



To: Walter Foeman

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

A handwritten signature in blue ink, appearing to be 'CL'.

RE: Legal Opinion Regarding Extension of Term

Date: June 30, 2015

Pursuant to section 2-201(e)(1) and (8) of the City Code, authorizing the City Attorney to provide opinions and interpretations on behalf of the City, it is my view that section 2-60(d) of the City Code governs the question you have asked. As an initial matter, a term limit is in derogation of the common law, and can prevent officials elected by the public from appointing the person they believe is best to a specific position. Accordingly, I apply the canon of construction that a provision in derogation of the common law, such as a term limit, should be strictly construed. Section 2-60(d) states as follows:

The city commission may extend the terms of all board members whose terms exceed eight years to coincide with the remainder of the appointing commissioner's term in office, upon the approval of four-fifths vote of the members of the city commission.

I read this provision literally as written. A board member's total term, even if exceeding the term limit, may be extended to the end of the Commissioner's current term in office. For example, if there is a board member who reaches eight years during the second year of a Commissioner's four year term, the Commission by a 4/5 vote may extend the Board members' total term (including the effective term limit) to the end of the Commissioner's present term in office. Hypothetically, if the Commissioner were then to be elected to a successive term, the board member could not be appointed again, as he or she would have reached the maximum term limit allowed upon the expiration of the Commissioner's prior term. Of course, that member could still serve until a successor is appointed consistent with 2-60(a) and past practice.

Herbello, Stephanie

From: Leen, Craig
Sent: Tuesday, June 30, 2015 12:39 PM
To: Herbello, Stephanie
Cc: Ramos, Miriam; Figueroa, Yaneris; Chen, Brigitte
Subject: FW: Extension of Term: Request for an Advisory Opinion

Stephanie,

Please publish this opinion instead. Please include everything after the colon in the first line in the opinion (It should start "Pursuant to . . .").

Craig E. Leen, City Attorney
*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com



Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Tuesday, June 30, 2015 12:38 PM
To: Foeman, Walter
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: RE: Extension of Term: Request for an Advisory Opinion

Walter, please use this opinion (I corrected a scrivener's error):

Pursuant to section 2-201(e)(1) and (8) of the City Code, authorizing the City Attorney to provide opinions and interpretations on behalf of the City, it is my view that section 2-60(d) of the City Code governs the question you have asked. As an initial matter, a term limit is in derogation of the common law, and can prevent officials elected by the public from appointing the person they believe is best to a specific position. Accordingly, I apply the canon of construction that a provision in derogation of the common law, such as a term limit, should be strictly construed. Section 2-60(d) states as follows:

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Please let me know if you have any questions.

Craig E. Leen, City Attorney

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CORAL GABLES
THE CITY BEAUTIFUL

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Tuesday, June 30, 2015 12:13 PM
To: Foeman, Walter
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: RE: Extension of Term: Request for an Advisory Opinion
Importance: High

Good morning, Walter. I am back in the office this morning. Here is my written opinion:

Pursuant to section 2-201(e)(1) and (8) of the City Code, authorizing the City Attorney to provide opinions and interpretations on behalf of the City, it is my view that section 2-60(d) of the City Code governs the question you have asked. As an initial matter, a term limit is in derogation of the common law, and can prevent officials elected by the public from making appointing the person they believe is best to a specific position. Accordingly, I apply the canon of construction that a provision in derogation of the common law, such as a term limit, should be strictly construed. Section 2-60(d) states as follows:

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I read this provision literally as written. A board member's total term, even if exceeding the term limit, may be extended to the end of the Commissioner's current term in office. For example, if there is a board member who reaches eight years during the second year of a Commissioner's four year term, the Commission by a 4/5 vote may extend the Board

members' total term (including the effective term limit) to the end of the Commissioner's present term in office. Hypothetically, if the Commissioner were then to be elected to a successive term, the board member could not be appointed again, as he or she would have reached the maximum term limit allowed upon the expiration of the Commissioner's prior term. Of course, that member could still serve until a successor is appointed consistent with 2-60(a) and past practice.

Please let me know if you have any questions.

Craig E. Leen, City Attorney

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CORAL GABLES
CITY OF FLORIDA

Celebrating 90 years of a dream realized.

From: Foeman, Walter
Sent: Monday, June 29, 2015 11:17 AM
To: Leen, Craig
Cc: Ramos, Miriam
Subject: RE: Extension of Term: Request for an Advisory Opinion

I need to get the written response. I want to be clear. The verbal communication doesn't have meaning to me. I can't articulate this to the Commission with all the nuances they have regarding extensions of time.

From: Leen, Craig
Sent: Monday, June 29, 2015 11:09 AM
To: Ramos, Miriam
Cc: Foeman, Walter
Subject: Re: Extension of Term: Request for an Advisory Opinion

Yes, I gave Walter a response verbally, and will place it into an opinion when I return.

Sent from my iPhone

On Jun 29, 2015, at 8:06 AM, Ramos, Miriam <mramos@coralgables.com> wrote:

Walter,

Did you receive a response to this?

Miriam S. Ramos, Esq.
Deputy City Attorney
City of Coral Gables
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
(305) 460-5218
(305) 460-5084 direct dial

<image001.png>

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From: Foeman, Walter
Sent: Thursday, June 25, 2015 1:27 PM
To: Leen, Craig
Cc: Ramos, Miriam
Subject: Extension of Term: Request for an Advisory Opinion

Craig, please provide this office with an advisory opinion in connection with the below reference issue:
Whether or not an advisory board member whose term has expired prior to the upcoming appointment period, is permitted to continue a new length of service?

[Note: The precedent that has normally been used for extension of term has been based on a designated members whose term will expire at some point during the last appointment period, but not prior to the beginning of an appointment term]

In closing, your expeditious response to this request is greatly appreciated, since there is an issue which may arise at our next City Commission meeting in connection with same.

Best,
Walter