

**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #08-011**

TO: Shirley Richardson, Executive Director
Civilian Investigative Panel

FROM: Julie O. Bru, City Attorney ~~Julie O. Bru~~

DATE: November 4, 2008

RE: Legal Opinion – Civilian Investigative Panel – Internal or
Administrative Operations

You have requested a legal opinion on the following questions:

- 1. DOES THE CITY ATTORNEY HAVE THE AUTHORITY TO PROVIDE GUIDANCE TO THE CIVILIAN INVESTIGATIVE PANEL (“CIP”) ON THOSE MATTERS PERTAINING TO THE INTERNAL OR ADMINISTRATIVE OPERATIONS OF THE CIP?**
- 2. DO THE CIP PANEL MEMBERS INDIVIDUALLY HAVE THE AUTHORITY TO DIRECT OR OTHERWISE INTERVENE IN STAFF ACTIVITIES ON MATTERS RELATING TO THE CIP?**
- 3. DOES THE CIP HAVE THE AUTHORITY TO MAKE PERSONNEL DECISIONS EFFECTING CITY OF MIAMI EMPLOYEES?**

ANSWERS

As explained in detail below, the answer to question 1 is in the affirmative and the answers to questions 2 and 3 are in the negative.

ANALYSIS

QUESTION 1

Pursuant to City Charter §21, the City Attorney “shall be the legal advisor of and attorney and counsel for the city, and for all officers and departments thereof in matters relating to their official duties.” Furthermore, “The mayor, city commission, the city manager, the director of any department, or any officer or board not included within a department, may require the opinion of the city attorney upon any question of law involving their respective powers and duties.” (Emphasis added.) Thus, under the Charter, the City Attorney is designated as the legal

advisor of the City and all officers and department therein, and is required to render legal opinions to the city manager, directors of departments, and officers and boards not included in departments.

The CIP was created by the City Commission to “act as independent citizens’ oversight of the sworn police department[.]” City Charter §51. The members of the CIP are nominated by the public and appointed by the City Commission. City Charter §51(A). Under the City Charter, the CIP is authorized to conduct “independent” investigations of police misconduct, review policies of the police department, and make recommendations to the City Manager. City Charter §51(E).

The CIP is staffed with an “independent counsel.” City Charter §51(c). The Charter provides that the CIP is to be “[a]dvised by independent counsel who is a competent member of the Florida Bar with at least seven years membership in the Florida Bar and is generally knowledgeable in municipal law, and appointed by the panel with the approval of the city attorney and with authority to remove by the city attorney.” City Charter §51(B); see also City Code §11.5-34 (“An attorney at law admitted to practice in Florida for at least seven years shall be employed by the CIP as independent counsel, subject to the approval of the city attorney and the authority of the city attorney to remove the independent counsel from employment.”) Under the City Code, the CIP is required to obtain the approval of its “independent counsel” prior to proceeding with an investigation of complaints related to police misconduct, and prior to the issuance of subpoenas. City Code §11.5-27(6); City Code §11.5-31(2)(a) and (c); City Code §11.5-32(a).

Based on the foregoing provisions of the Charter and Code, the CIP may seek the advice and opinion of the City Attorney on matters pertaining to the internal or administrative operations of the CIP. However, due to the “independent” nature of the CIP, it is the function of its “independent counsel” to advise it on matters relating to its “independent” functions—i.e. investigations, reviewing policies of the police department, and making recommendations to the City Manager. To this end, the City Attorney is not required to attend CIP meetings. City Code §11.5-34. Hence, advice in areas related to the CIP’s “independent” role are reserved to its “independent counsel.” On other matters, such as internal administration (i.e. personnel decisions involving City employees), the CIP is authorized to request the advice and opinion of the City Attorney.

QUESTIONS 2 AND 3

City Charter §15 provides that “The city manager shall be the head of the administrative branch of the city government.” Section 15 further provides “The city manager shall be responsible for the administration of all units of the city government under the city manager’s jurisdiction.” Pursuant to City Charter §16, the “powers and duties of the city manager shall be to ... (c) Exercise control over all departments and divisions created herein or that may be hereafter created by the city commission.”

The City Charter §20 governs “Directors of departments.” That section states “The city manager shall appoint a director for each department and, in the city manager’s discretion, may consolidate two departments under one director. Each such director shall serve until removed by the city manager or until a successor has been appointed and qualified, shall conduct the affairs of his or her department in accordance with rules and regulations made by the city manager, shall be responsible for the conduct of the officers and employees of his or her department, for the performance of its business, and for the custody and preservation of the books, records, papers and property under its control, and, subject to the supervision and control of the city manager in all matters, shall manage the department. None of the provisions of this section, however, shall be applicable to the department of law, city clerk or office of independent auditor general. (Emphasis added.)

The purpose, powers and duties of the CIP are limited to: acting as independent civilian oversight of the police department; making written recommendations related to police department policies and procedures; engaging the services of trained investigators; securing training for its members; conducting investigations, inquiries and hearings regarding allegations of police misconduct; requesting issuance of subpoenas; issuing reports to the Mayor, City Commission, City Attorney, City Manager, Chief of Police, and the public; forwarding complaints of criminal activity to the police department; and promulgating rules and procedures for internal governance for training CIP members and staff. City Charter §11.5-27. Upon assuming the duties of the CIP, members are required to complete training in ethics, conflict of interest, the Sunshine Law, and must complete Citizens Police Academy Training or approved training through National Association of Citizens’ Oversight of Law or equivalent programs. City Code §11.5-28(c)(4).

The CIP is “staffed with professional personnel” and “operated on an annual approved budget.” City Charter §51(c). The CIP submits its budget request to the City Commission in a form acceptable to the City Manager. City Code §11.5-35(a). “The city manager shall assign appropriate personnel to assist in the preparation of the budget for the CIP and provide administrative support to the CIP.” City Code §11.5-35(a) (Emphasis added). “The City Manager shall present the total estimated dollar appropriations necessary to cover expenses incurred by the CIP during the execution of its duties to the City Commission[.]” City Code §11.5-35(a).

The CIP is authorized to appoint an executive director after one year from the effective date of the Ordinance. City Code §11.5-35(d). The appointment and the terms and conditions of the director’s employment are subject to the approval of the City Commission. City Code §11.5-35(d).

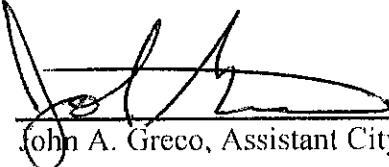
Based upon the foregoing, the Charter and Ordinance creating and delineating the powers of the CIP do not include the authority to intervene or make personnel decisions involving City staff. Furthermore, the staff assigned as administrative support to the CIP are City employees and are therefore under the exclusive control of the City Manager. Therefore, neither the CIP, nor its individual members, have the authority to direct or otherwise intervene in staff activities or make personnel decisions effecting City of Miami employees.

CONCLUSION

With regard to question 1, the City Attorney has the authority to provide advice or opinion to the CIP on matters pertaining to the administrative operations of the CIP. However, this authority is limited and does not extend to the "independent" aspects of the CIP, i.e. conducting investigations, reviewing polices of the police department, and making recommendations to the City Manager concerning the matters within its purview.

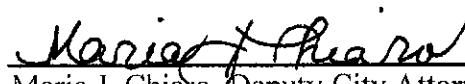
With regard to questions 2 and 3, the CIP members do not, either collectively or individually, have the authority to intervene in staff activities or make personnel decisions effecting City of Miami employees. The authority to intervene in staff activities or make personnel decisions effecting City of Miami employees is exclusively vested in the City Manager. The CIP's authority is limited to functions described in the Charter and Ordinance.

PREPARED BY:



John A. Greco, Assistant City Attorney

REVIEWED BY:



Maria J. Chiare, Deputy City Attorney

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