


**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 13-004**

TO: Marc D. Sarnoff, Chairman
FROM: Julie O. Bru, City Attorney 
DATE: September 23, 2013
RE: Legal Opinion - Resolution Providing for a Three Percent (3%) One Time Pay Supplement
Matter ID No.: 13-2044

You have requested a legal opinion on the following question:

Whether based upon the record of the September 12, 2013 Commission meeting the bonus is sustainable under Florida Statutes 215.425, 166.021 or AG 2000-48¹. You are in fact questioning whether the Miami City Commission has the authority under Florida Law to appropriate funds for the purpose of paying a one-time salary supplement to all city employees who are in active city service on September 30, 2013.

ANSWER

The City Commission on September 12, 2013, adopted Resolution R-13-0344, thereby authorizing a one-time three percent (3%) pay supplement to all city-employees who are active as of September 30, 2013. In its deliberation in support of such expenditure of funds, the City Commission established a compelling record of action taken in furtherance of a municipal purpose in compliance with Section 166.021 Fla. Stat. Additionally, based on the facts discussed below related to the timing and manner of payment of this “one-time pay supplement,” other than the requirements of collective bargaining applicable to those employees covered under collective bargaining agreements, there is no constitutional provision or general law that expressly prohibits such municipal action.

ANALYSIS

Article VII, Section 10, Fla. Const. requires that the expenditure of public funds serve a public purpose. Additionally, as provided for in the Florida Constitution, under Section 166.021, Fla. Stat., municipalities are authorized to exercise any power for municipal purposes except when the subject is expressly preempted to the state or county government, or the subject is expressly prohibited by the constitution, or general law.

¹ The opinion expressed in AGO 2000-48 is not relevant to the facts at issue as distinguished herein. Additionally, AGO 2000-48, relies in pertinent part on s. 166.021(7), Fla. Stat., which has been repealed by act of the legislature in 2011.

The reasons articulated by the City Commission in support of the action taken authorizing the payment of a one-time pay supplement to all active employees as of September 30, 2013, establishes a compelling record of the expenditure of public funds in furtherance of a municipal purpose in compliance with Art. VII, Section 10, Fla. Const.

During the discussion regarding the one-time pay supplement at the commission meeting, the majority of the members of the commission acknowledged that city employees had received salary reductions and no wage increases during the previous five years. It was noted that the reduction in the wages of city employees which occurred over the last five years, *was not based on performance, but due to the city's deteriorated financial condition* that resulted in the extraordinary action of a declaration of a financial urgency, and the resulting unilateral modification of existing labor contracts.

The Commission acknowledged that the city had a surplus of funds not previously available, and could offer some relief to city employees by providing for a one-time three percent (3%) pay supplement to those city employees active as of September 30, 2013, subject to collective bargaining and ratification by the bargaining unit members and the City Commission. The commission also acknowledged that since at this time, based on budgetary projections, the city is not financially able to approve a three percent (3%) yearly salary increase for all City employees, this one-time pay supplement would not only provide at least some financial relief to employees, but increase moral, which is essential to the city's critical objective of recruitment and retention of personnel.

The manner and timing of payment of the 3% one-time salary supplement is not equivalent to the payment of a 'bonus' as such term is described and regulated under Section 215.425, Fla. Stat.

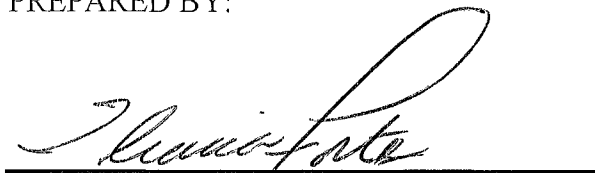
Section 215.425, Florida Statutes, creates requirements for any policy, ordinance, rule or resolution designed to implement a bonus scheme. The scheme must:

- (a) Base the award of a bonus on work performance;
- (b) Describe the performance standards and evaluation process by which a bonus will be awarded;
- (c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based and;
- (d) Consider all employees for the bonus.

The City Commission's record on this matter makes it clear that the pay supplement being authorized is not "additional compensation for services that have been rendered." In fact, only employees that are active as of September 30, 2013, will be eligible to receive the one-time pay supplement. Thus, this is not a performance based bonus based on evaluation of past work product, but rather a prospective adjustment to the salary of employees which is not recurring.

Having established herein that the expenditure serves a municipal purpose, and finding no explicit expression in general law that prohibits such a prospective adjustment to employees' salaries, the only restriction on the commission's authority to implement such action is that it be done in compliance with the constitutional right of employees who are represented by a labor organization to have matters related to compensation negotiated by their bargaining agent. Part II, Chapter 447, Florida Statutes. The commission has acknowledged such restriction and has authorized the one-time pay supplement subject to collective bargaining.

PREPARED BY:



Iliana Forte
Assistant City Attorney

cc: Honorable Mayor and Members of the City Commission
Daniel Alfonso, Acting City Manager
Todd Hannon, City Clerk