

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 10-001

TO: Pedro G. Hernandez, City Manager
FROM: Julie O. Bru, City Attorney ~~_____~~
DATE: February 16, 2010
RE: Legal Services Obtained by the Office of the City Attorney Exempt from the City of Miami Procurement Ordinance

We are issuing this legal opinion on the following question:

Are "legal services" obtained by the Office of the City Attorney ("City Attorney") exempt from the requirements of the City of Miami Procurement Ordinance ("Procurement Ordinance")?

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

FACTS

The City Attorney utilizes a wide variety of legal services providers, including, but not limited to, court reporters, interpreters, mediators, and professional legal support service providers (fixed and mobile photocopy services, color copies, trial exhibit boards, etc.), in the defense and prosecution of actions filed by, or against, the City of Miami ("City").

The duties of the City Attorney, prescribed by the City Charter, include the defense and prosecution of all suits for and in behalf of the City.¹ In addition, the City Attorney has certain specified duties prescribed by ordinance as to the City's Self-Insurance Program and Self-Insurance Trust Fund ("Self-Insurance Program").² Among those expressly designated duties are the following:

The City Attorney shall perform or supervise the performance of all legal services required to accomplish the purposes of the self-insurance and insurance program. Legal services include, but are not limited to, the defense or prosecution or the negotiation of settlement agreements of all claims or suits, the investigation of all claims and settlement of those claims found to be well founded for which the amounts claimed are payable from the trust fund. (Emphasis supplied).³

In order to satisfactorily discharge the duties expressly given to the City Attorney by the Charter and the Code to defend and prosecute all suits for and on behalf of the City, the City Attorney must have access to a wide range of "legal services" providers, such as court reporters, interpreters, mediators, professional legal support providers, etc., who, with little advance notice, must be ready to appear, at a judge's chambers, at an expert or lay witnesses' location, at a hospital or other medical facility, or in open court.

¹ § 21, Department of Law, City of Miami Charter.

² Sec. Article VI, Self-Insurance and Insurance Trust Fund, City Code.

³ § 18-232(a), Responsibility of City Attorney, City Code.

ANALYSIS

The Procurement Ordinance lists certain exemptions, that is, exclusions from its provisions, for certain goods and services not deemed suitable for the procurement process. The Procurement Ordinance provides that it does not apply to "legal services", among others services and materials, named in the exclusion section.⁴

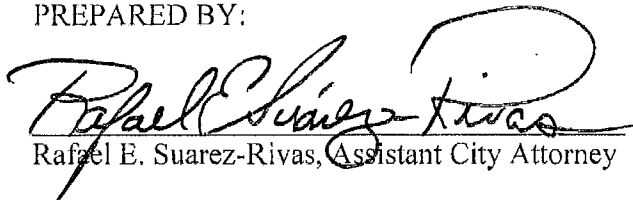
While some dictionaries refer to "legal services" as the services of a lawyer; nevertheless, other commentators take a broader view that legal services are beneficial services provided by a lawyer, or other person(s) under the supervision of a lawyer, to assist in seeking or obtaining legal help. In the context of the City Attorney's legally prescribed duties to investigate, defend, and prosecute claims or suits, we think the broader definition is the most apt and we adopt that definition here.

It is a rule of statutory construction that statutes, and ordinances, are to be interpreted in the most logical and sensible way.⁵ A law should not be construed in a manner that would lead to an absurd result.⁶

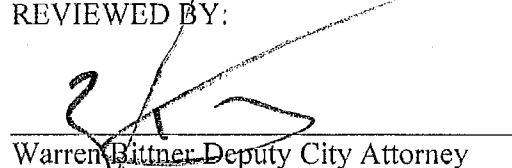
CONCLUSION

The utilization of court reporters, interpreters, mediators, and professional legal support service providers, by the City Attorney is part of the legal function of investigation of claims and suits on behalf of the City that is by Charter and Code delegated to the Office of the City Attorney a/k/a Law Department. The exemption of "legal services" from the provisions of the Procurement Ordinance is most reasonably and necessarily interpreted to include the necessary incidental or allied services of court reporters, interpreters, mediators, and professional legal support services providers, when used to investigate, defend, or prosecute claims or suits on behalf of the City by the City Attorney. It is unreasonable to subject the sometimes urgent, unexpected, and case-by-case specific needs of these legal service providers retained by the City Attorney to the vagaries of the Procurement Ordinance. We therefore opine that legal services providers, such as court reporters, interpreters, mediators, and professional legal support services providers, retained by the Office of the City Attorney in the investigation, defense or prosecution of claims involving the City are exempt from the Procurement Ordinance.

PREPARED BY:


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REVIEWED BY:


Warren Bittner, Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission
Glenn Marcos, Director, Purchasing Department
Larry Spring, Chief Financial Officer

⁴ §18-72(b), City Code.

⁵ See, *Town of Jupiter Island v. Gautier*, 157 So. 2d 868(Fla. 2nd DCA 1963).

⁶ See, *State v. Presidential Women's Center*, 937 So. 2d 114(Fla. 2005).