Section 12(a) of the Miami Charter does not provide for a manner of making an appointment to fill the temporary vacancy created by the suspension of the District 5 Commissioner. The ten day period for making such appointment will lapse on November 23, 2009, thus leaving only the possibility of an election under 12(b) to fill the vacancy.²

Cc: Pedro G. Hernandez, City Manager
Priscilla Thompson, City Clerk

¹ See *Clark v. North Bay Village, et al*, 54 So.2d 240 (Fla. 1951); Section 4(e) of the Miami Charter.

² Charter Section 12(b) states: If the remaining city commissioners shall fail or refuse to fill such vacancy within ten days after it occurs, as provided herein, the city commission shall call a special election to fill the vacancy to be held at a date not less than thirty-eight or more than forty-five days after the expiration of the ten-day period and the five day qualifying period. The qualifying period for such special election shall be for the five days not including Saturday, Sunday or legal holidays before the thirty-eighth day before the date of the election and the procedure for the election not otherwise provided for in this section shall be as provided in section 7 of this Charter. The person who receives the greatest number of votes for the office in said special election is elected to fill the vacancy until the election as provided in subsection (a) (1) or (2) of this section.