



To: Cathy Swanson-Rivenbark, City Manager for the City of Coral Gables

From: Miriam S. Ramos, Deputy City Attorney for the City of Coral Gables *M.S.R.*

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

RE: Legal Opinion Regarding Dual Office-Holding

Date: April 29, 2016

Recently, the City's Building Official retired. Also recently, on April 25, 2016, the City hired an Assistant City Manager (a position that is not considered an "office" under Article II, Section 5(a) of the Florida Constitution) over Operations and Infrastructure. This position oversees the Building Division, among others. Until such time as a permanent Building Official is hired, this Assistant City Manager will ex officio execute the duties of the Building Official.

The issue at hand is whether, under Article II, Section 5(a), of the Florida Constitution, commonly known as the "dual office-holding prohibition," this Assistant City Manager may serve as Acting City Manager (when the City Manager is unavailable), given that he is also currently executing the duties of the City's Building Official, a position which remains vacant.¹

It is an established principle that where additional duties are assigned to officers and there is no inconsistency between the new and preexisting duties, the dual office-holding prohibition contained in the Constitution does not preclude such an assignment but, rather, the new assigned duties are viewed as an addition to existing responsibilities. See *Bath Club, Inc. v. Dade County et al.*, 394 So.2d 110 (Fla. 1981); *State of Florida v. Florida State Turnpike Authority*, 80 So.2d 337 (Fla. 1955). In relying on these cases, the Attorney General opined that, "where...additional or ex officio duties are imposed upon or assigned to a particular officer by the legislative body of a municipality and there is no inconsistency between the new and the preexisting duties, the dual office-holding prohibition does not preclude such an assignment." (AGO 81-72). Consistently, in AGO 2006-27, the Attorney General stated, "the courts of this state have recognized that the legislative determination of an officer to perform ex officio the functions of another or additional office does not violate the dual office-holding prohibition, provided that the duties imposed are consistent with those already being exercised."

¹ In AGO 2004-07, the Attorney General opined that the position of building official constitutes an office for purposes of Article II, Section 5(a), of the Florida Constitution. This Attorney General Opinion is not binding upon the City, but assuming arguendo that the Attorney General was correct in this interpretation, the question posed above arises.

The City Commission has, by legislative act, granted the City Manager the authority to delegate his or her authority (See eg. Sec. 2-701 of the City's Zoning Code which states in part that, "the City Manager has the authority to delegate his authority to City staff as necessary for the effective administration and enforcement of the regulations," and Sec. 2-651 of the City Code, which states in part that, "the city manager may delegate authority to designees or to any department,"). Consistent with this principle, the City Manager may delegate her authority to an individual who may serve in her capacity when she is out of the office or otherwise unavailable. It is reasonable that the City Manager would appoint an Assistant City Manager for this purpose.

After reviewing the City Charter and the duties of each position, we find that they are not inconsistent.

Therefore, it is the opinion of this office that this Assistant City Manager may serve as Acting City Manager in an ex officio capacity, when the City Manager is unavailable, without violating the dual office-holding prohibition. We come to this conclusion after finding that this Assistant City Manager is only serving as the City's Building Official in an ex officio capacity, thereby not holding that office. Similarly, having the Assistant City Manager serve as Acting City Manager, in an ex officio capacity, does not implicate the dual office-holding prohibition. It is important to note that, even during times of unavailability, the City Manager continues to be the City Manager and the Acting City Manager is exercising the duties of that office in a delegated capacity, ex officio.

This opinion is issued pursuant to Sec. 2-201(e)(1) and (8) of the City Code, authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

April 2016

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING
DUAL OFFICE HOLDING – ACTING CITY MANAGER/BUILDING OFFICIAL

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