

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION 11-003

TO: Commissioner Michelle Spence-Jones, District 5
FROM: Julie O. Bru, City Attorney
DATE: October 12, 2011
RE: Additional Term Eligibility

You have asked:

WHETHER YOU ARE ELIGIBLE FOR AN ADDITIONAL TERM PURSUANT TO CHARTER SECTION 4 WHICH LIMITS THE TERMS A CITY COMMISSIONER MAY SERVE IF THE COMMISSIONER HAD BEEN ELECTED AND QUALIFIED FOR TWO CONSECUTIVE FULL TERMS IN LIGHT OF YOUR SUSPENSION BY THE GOVERNOR FROM OFFICE FOR A 21 MONTH PERIOD.

The answer to your question is yes.

The relevant applicable facts are that you served one full term from 2005 to 2009. You were qualified and elected to office for a second term in November 2009.

During your second term, on November 13, 2009, the Governor suspended you from office pursuant to Section 112.51, Florida Statutes (2009).

The City Commission called for a special election on January 12, 2010 to fill the vacancy created by your suspension. In the special election, you were qualified and elected to fill the vacancy.

On January 14, 2010, the Governor signed Executive Order 10-05, as amended by Executive Order 10-61, again suspending you from office. Under the terms of the suspension and pursuant to Section 112.51(4), you were not entitled to "perform any official act, duty, or function" of the office.

Thereafter, you received an acquittal and dismissal of the charges which formed the basis of your suspension, and on August 24, 2011, the Governor signed Executive Order 11-186 terminating your suspension and restoring you to office.

In Florida, the right of a candidate to hold public office is a valuable right, and no one should be denied this right unless the Constitution or applicable valid law expressly declares him or her ineligible. *See, e.g., Vierra v. Slaughter*, 318 So.2d 490 (Fla. 1st DCA 1975). The imposition of restrictions upon the right of a person to hold public office should receive a liberal construction in favor of the people exercising freedom of choice in the selection of public officers. *Id.* If any doubt or ambiguity exists in the provisions, the doubt or ambiguity must be resolved in favor of eligibility. *Id.*

Florida law in this area is consistent with general law. See Am. Jur. *Public Officers and Employees* § 53 (“There is a presumption in favor of eligibility of one who has been chosen and elected, or appointed to public office, and a strong public policy exists in favor of eligibility for public office. ... If there is any doubt or ambiguity in the applicable provisions, such doubt or ambiguity must be resolved in favor of eligibility.”).

Viera v. Slaughter compels a finding of eligibility in the context of term limits where an elected official has served less than a full term. In that case, the city charter stated that “No mayor elected and qualified for two consecutive terms shall be eligible for election as mayor in the next succeeding term.” The mayor in that case served a transitional term (2 years and 9 months), and a full four year term. The First District Court of Appeal held that the conflict or ambiguity must be resolved in favor of eligibility, leaving to the voters the question of whether the mayor was entitled to a second full term. The Court stated:

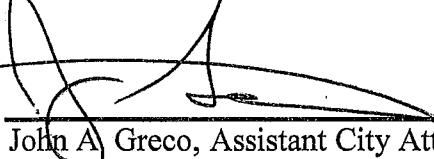
“Discouragement of candidacy for public office should be frowned upon in the absence of express statutory disqualification. The people should have available opportunity to select their public officer from a multiple choice of candidates. Widening the field of candidates is the rule, not the exception, in Florida. It should not be abated in the absence of express statutory provision to the contrary.”

Id. at 492 (quoting *Hurt v. Naples*, 299 So.2d 17 (Fla. 1974)). Eligibility is stronger in your circumstance because, unlike *Viera*, the City of Miami charter restriction is specifically limited to consecutive “full” terms.

CONCLUSION

Based on the foregoing strong public policy, City Charter Section 4 must be construed in favor of your eligibility for another term. The Charter restriction only applies to officials “elected and **qualified** for two consecutive **full** terms.” (Emphasis added.) No indication exists in the Charter that serving a partial term as a consequence of a suspension is equivalent to a full term. Through no action on your part, the Governor deemed you to be unqualified during the period of your suspension thereby preventing you from serving a full term. Since you have only served one “full” term and one “partial” term, you are eligible to qualify and be elected for a second full term.

PREPARED BY:


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cc: Honorable Mayor and Members of the City Commission
Johnny Martinez, P.E., City Manager
Priscilla Thompson, CMC, City Clerk