

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 07-010

TO: Honorable Michelle Spence-Jones, Commissioner
District 5
FROM: Jorge L. Fernandez, City Attorney
DATE: May 23, 2007
RE: Legal Opinion re: 1) Commission authority to direct Administration
to revise policy; and 2) Whether such revised policy can be applied
retroactively.
Matter ID No. 07-1006

Your Legislative Policy Advisor, Koteles Alexander, has requested a legal opinion on your behalf, regarding the following question:

Whether the City Commission has authority to establish policy regarding rules and regulations governing the conduct of police employees? If such authority exists, you have also asked whether such policies can be applied retroactively.

Answer

Charter § 15 specifically recognizes the city manager's responsibility for "carrying out policies adopted by the city commission." The City's Charter and Code provisions have been interpreted to mean that the manager and the commission "have final policymaking authority over all employment decision made by municipal officials."¹ The revision of such policies to settle pending employment claims, is best characterized as remedial legislation that does not violate existing rights, provided the grievance and appeal procedures were left intact.

Analysis

Policy-making authority

The city's form of government is established in the City Charter, which may only be changed by voter referendum. In adopting the Charter, the voters approved the "mayor-commissioner plan," as the city's form of government. The Charter recognizes that the "commission shall constitute the governing body" and that it has broad powers, subject to the

¹ *Pino*, 315 F.Supp.2d at 1246

exceptions contained therein. One such power is to establish policies.² An example is seen in the Commission's broad authority to "adopt, amend and enforce" the Civil Service Rules and Regulations.³ You should note, though, that these powers are not unlimited. As it relates to employment, the Charter prohibits the mayor and the commission from interference with the city manager's judgment in the appointment or removal of officers and employees in the administrative service.⁴ Nor can the mayor or commission give orders to the subordinates of the city manager, city attorney, city clerk and independent auditor general, either publicly or privately.

The city manager, as "the head of the administrative branch of the city government shall be responsible for the administration of all units of the city government under the city manager's jurisdiction..."⁵ The Charter specifically provides that the manager can "exercise control over all departments and divisions created herein or that may be hereafter created by the city commission."⁶ This has been interpreted to mean that the manager has "explicit authority to override the Chief of Police's decisions, including his employment decisions."⁷ The city manager is also empowered to meet these responsibilities via his or her authority to "appoint and remove" directors and employees in the City's service, *including* the police chief, subject to the procedural provisions set forth in the Charter.⁸

In addition to its legislative duties, the commission, acting as a collegial body, has the authority to investigate and "secure information upon any matter" involving any city department.⁹ Similarly, the Charter also explicitly authorizes the City Manager to "without notice, cause the affairs of any department or the conduct of any officer or employee to be examined."¹⁰

² Charter § 15 ("the city manager shall be responsible for the administration of all units of the city government under the city manager's jurisdiction, and for carrying out policies adopted by the city commission") (emphasis added)

³ *Pino v. City of Miami*, 315 F.Supp2d 1230, at 1246 (S.D.Fla. 2004)

⁴ Charter §4(d), provides "neither the mayor nor the city commission, nor any committees nor members thereof shall direct, request, take part in or dictate the appointment or removal of any person in office or employment by the city manager or subordinates or in any manner interfere with the city manager or prevent the city manager from exercising his/her own judgment in the appointment of officers and employees in the administrative service ... any willful violation of the provisions to the section by the mayor or any city commissioner shall be grounds for his or her removal from office by an action brought in the Circuit court by the state attorney of this county."

⁵ Charter § 15; emphasis added

⁶ Charter § 16(c)

⁷ *Pino*, 315 F.Supp.2d at 1246

⁸ Charter § 16(b)

⁹ Charter § 14

¹⁰ Charter § 17; Charter § 25 is not inconsistent. It authorizes the Chief of Police to suspend employees under his supervision for misconduct, subject to review by the City Manager.

Retroactive application to settle pending employment claims

Your question arose because of the pending employment claims that could be resolved by a policy change. Settlements are encouraged by the courts.¹¹

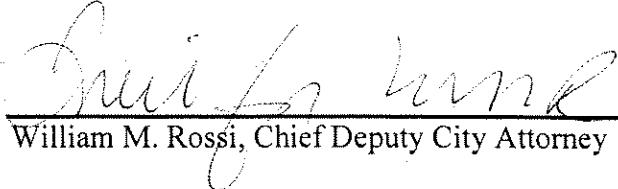
Retroactive legislation cannot abolish substantive vested rights.¹² This is distinct from remedial legislation, which is, "by its very nature, retroactive in effect."¹³ Remedial legislation, "operates in furtherance of a remedy or confirms rights already in existence. However, it may not deprive one of vested rights. Remedial statutes simply confer or change a remedy in furtherance of existing rights and do not deny a claimant his or her vested rights."¹⁴ Revising the policies governing employee conduct would not violate vested rights, provided the due process appeal and grievance procedures were left intact. The right of the police chief to suspend employees is noted, however, that is not a substantive vested right, because it is subject to final approval after an employee's appeal process.¹⁵

PREPARED BY:



Mimi V. Turin, Assistant City Attorney

REVIEWED BY:



William M. Rossi, Chief Deputy City Attorney

C: The Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager

¹¹ *Vitakis-Valchine v. Valchine*, 793 So.2d 1094, 1097-1098 (Fla. App. 4th DCA 2001) ("Mandatory, court-ordered mediation was officially sanctioned by the Florida legislature in 1987, and since then, mediation has become institutionalized within Florida's court system...ultimate authority to settle remains with the parties. Mediation, as a method of alternative dispute resolution, potentially saves both the parties and the judicial system time and money while leaving the power to structure the terms of any resolution of the dispute in the hands of the parties themselves." Internal citations omitted)

¹² See generally, *State Department of Transportation v. Knowles*, 402 So.2d 1155 (Fla. 1981); see also, *Schiavo v. Bush*, 2004 WL 980028 (unreported) (with a full discussion of retroactive legislation and the distinction from remedial legislation)

¹³ *Schiavo*, 2004 WL 980028, *11

¹⁴ Id; internal citations omitted.

¹⁵ Charter § 25