



To: Commissioners

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

A handwritten signature in blue ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding City Commission's Legal Authority under Section 14 of the City Charter Regarding Personnel Matters

Date: May 24, 2017

Commissioner Lago has asked me substantially the following question:

What is the authority of the City Commission regarding personnel matters under section 14 of the City Charter?

Short answer

The City Commission has the authority to appoint, suspend, or discharge any employee of the City under section 14 of the City Charter, except to the extent this authority has been limited through an applicable collective bargaining agreement ratified by the City Commission. For excluded employees, the Commission's authority is not limited by any collective bargaining agreement. The appropriate way for the City Commission to exercise section 14 authority is for a Commissioner to place the matter on the agenda or make a motion to exercise this authority. Any Commission action under this provision requires a motion, a second, and at least three affirmative votes. The Commission action is final and is not subject to review by the Trial Board, as that is limited to section 13 of the City Charter.

Prior City Attorney Opinions

I have previously written on this subject in CAO 2012-025 relating to the Commission's authority over hiring or removal of the City Architect. The opinion indicated that the City Manager has day-to-day management authority over the Architect, including the power to hire or remove. The opinion also indicated that the City Commission has final authority to direct such appointment or removal. A copy of the opinion is here (please note that the numbering of the relevant Charter provisions has changed):

<http://www.coralgables.com/modules/showdocument.aspx?documentid=15052>

Charter Review Process

Section 14 of the City Charter, relating to the Commission's authority to appoint, suspend, or discharge, recently was addressed by the City Commission and the Charter Review Committee through the Charter Review process. Although the Charter Review Committee recommended modification of this provision to remove the Commission's authority over personnel matters, the Commission decided not to place such amendment on the ballot, indicating that the authority should remain in the Charter.

Analysis

Section 14 of the Coral Gables City Charter states as follows:

"The Commission, by resolution duly adopted, may direct or require appointments, suspensions, or discharges of city officers or employees by the City Manager. But none of the commissioners may otherwise individually direct or request the appointment of any person to or his or her removal from the service of the city by the City Manager or any of his or her subordinates. Except for the purpose of inquiry, the Commission members shall deal with that portion of the administrative service for which the Manager is responsible solely through the Manager. Neither the Commission, except in open session, nor any member thereof shall give orders to any subordinate of the Manager. Any violation of the provisions of this section by a member of the Commission shall work a forfeiture of the office of such member."

As an initial matter, I would like to make a brief note on the interaction between section 13 of the Charter and section 14 of the Charter, which I discuss at length in CAO 2012-025. The City Manager as chief executive officer is granted say-to-day management authority of administrative staff placed in her charge, and in exercising that authority takes personnel actions under section 13 of the Charter. The City Commission as governing body retains parallel authority to take personnel action where it determines it is appropriate. The City Commission is not required to exercise such authority, and such authority is not appellate in nature. The City Commission simply retains its own independent authority to act separate from the City Manager and the Trial Board process.

Section 14 expressly states that the Commission by resolution may direct appointments, suspensions, or discharges. The procedurally correct way for this to occur is for a Commissioner to place the item on the agenda for Commission action under section 14 of the City Charter, or for a Commissioner to make a motion during the meeting consistent with section 14 of the City Charter. The only constraints on the Commission's authority under this section would be (i) constraints agreed to by the Commission as part of a collective bargaining agreement and (ii) the general principles that Commission action must serve a public purpose and that the Commission may not act arbitrarily and capriciously or otherwise contrary to law. With regards to a Major in

the police department, such individual is an excluded employee and therefore is subject to the Commission's full authority under section 14 of the City Charter.

Any resolution exercising section 14 authority would require the majority vote of the entire Commission, which would be 3 votes. See City Charter § 5. In situations where the City Manager has exercised her authority under section 13 of the Charter, and the Commission does not take action under section 14 of the Charter (because 3 votes cannot be obtained), the City Manager's action would stand. This is an important point, as the particular matter at issue involves an administrative decision of the City Manager under section 13 of the City Charter. To be clear, the Commission is not bound by a section 13 decision, and may still act under section 14, but the Commission is not required to take action under section 14 either. It is ultimately left to the sound discretion of the Commission as governing body.

Any action by the City Commission under section 14 would be final, and not subject to the Trial Board procedure. This is because the Trial Board is a limitation of authority under section 13 of the Charter. There is a specific provision in the Charter related to action by the City Commission, and it notably does not include any Trial Board process. Moreover, it would not make sense under the Charter's structure and state law for a City board to have authority over the City Commission, as all boards are subsidiary to the Commission's ultimate authority as governing body of the municipality. See generally City Charter § 26 and Chapter 166, Florida Statutes.

Finally, although the item is not quasi-judicial, I would recommend that the sponsor of the item first speak and explain why action is being sought under section 14, that the City Manager then present her decision under section 13, that the affected employee be given an opportunity to speak herself and/or through counsel, and that any affected party have an opportunity to speak as well. The Commission could then decide whether to take action under section 14. As mentioned, if action by the Commission were to be taken, a motion, second, and three votes would be required.

This opinion and interpretation is issued pursuant to section 2-201(e)(1) and (8) of the City Code.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: RE: City Attorney Opinion regarding City Commission's legal authority under Section 14 of the City Charter regarding personnel matters
Date: Thursday, May 25, 2017 10:34:53 AM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)

Enga, please include a sentence at the end stating the following:

This opinion and interpretation is issued pursuant to section 2-201(e)(1) and (8) of the City Code.

Craig E. Leen, City Attorney

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City, County and Local Government Law*
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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, May 24, 2017 6:22 PM
To: Paulk, Enga <epaulk@coralgables.com>
Subject: FW: City Attorney Opinion regarding City Commission's legal authority under Section 14 of the City Charter regarding personnel matters

Please publish.

Craig E. Leen, City Attorney

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From: Leen, Craig
Sent: Wednesday, May 24, 2017 6:20 PM
To: Commissioners <Commissioners1@coralgables.com>
Cc: Swanson-Rivenbark, Cathy <cswanson@coralgables.com>; Foeman, Walter <wfoeman@coralgables.com>
Subject: City Attorney Opinion regarding City Commission's legal authority under Section 14 of the City Charter regarding personnel matters

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