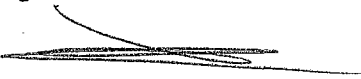


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #09-006

TO: Honorable Mayor Tomas Regalado
FROM: Julie O. Bru, City Attorney 
DATE: November 24, 2009
RE: Legal Opinion - Gusman Center Theater

You have requested a legal opinion on the following question:

**MAY THE CITY OF MIAMI TAKE OVER THE
OPERATIONS OF THE GUSMAN THEATER?**

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

The City is the owner of the property known as the Gusman Theater (the "Theater") pursuant to Special Warranty Deed dated July 24, 1975, from Maurice Gusman Cultural Center for the Performing Arts, Inc, a Florida not-for-profit corporation (which has been inactive since 1978), to the City of Miami, recorded July 24, 1975 in Official Records Book 9053, Page 723, of the Public Records of Miami-Dade County, Florida (the "Deed"). The Deed is subject to the customary restrictions and limitations of record but has an unusual proviso. It states: "Provided that the facility on the property shall be administered by the Members of the Off-Street Parking Board of the City of Miami or their successors." (the "Deed Restriction").

The Theater is administered currently by the Department of Off-Street Parking of the City of Miami ("DOSPP") in compliance with the Deed Restriction and as provided in Section 14-91 of the City Code.

A decision by the City, as owner of the Theater, to take over its operation appears to be contrary to the Deed Restriction. However, the Deed Restriction is not a covenant running with the land because it does not bind the parties' successors and assigns. See Winn-Dixie Stores, Inc., v. Dolgencorp, Inc., 964 So.2d 261 (Fla. 4th DCA 2007). It cannot be enforced by the grantor, because the grantor was dissolved, as a Florida corporation, in 1976. It cannot be enforced by a party who is not a party to the conveyance (and the grantor has been dissolved since 1976) because it is not a covenant made by a common grantor for the benefit of multiple grantees. Nelle v. Loch Haven, 413 So.2d 28 (Fla. 1982). Further, the Deed Restriction appears to be extinguished by the Marketable Record Title Act (MRTA), codified as Chapter 712, Florida Statutes.

Section 712.02, Florida Statutes, provides that any person who has been vested with any estate in land of record for 30 years or more shall have title free and clear of all claims, except as to matters set forth as exceptions to marketability in Section 712.03, Florida Statutes. The City has been vested with title to the Theater for more than 30 years. The Deed Restriction is not a matter set forth as an exception to marketability in Section 712.03, Florida Statutes. Therefore, assuming

the Deed Restriction has not been reimposed by a title transaction that has been of record less than 30 years, it is extinguished by MRTA. In order to be certain that the Deed Restriction has not been reimposed it is necessary to obtain and review a title search.


Additionally, the City could manage the Theater, as DOSP's successor, consistent with the Deed Restriction, if the board of directors of DOSP, by resolution, delegates the management responsibility to the City.

CONCLUSION


The City may take control over the Gusman Theater notwithstanding the Deed Restriction. The City may take control over the Gusman Theater, without violating the Deed Restriction, if it is DOSP's successor. The City may become DOSP's successor if the DOSP Board resolves to assign to the City any rights it may have to administer the Theater under the Deed.

PREPARED BY:

REVIEWED BY:



Olga Ramirez-Seijas, Assistant City Attorney



Maria J. Chiaro, Assistant City Attorney

cc: Members of the City Commission
Pedro G. Hernandez, City Manager