

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #07-006**

TO: Honorable Mayor and Members of the City Commission
FROM: Jorge L. Fernandez, City Attorney
DATE: April 24, 2007
RE: Legal Opinion – Voting Rights of the Presiding Officer

You have requested a legal opinion as to the following issues:

**WHETHER A MEMBER OF THE CITY COMMISSION WHO
HAS BEEN DESIGNATED TO SERVE AS THE PRESIDING
OFFICER BY THE MAYOR HAS THE POWER TO VOTE?**

**WHETHER ACTS TAKEN BY MEMBERS OF THE CITY
COMMISSION IN VIOLATION OF ITS RULES AND
PROCEDURES ARE INVALID?**

The answer to your first question is in the affirmative. The answer to your second question is in the negative.

RELEVANT AUTHORITIES

In order to determine whether a city commissioner designated to serve as the presiding officer has the power to vote, it is necessary to analyze the controlling provisions of the City Charter and City of Miami Code of Ordinances ("City Code").

City Charter

The City Charter bestows broad powers to members of the City Commission as a governing body.

Sec. 4 (a) of the City Charter provides in pertinent part:

The form of government of the City of Miami, Florida, provided for under this Charter shall be known as the "mayor-city commissioner plan," and the city commission shall consist of five citizens, who are qualified voters of the city and who shall be elected from districts in the manner hereinafter provided. **The city commission shall constitute the governing body with powers (as hereinafter provided) to pass ordinances, adopt regulations, and exercise all powers conferred upon the city except as hereinafter provided.**

The City Charter also empowers the Mayor to designate a member of the City Commission to serve as the presiding officer, without imposing any limitations on the broad

powers conferred to members of the City Commission enumerated under Section 4(a), including the power to vote.

Sec. 4 (g)(1) of the City Charter provides, in pertinent part:

Powers and duties of mayor. The mayor shall serve as the chief executive officer and head of the city government with the **following specific powers** and duties:

(1) **The mayor shall be the presiding officer of the city commission with the authority to designate another member of the city commission to serve as presiding officer.**

Chapter 2, Article II, section 2-34 of the City Code, sets forth the following rules of procedure:

(a) **In accordance with provisions of City Charter section 4(g)(1), the mayor may be the presiding officer of the city commission with the authority to designate another member of the city commission to serve as presiding officer.**

(b) **The mayor as presiding officer, shall not move, second, debate or vote. If the presiding officer is a member of the city commission, the presiding officer, upon relinquishing the chair, may move, second, debate and vote, subject only to such limitations as are imposed on all members.**

ANALYSIS

In light of the broad voting powers conferred upon City Commission members by section 4(a) of the City Charter, including the power to pass ordinances and to adopt regulations, commission members designated as presiding officers have the power to vote. This power is in no way affected by conflicting provisions found in section 2-34 of the City Code because powers granted to a municipal body by virtue of the City Charter cannot be limited by ordinance.^{1/} In order to be valid, an ordinance must not conflict with the state's constitution, general statutes, or the charter or other special legislative acts under which a city operates.^{2/} Furthermore, the City Charter is clear that its provisions supersede the City Code.

Sec. 45(f) of the City Charter provides:

(f) ***Effect of state law and present ordinances.*** Nothing in this act shall be so construed as to alter, abolish, affect or amend any of the laws of this state now in force or which may hereafter be enacted relative to towns and cities of the state incorporated under the general law, nor any of the ordinances of the city now in

^{1/} See 1A Sutherland Statutory Construction, Validity of Ordinances, § 30:5 (6th Ed.)

^{2/} *Peoples Gas System, Inc. v. Lynch*, 254 So. 2d 371 (Fla. 3d DCA 1971), citing 1 Sutherland Statutory Construction, Effect of Violation or Disregard of rules of Procedure, § 7:4 (6th ed.).

force, **except such as are in conflict with the provisions of this Charter**; all such laws and ordinances are hereby declared to be in full force and effect.

Therefore, it is recommended that this ordinance be revised to conform to the provisions of the City Charter.

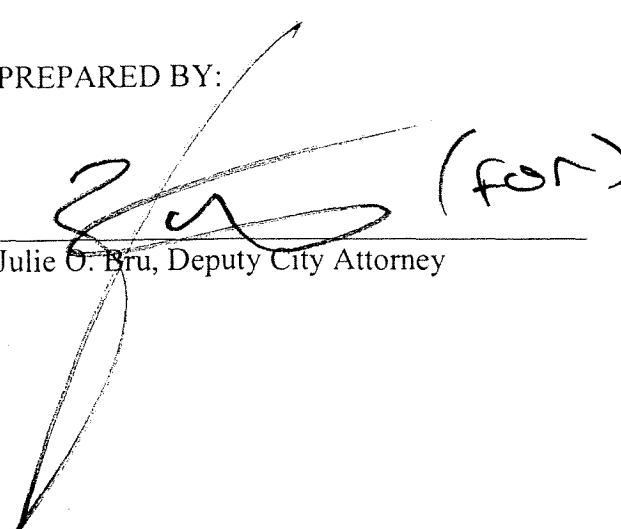
The answer to your second question is in the negative.

ANALYSIS

In order to determine whether acts taken by the City Commission in violation of its rules and procedures are invalid, it is necessary to analyze the provisions of the City Charter, McQuillin's Law of Municipal Corporations, and Mason's Manual of Legislative Procedure.

It is a well-established rule of law that an act cannot be declared invalid for failure of a legislative body to observe its own rules.^{3/} More specifically, a municipal legislative body may adopt and change its own rules or parliamentary usage as to procedure,^{4/} which includes the right to abolish, suspend, modify or waive its own rules.^{5/} This right is also exercised passively and by implication when a legislative body's action is not in accordance with its rules and procedures.^{6/}

PREPARED BY:

 (for)

Julie O. Bru, Deputy City Attorney

^{3/} See *Jenkins v. Entzminger*, 135 So. 785 (1931). See also *Childers v. American Auto Ass'n, Inc.*, 424 So. 2d 116 (Fla. 1st DCA 1982).

^{4/} 4 McQuillin Mun. Corp., Procedural Rules, § 13.42 (3rd ed.)

^{5/} *Id.*

^{6/} See *Coleman v. Louison*, 5 N.E. 2d 46 (Mass. 1936), citing 4 McQuillin Mun. Corp., Procedural Rules, § 13.42 (3rd ed.).