


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #14-003

TO: Todd B. Hannon, City Clerk
FROM: Victoria Méndez, City Attorney 
DATE: November 21, 2014
RE: Requirement that Members of City Boards Resign Upon Seeking Election to Public Office.

You have asked for a legal opinion that analyzes a number of issues related to the requirement in the City Code that members of City boards resign upon seeking election to public office. Specifically:

1. AT WHAT POINT IS A MEMBER OF A CITY BOARD REQUIRED TO RESIGN FROM HIS OR HER BOARD POSITION UPON SEEKING ELECTION TO PUBLIC OFFICE?
2. WHAT ARE THE REMEDIES AVAILABLE TO THE CITY IF A BOARD MEMBER SEEKING ELECTION TO PUBLIC OFFICE DOES NOT RESIGN FROM HIS OR HER BOARD POSITION?
3. CAN AN INDIVIDUAL SEEKING ELECTION TO PUBLIC OFFICE BE SUBSEQUENTLY APPOINTED TO A CITY BOARD IF THAT INDIVIDUAL WAS NOT A CURRENT BOARD MEMBER AT THE TIME WHEN THE EVENTS THAT WOULD OTHERWISE TRIGGER RESIGNATION OCCURRED?

ANALYSIS

Question 1

AT WHAT POINT IS A MEMBER OF A CITY BOARD REQUIRED TO RESIGN FROM HIS OR HER BOARD POSITION UPON SEEKING ELECTION TO PUBLIC OFFICE?

There are two provisions in the City Code that relate to the ability of a member of a City board to seek elective public office. Section 2-884(d), within the section of the code relating to “memberships on boards,” states:

No member of any city board shall become a candidate for elective political office during his or her term. Should any member of a city board qualify as a candidate for elective public office, such qualification shall be deemed a tender of resignation from such board.

Under section 2-884(d), once a member of a board qualifies as a candidate for elective office, that qualification automatically serves as his or her resignation from their board position. If the board member were running for an elected office in the City, such qualification cannot not take place until the qualifying period, which runs from “not earlier than 60 days and not later than 45 days prior to the date of the general municipal election.” §7, City of Miami Charter. The qualifying period for the City’s next municipal election does not begin until September 4, 2015. Therefore, no individual has “qualified” as a candidate such that his or her board position would be automatically terminated under the code.

Section 16-6 of the Code, however, relating to candidate qualifications for elections, also includes language related to the obligation of a member of a city board to resign upon seeking election to public office. Section 16-6(c) includes language that states:

If affiant is an employee of the City of Miami (other than city manager, city attorney, independent auditor general or city clerk) or member of a city board of the City of Miami, Florida (other than a city commissioner or mayor), affiant in the case of an employee shall take a leave of absence, without pay from his/her employment during the period in which affiant is seeking election to public office or in the case of a board member such member shall resign and such leave of absence or resignation to be effective upon which ever occurs first:

- (a) Such employee or board member receives contributions or makes expenditures, or gives her or his consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination or election to public office; or
- (b) At the time such employee or board member appoints a campaign treasurer and designates a primary depository; or
- (c) at the time such employee or board member files qualification papers and subscribes to a candidate’s oath as required by law.

Under section 16-6(c), a member of a city board is required to resign from his or her board position, effective upon the first of three potential triggering events taking place: (1) the board member begins to raise money in pursuit of his or her election to public office; (2) the board member appoints a campaign treasurer and designates a primary depository; or (3) the board member filed qualification papers and subscribes to a candidate’s oath. Section 16-6 dictates that the board member has an obligation to resign his or her board position upon the happening of any of the three triggering events. Unlike the language in section 2-884, there is no requirement in section 16-6 that a board member qualify as a candidate. The triggering events set forth in section 16-6(c) can occur prior to the formal qualifying period, and typically do. And once any of those events has transpired, a member of a board would be

required under the Code to resign his or her board position. Any board member continuing his or her board membership after one of the triggering events has taken place would be in violation of the Code.

Question 2

WHAT ARE THE REMEDIES AVAILABLE TO THE CITY IF A BOARD MEMBER SEEKING ELECTION TO PUBLIC OFFICE DOES NOT RESIGN FROM THEIR BOARD POSITION?

If a board member seeking election from public office does not resign from his or her board position after one of the three triggering events set forth in section 16-6(c) has transpired, the Commission could remove that board member from his or her position. Section 2-885 of the City Code states with respect to terms of city board members that

Unless otherwise specifically provided in the charter or the Code, the terms of office of the members of each board shall be:

- (1) One year;
- (2) Until the nominating commissioner leaves office; or
- (3) Until recommended for removal, at the will of the nominating commissioner, voted upon by the members of the city commission, whichever occurs first. . . .

For those boards that the City Charter or Code does not specifically designate otherwise, board members serve at the discretion of the City Commission, and can be removed upon a vote of the Commission. Removal from certain boards requires cause. *See, e.g.*, § 2-976(d), City of Miami Code.

If a member of a board fails to resign his or her board position after one of the three triggering events set forth in section 16-6(c) has transpired, that board member is serving on the board in violation of the City Code. This would constitute cause to remove the board member, if that board member were serving on a board where cause was required for the removal of a board member.

Question 3

CAN AN INDIVIDUAL SEEKING ELECTION TO PUBLIC OFFICE BE SUBSEQUENTLY APPOINTED TO A CITY BOARD IF THAT INDIVIDUAL WAS NOT A CURRENT BOARD MEMBER AT THE TIME WHEN THE EVENTS THAT WOULD OTHERWISE TRIGGER RESIGNATION OCCURRED?

Neither section 16-6(c) or 2-884(d) expressly address the propriety of an individual being appointed to a city board subsequent to seeking election to public office. Under section 16-6(c), however, if an individual were to be appointed to a city board subsequent to the occurrence of one of the three triggering events set forth in that section, he or she would immediately be

obliged to resign from any such board position under the language of the Code. Upon appointment to his or her board position, the individual would be a member of a city board subject to the provisions of section 16-6(c). Consequently, if he or she had previously designated a campaign treasurer and primary depository, his or her board membership would instantly run afoul of the dictates of section 16-6(c), and that individual would be obligated to resign from his or her board position. As such, an individual that has already met one of the triggering events in section 16-6(c) cannot practically be subsequently appointed to a city board.

CONCLUSION


Section 16-6(c) of the Code requires that a member of a city board seeking election to public office resign upon the occurrence of the first of three potential triggering events. After one of the events has taken place, the board member is obligated to resign from their board position. If the board member fails to do so, the board member can be removed by the commission. The procedures and specific requirements for such removal vary from board to board. If an individual does not sit on a city board at the time that one of the triggering events set forth in section 16-6(c) takes place, that individual should not be subsequently appointed to a city board. Although nothing in the plain language of the Code prevents the appointment, once appointed the individual will be required by the dictates of section 16-6(c) to resign from his or her board position.

PREPARED BY:

REVIEWED BY:



Kerri L. McNulty, Assistant City Attorney



John A. Greco, Deputy City Attorney

c: Honorable Mayor and Members of the City Commission
Daniel J. Alfonso, City Manager

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