CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #07-007

TO: Diana Gomez, Director
Finance Department

FROM: Jorge L. Fernandez, City Attorney

DATE: April 25, 2007

RE: Legal Opinion - Payment of death benefits to the beneficiary of former Commissioner Arthur Earle Teele, Jr.

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

THE LEGAL IMPLICATIONS RESULTING FROM THE THIRD DISTRICT COURT OF APPEALS REVERSING THE CONVICTION AND SENTENCE OF ARTHUR EARLE TEELE JR. (HEREINAFTER "TEELE") ON THE CHARGE OF CORRUPTION BY THREAT AGAINST A PUBLIC SERVANT.

The answer to your inquiry is as follows:

CHRONOLOGY OF EVENTS AND FACTUAL BACKGROUND

- On **November 4, 1997**, Arthur Earle Teele Jr. was elected Commissioner of District 5, City of Miami.

- On **September 14, 2004**, the State Attorney for the Eleventh Judicial Circuit filed a **two-count criminal information** charging Teele with two third-degree felonies: corruption by threat against a public servant and aggravated assault with a deadly weapon.

- On **September 22, 2004**, by Executive Order 04-212, the Governor of the State of Florida **suspended** Teele from public office.

- On **January 4, 2005**, the State Attorney for the Eleventh Judicial Circuit filed an **amended criminal information**, charging Teele with an additional ten counts of compensation/reward for unlawful official behavior (felony).

- On **January 7, 2005**, the State trial court granted Teele's motion to sever the ten counts pertaining to unlawful compensation.

- On **February 16, 2005**, the jury trial commenced as to the charges of corruption by threat against a public servant and aggravated assault with a deadly weapon.

- On **March 2, 2005**, the jury rendered its **verdict** finding Teele *not guilty* on the aggravated assault with a deadly weapon and *guilty* on the charge of corruption by threat against a public servant.

- On **March 3, 2005**, by Executive Order 05-46, the Governor of the State of Florida, **amended Executive Order** 04-212, to reflect the suspension of Teele as being further supported by the amended criminal information filed by the state on January 4, 2005.

- On **March 18, 2005**, the trial court entered a judgment of guilt as to the charge of corruption by threat against a public servant.

- On **May 4, 2005**, Teele was sentenced to two years probation in state court.

- On **July 14, 2005**, the United States Attorney's Office filed a 26 count **indictment in federal court**, including charges of conspiracy to commit mail and wire fraud, wire fraud, mail fraud, money laundering conspiracy, money laundering promotion, money laundering concealment, and money laundering.

- On **July 27, 2005**, Teele committed **suicide**.

- On **August 12, 2005**, the State Attorney's Office **dismissed the ten counts** of compensation/reward for unlawful official behavior.

- On **December 13, 2005**, the Federal District Court granted the United States' motion to **dismiss the federal indictment** against Teele because of his death.

- On **April 18, 2007**, the Third District Court of Appeals **reversed Teele's conviction** and sentence on the charge of corruption by threat against a public servant.

LEGAL ANALYSIS

The chronology and facts discussed above indicate that the Teele's suspension from public office was predicated *solely* on the Criminal Information and Amended Criminal Information filed by the State Attorney for the Eleventh Judicial Circuit on September 14, 2004, and January 4, 2005, respectively. Subsequently, the *only* criminal conviction against Teele was overturned by the Third District Court of Appeal. All other charges were either dismissed or nolle prosse.

The fact that the state nolle prosse the additional criminal charges and the federal government dismissed the indictment *after* Teele committed suicide, does not deprive Teele of

the legal presumption of innocence of the crimes with which he was charged. The death of Teele pending prosecution of the state and the federal charges has the effect of nullifying the information and indictment ab initio. In essence, it is as if Teele had never been informed or indicted as to those charges. See, *Cruz v. State*, 137 So.2d 254 (Fla. 2d DCA 1962); *Bagley v. State*, 122 So.2d 789 (Fla. 1st DCA 1960); *United States v. Romano*, 755 F.2d 1401 (11th Cir.1985) (death pending direct appeal of criminal conviction results in dismissal of appeal as moot and dismissal of indictment); *United States v. Pauline*, 625 F.2d 684 (5th Cir.1980) (abatement by death while appeal pending results in vacation of conviction and dismissal of indictment).

The Florida Constitution provides that the Governor may suspend an indicted elected municipal official from office for the balance of such municipal official's term or until acquitted, and the office filled by appointment "unless these powers are vested elsewhere by law or the municipal charter." Art. IV, § 7(c), Fla. Const. Section 112.51, Florida Statutes (2006), buttresses the Constitutional provision by also authorizing the Governor to suspend an arrested or indicted elected municipal official.

Section 112.51(6), Fla. Stat. (2006), provides the following:

> If the municipal official is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest, indictment, or information by reason of which he or she was suspended under the provisions of this section, then the Governor shall forthwith revoke the suspension and restore such municipal official to office; and the official shall be entitled to and be paid full back pay and such other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension. If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated. (emphasis added).

The Florida Supreme Court has ruled that a suspension from office does not destroy, but merely suspends, the right acquired by an election to the office. In re ADVISORY OPINION TO THE GOVERNOR, 75 Fla. 119, 78 So. 673 (1918). When a municipal official suspended on the grounds of arrest, information, or indictment is acquitted, found not guilty, or *otherwise cleared* of the charges that were the basis of the arrest, indictment, or information, then the governor must revoke the suspension and restore the official to office, with full back pay and other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension.

Accordingly, assuming the Governor revokes the suspension, as it appears he is required to do under the law, Teele's estate would be entitled to recover such back pay and emoluments or

allowances as Teele would have received for the period of time of his suspension and prior to his death.[1/]

PREPARED BY:

Julie O. Bru, Deputy City Attorney

c: Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager
Larry Spring, Chief Financial Officer

1/ **Sec. 40-296. Benefits.**

(a) Any elected officer, who has been an elected officer for a period of ten years or more and who no longer serves as an elected officer shall be entitled during the remainder of his/her natural life to a sum equal to one-half of his/her W-2 wages for the highest of the last three years of service of his/her term of office and a single sum death benefit fully vested at date of death. Upon vesting and each year thereafter of service as an elected officer, the retirement allowance shall increase by five percent for each year of service to a maximum of 100 percent of the highest W-2 wages.

(b) Any elected officer in office as of October 1, 2001 or anytime thereafter, who has been an elected officer for a period of seven years or more and who no longer serves as an elected officer shall be entitled, upon reaching age 55 during the remainder of his/her natural life to a sum equal to one-half of his/her W-2 wages for the highest of the last three years of service of his/her term of office and a single sum death benefit fully vested at date of death. Upon vesting and each year thereafter of service as an elected officer, the retirement allowance shall increase by five percent for each year of service to a maximum of 100 percent of the highest W-2 wages.

(c) Notwithstanding the above, for the position of the mayor, the base rate of pay for the mayor shall replace W-2 wages in subsection (b).

(d) In the event of death before retirement, the elected officer's beneficiary will receive a lump sum death benefit equal to the present value of the vested benefit accrued to date of death based on actuarial assumptions in effect for the valuation of liabilities in the year of death.