



To: Diana Gomez

From: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding City Manager Appointment Resolution, City Charter, and Pension Ordinance

Date: November 20, 2014

The City recently appointed a new City Manager, Cathy Swanson-Rivenbark, who will likely assume that office in mid- December. The new City Manager was previously employed by the City for approximately 20 years, ultimately retiring from the City and receiving a monthly retirement income from the City pension. You have asked me substantially the following question: whether Ms. Swanson-Riven bark may continue to receive her monthly retirement income while she serves in the appointed position of City Manager. You have asked me to look at sections 50-26 and 50-239 of the City Code in rendering this opinion and interpretation. I have conducted this review, along with a review of the City Charter and other relevant provisions of the City Code. Pursuant to section 2-201(e)(1) and (8) of the City Code, which grants the City Attorney authority to issue opinions and "[t]o interpret the City Charter, Zoning Code, and City Code on behalf of the City," it is my opinion and interpretation that Ms. Swanson-Rivenbark would continue receiving her retirement income from her prior employment with the City while serving as City Manager.

The City Commission has plenary authority to appoint a City Manager under sections 17 and 20 of the Charter, and has plenary authority to set the City Manager's compensation. Under the resolution appointing her City Manager, which was executed by the City and Ms. Swanson-Rivenbark, it is clear that Ms. Swanson-Rivenbark has been appointed to be the City Manager and has been allowed to opt out of the pension for this appointed position (instead receiving a 401(a) and/or 457 plan). In contrast, there is no language requiring her to cease receiving her pension from her prior employment with the City. The plain wording of the resolution governs, and that plain wording does not include such a condition. Further, there was no indication at all that the City Commission would have intended to impose such a condition. Moreover, it is my opinion that such a substantial and material condition would need to be expressly stated in the resolution to have any effect, and Ms. Swanson-Rivenbark would have had to agree with such a condition (which she did not). Ultimately, the Charter takes precedence over the City Code, and it is my

opinion that the employment resolution (which implements this Charter authority) should be enforced as written, and not require Ms. Swanson-Rivenbark to cease receiving her pension for her prior employment.

In addition, even if this issue were not governed by the City Charter, it is my opinion that section 50-239 would not apply to an elected or appointed official who opts out of the pension for the time when serving in that office. It is clear under section 50-26(b) and (c) that elected and appointed officials may opt out of the retirement system for their tenure in office. If one of these officials opts out, that official need not make contributions to the pension system, and will not receive a pension benefits for that time spent in office. When read in *pari materia* with section 50-239, it is clear that these provisions are not intended to prevent an elected or appointed official from receiving a prior City pension, earned while an employee, while serving in a subsequent appointed or elected office. (Indeed, it is my view that such a restriction would violate the Charter, as it would place a substantial burden that is not recognized in the Charter on a former employee considering elected or appointed office, as well as on the Commission that wished to exercise its plenary discretion to appoint someone to office and allow that person to opt-out of the pension provisions). The concerns that such a provision is meant to address are not implicated where an elected or appointed official opts out of the pension when elected or appointed. Moreover, it is my view that if section 50-239 were intended to apply to appointed and elected officials who opt out of the pension, that it would need to expressly state this, particularly where it is clear that the Code allows appointed and elected officials to opt out of the pension provisions \ without penalty (and even receive a contribution to another retirement plan, such as a 401(a) or 457 plan).

Finally, I would also point out that section 50-239 contains language that is simply not applicable to an appointed official. Indeed, the phrase "any compensation for personal services currently performed under substantially full-time continuous employment by the city at the regular compensation for the type services being performed" does not address the situation of an appointed official. For example, there is no "regular compensation" for such an office, as it is completely within the discretion of the City Commission (and such officials are not even subject to the City's personnel rules). In contrast, non-appointed employees of the City are subject to a pay scale that sets their "regular compensation." Once again, if the City intended this language to apply to elected and appointed officials, it would have expressly said so, particularly in light of the provisions allowing these officials to opt-out of the pension provisions.

For all of these reasons, it is my opinion and interpretation pursuant to section 2-201(e)(1) and (8) of the City Code that Ms. Swanson-Rivenbark may continue receiving her pension from her prior employment with the City once she starts her appointment as City Manager.

Parramore, Carol

From: Leen, Craig
Sent: Thursday, November 20, 2014 4:16 PM
To: Parramore, Carol
Cc: Thornton, Bridgette; Figueroa, Yaneris
Subject: FW: City Attorney Opinion - City Manager Appointment Resolution, City Charter, and Pension Ordinance

Please place in the opinion folder.

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City, County and Local Government Law*
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From: Leen, Craig
Sent: Thursday, November 20, 2014 4:14 PM
To: Gomez, Diana
Cc: Commissioners; Olazabal, Carmen; Foeman, Walter
Subject: City Attorney Opinion - City Manager Appointment Resolution, City Charter, and Pension Ordinance

Ms. Gomez,

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Craig E. Leen, City Attorney

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