




CITY OF HALLANDALE BEACH, FLORIDA

MEMORANDUM

DATE: September 27, 2017

TO: Honorable Mayor and City Commission

FROM: Jennifer Merino, City Attorney 

SUBJECT: Vacancy Resulting from Resignation of Commissioner Sanders

As the Commission is aware, the City has encountered impediments in filling the vacancy left by the August resignation of Commissioner Anthony Sanders. Although our Charter would typically require a special election to be held 60 to 90 days from the date of the vacancy, the Office of the Supervisor of Elections has informed the City that a special election cannot be held until March 2018. The special election will only be for the remainder of Commissioner Sanders' term, which was scheduled to conclude in November 2018.

Although state statute requires the City to obtain the consent of the Supervisor of Elections for any election, this situation places the City beyond the explicit guidance of the Charter. As discussed with the Commission, I retained the services of Mr. Sam Goren, former General Counsel to the Supervisor of Elections, to determine the rights and responsibilities of the City Commission in the instant situation.

Mr. Goren has provided the attached analysis and guidance. In short, where the Charter is silent, it is ultimately the responsibility of the Commission to interpret the Charter's intent. However, a special election cannot be held without the consent of the Supervisor of Elections. Further, there is significant legal liability associated with an appointment not explicitly authorized by Charter.

Thus, I recommend that the Commission proceed to set the qualifying period and deadlines for a March special election and the seat remain vacant until the special election, absent any special or urgent circumstances. Should the Commission agree, the City Clerk and I will prepare the necessary ordinances for your consideration during the November meetings.

Sept. 27, 2017

Memo Re: Vacancy Resulting from Resignation of Commissioner Sanders

If you have any questions, please do not hesitate to contact me.

Cc: Roger Carlton, City Manager
Mario Bataille, City Clerk

Jacob G. Horowitz
jhorowitz@cityatty.com



**GOREN CHEROF
DOODY & EZROL P.A.**
ATTORNEYS AT LAW

September 19, 2017

VIA EMAIL (jmerino@hallandalebeachfl.gov)

Jennifer Merino, City Attorney
City of Hallandale
400 South Federal Highway
Hallandale Beach, FL 33009

Re: City of Hallandale Beach / Commission Vacancy Matter

Dear Ms. Merino:

You have engaged Goren, Cherof, Doody & Ezrol, P.A. to provide the City of Hallandale Beach ("City") with a legal opinion examining the process for filling a vacancy on the city commission.

On August 11, 2017, Anthony Sanders resigned from his position on the city commission creating a legal vacancy in the Seat 1 commission seat. Mr. Sanders was elected to a four-year term on November 4, 2014. At the time of his resignation there was just over fourteen (14) months remaining on Mr. Sanders' current term of office. The next regular city election is currently scheduled for November 6, 2018. In light of these facts and circumstances, you have asked our office to review the Hallandale Beach City Charter (the "Charter"), The Florida Election Code (Chapters 97-206, F.S.), opinions of the Florida Division of Elections, and other governing authority and provide the City with a legal analysis detailing the process and procedures for filling the vacancy created by this resignation. In reviewing this matter, we have also consulted with the general counsel for the State of Florida Division of Elections.

Based on the foregoing analysis, it is our legal opinion that the city commission should conduct a special election to fill the commission vacancy. The City is legally required to obtain the consent of the Broward County Supervisor of Elections ("SOE") when scheduling a special

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Please reply to Fort Lauderdale Office

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election. Subject to the SOE's consent, the special election should be held in accordance with the City Charter and the legislative intent thereof. As detailed herein, the city commission is ultimately empowered to interpret the Charter with regards to filling the city commission vacancy.

I. HALLANDALE BEACH CHARTER AND STATUTORY AUTHORITY

Section 3.09(1) of the Charter provides that "a vacancy in the city commission occurs when a commissioner leaves office otherwise than before the normal expiration of his term of office." This section further states that "the office of a commissioner shall become vacant upon...resignation." Therefore, Mr. Sanders' irrevocable resignation created a legal vacancy on the city commission, effective August 11, 2017.

Section 3.09(3) of the Charter sets forth the process for filling vacancies on the city commission. This section expressly provides as follows:

Filling of vacancies. A vacancy or vacancies in the city commission shall be filled as provided in the following.

- (a) *Appointment.* Whenever there is a vacancy in the commission and there are less than twelve (12) months remaining before the next regular city or general election, the commission, by a majority vote of the remaining members, shall choose a successor to serve until that election. In the event of a vacancy in the office of mayor, the vice mayor shall serve as the acting mayor until the mayor's seat is filled. If a majority vote cannot be reached within thirty (30) days of the creation of the vacancy, then the vacancy shall be decided by lot.
- (b) *Special elections.* If no regular city or general election is scheduled within twelve (12) months, the commission shall schedule a special election to fill the unexpired term held not sooner than sixty (60) days, nor more than ninety (90) days following the occurrence of the vacancy or vacancies. In any special election held for the purposes of this section, the provisions for nominations and elections contained in article IV of this Charter shall apply.
- (c) *Term.* The term of office for vacancies filled by this section shall be for the remainder of the unexpired term of the office in which the vacancy exists.
- (d) *Regular city election.* When, at a regular city election in addition to regular commission offices, it becomes necessary to fill a commission vacancy or vacancies which have occurred under the provisions of

section 3.09(1), candidates shall be elected according to the provisions of article IV of this Charter.

Section 4.06 of the Charter establishes “regular and special elections” within the City. This section states, in its entirety, that “a general city election for the purpose of electing members to the city commission shall be held on the first Tuesday after the first Monday in November of each even-numbered year.” This provision only references a “general city election” and makes no reference to special elections.¹ The next regular city election is currently scheduled to occur on November 6, 2018. There is no regular city election scheduled within twelve (12) months of the vacancy created by Mr. Sanders’ resignation.

The Charter does not provide a definition for “general election” for purposes of Section 3.09(3), cited above; however, Section 4.02 of the Charter, governs the “conduct of elections,” in general. This section expressly provides, as follows:

Except as otherwise provided by this Charter, the provisions of the general election laws of the State of Florida shall apply to elections held under this Charter. All elections provided for by the Charter shall be conducted by the election authorities established by law. For the conduct of city elections, for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud, the commission may adopt, by ordinance, other election regulations which it considers desirable, consistent with law and this Charter.²

This provision embraces the requirements of Section 100.3605, F.S, governing the conduct of municipal elections. Section 100.3605, F.S., further provides that no charter or ordinance provision shall be adopted which conflicts with or exempts the City from any provision of the Florida Election Code that expressly applies to municipalities. For reference, the authority established by law to conduct elections in the State of Florida and, more specifically in Broward County, is the SOE.³

Section 97.021(16), F.S., defines “general election,” as follows:

¹ Section 4.01 of the City Charter empowers the city commission, by ordinance, to call regular and special elections.

² Our office has not been advised of any ordinance or other regulation governing the conduct of elections pursuant to this section which would impact the analysis set forth herein.

³ Section 100.3605, F.S., permits the City to adopt an ordinance or charter provision providing for the conduction of its own election, so long as such ordinance or charter provision does not conflict with any provision of The Florida Election Code which expressly applies to municipalities. We are not aware of the City adopting any such provision. *See also DE 03-01 (January 23, 2003).*

An election held on the first Tuesday after the first Monday in November in even-numbered years, for the purpose of filling national state, county and district offices and for voting on constitutional amendments not otherwise provided by law.

Section 100.031, F.S. further provides for “general elections,” as follows:

A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election and, except as provided in the State Constitution, to fill each vacancy in elective office for the unexpired portion of the term.

Like the next city election, the next “general election” is also currently scheduled to occur on November 6, 2018. There is no general election scheduled within twelve (12) months of the vacancy created by Mr. Sanders’ resignation.

Since there is no regular city or general election scheduled within twelve (12) months of the vacancy created by Mr. Sanders’ resignation, Section 3.09(3)(b) of the City Charter, requires the city commission to schedule a special election to fill the remainder of Mr. Sanders’ unexpired term. In accordance with this Charter provision, this special election is to be held not sooner than sixty (60) days, nor more than ninety (90) days following the occurrence of the vacancy.

Section 100.151, F.S., governs special elections called by local governing bodies, including municipalities. This provision requires the city commission to provide notice of the special election to the SOE and to obtain the “consent” of the SOE as to a date when the registration books can be available. Notwithstanding the timing of the special election set forth in Section 3.09(3) of the Charter, the special election cannot legally be conducted without the SOE’s expressed consent. Pursuant to Section 100.3605, F.S, the requirement for the SOE’s consent will legally prevail over any conflicting Charter language setting forth date requirements for a special election.

Pursuant to Section 4.07 of the City Charter, the candidate at the special election who receives the greatest number of votes shall be declared elected to the unexpired term remaining as a result of Mr. Sanders’ resignation.

Based on the foregoing Charter provisions and statutory authority, it is our legal opinion that the City must conduct a special election to fill the vacancy created by Mr. Sanders’ resignation. Further, the date of such an election must be coordinated with and approved by the SOE; however the special election should occur as soon as practicable in order to satisfy the general intent of Section 3.09(3)(b) of the City Charter.

Additionally, as noted, Section 3.09(3)(a) of the Charter sets forth the only circumstances which expressly allow for an appointment to fill a vacancy on the city commission. There is no expressed Charter provision providing for such an appointment unless there is less than twelve (12) months remaining before the next regular city or general election. Since the next regular city and general election will both occur on November 6, 2018, in our opinion the Charter does not expressly provide for an appointment to fill the vacancy created by Mr. Sanders' resignation.

However, Section 3.09(3)(b) of the City Charter only contemplates an actual vacancy on the city commission for a period of up to ninety (90) days. It is our understanding, as set forth in greater detail below, that the SOE will not consent to a special election date before March 13, 2018. Therefore, since the city commission cannot unilaterally set a special election date, the city commission is facing a vacancy for a period of approximately seven (7) months. The Charter does not provide any expressed language addressing such an extended vacancy. Ultimately, as detailed below, the city commission is legally authorized to interpret the legislative intent of the City Charter.

II. ADDITIONAL ANALYSIS

The paramount law of a municipality is its charter, (just as the State Constitution is the charter of the State of Florida), and it gives the municipality all the powers it possesses, unless other statutes are applicable thereto. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801, 803 (Fla. 1972) citing *Gontz v. Cooper City*, (Fla.App., 1970) 228 So.2d 913, *Clark v. North Bay Village, et al.*, 54 So.2d 240 (Fla.1951). In other words, the City Charter must be examined in the context of the applicable state law.

The rules of construction to be followed when construing municipal charter provisions are the same as those governing the construction of state statutes. *City of Opa Locka v. State ex rel Tepper*, 257 So.2d 100, 103 (3rd DCA 1972) (examining a provision of the City of Opa Locka charter related to the removal of the city manager). The provisions of the charter must be considered as a whole. *Id.*

When the language of a statute (or charter) is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory construction as the statute (or charter) must be given its plain and obvious meaning. *M.W. v Davis*, 756 So.2d 90 (Fla. 2000). Moreover, statutes relating to the subject matter will be read into the charter; and all parts of the charter will be considered together to ascertain its true meaning. 2A *McQuillin Mun. Corp. Sec. 9:23 (3d.ed 2017)*.

In *City of Opa Locka*, the Third District Court of Appeal specifically noted that when interpreting charter provisions courts should not supply a construction which would defeat the legislative purpose, which, in that particular instance, related to the defeat of the

commissioner-manager form of government. *City of Opa Locka* at 104. Further, courts generally defer to the interpretation of the municipal agency charged with administering a charter provision, unless that interpretation is inconsistent with the legislative intent manifested in the text of the charter. *2A McQuillin Mun. Corp. Sec. 9:23 (3d.ed 2017)*.

Therefore, it is essential to examine Section 3.09(3) of the City Charter in the context of the other Charter provisions and applicable statutory authority, as cited above. In general, courts will defer to the city commission's interpretation of this provision, unless its interpretation is inconsistent with the text of the Charter.

Based on a plain reading of Section 3.09(3), it appears that the amount of time remaining between the date of the vacancy and the next regular city or general election is the operative factor when determining whether the vacancy may be filled by appointment or special election. As noted, since there are more than twelve (12) months before the next regular city or general election, a special election must be conducted to fill the vacancy.

It appears that the intent of the Charter is to ensure that no commission seat would be vacant for a period longer than ninety (90) days and that no commissioner appointed to fill a vacancy on the city commission serve for a period greater than twelve (12) months. The Charter does not specifically anticipate the need to coordinate a special election date with the SOE or the possibility of a commission seat remaining vacant for a period greater than ninety (90) days.

Further, the Charter does not expressly contemplate an appointment to fill a commission vacancy on an interim basis from the time of resignation to the date of a special election. Absent a specific provision providing for an appointment for this brief period, the city commission may legally interpret whether a limited appointment is consistent with the legislative intent of the Charter. If such an appointment were challenged, a court will be asked to determine whether the appointment is inconsistent with the legislative intent manifested in the text of the charter.

III. THE BROWARD COUNTY SUPERVISOR OF ELECTIONS

As noted, the City is required to provide notice of the special election to the SOE and to obtain the "consent" of SOE as to a date when the registration books can be available. It is our understanding that the SOE has advised the City that they cannot accommodate the special election timeframes set forth in the City Charter.

It is our further understanding that the SOE has advised the City that they will not consent to a special election before March 13, 2018, the next scheduled general municipal election date, at a cost to City of \$48,500. This special election date will result in an approximately seven (7) month vacancy on the city commission.

As previously noted, the City Charter contemplates a vacant commission seat for a period of up to ninety (90) days. It also contemplates an appointment to fill a commission vacancy for a period not to exceed twelve (12) months when there are less than twelve (12) months remaining before the next regular city or general election. The Charter does not contemplate a seven (7) month vacancy on the city commission, or offer any expressed process to fill such a vacancy on an interim basis.

Section 100.151, F.S. requires the City to obtain the SOE's consent with regards to the date of any special election held to fill the commission vacancy. Notwithstanding any Charter provision to the contrary related to the dates of such an election, the city commission must then determine the best available option, as provided by the SOE, which meets the legislative intent of the City Charter.

I. CONCLUSION

Mr. Sanders' resignation created a legal vacancy on the city commission. Since there are more than twelve (12) months before the next regular city or general election, a special election must be conducted to fill the commission vacancy. Notwithstanding any Charter provision to the contrary, the City is legally required to obtain the SOE's consent to conduct a special election to fill the vacancy.

The Charter does not expressly provide for an appointment to fill the vacancy for the limited period until the special election. However, the Charter also does not contemplate a commission seat remaining vacant for a period greater than ninety (90) days. Ultimately, the city commission is legally empowered to interpret the City Charter to ensure that the vacancy is filled in a manner consistent with the legislative intent thereof.

Please be advised that an interpretation which allows for a temporary appointment to fill the vacancy from the date of the resignation to the date of the special election creates the possibility of a legal challenge to any action taken by the city commission during that time. Therefore, it is our legal opinion and recommendation that the City should coordinate with the SOE to set a special election date as soon as practicable, and to avoid an appointment that is not expressly authorized by the Charter.

Thank you for the opportunity to review and analyze this important issue. Please do not hesitate to contact our office if there is any additional information that we can provide.


SAMUEL S. GOREN

Sincerely,


JACOB G. HOROWITZ

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