



From: Yaneris Figueroa, Special Counsel to the City Attorney's Office

Approved: 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 of the City Attorney.

RE: Legal Opinion Regarding The Resign-To-Run Law As It Applies To Membership On The Coral Gables Merrick House Governing Board And Seeking Statewide Elective Office

Date: July 18, 2013

You have asked me to determine whether a member of the Coral Gables Merrick House Governing Board (the "Governing Board") must resign from the Governing Board before seeking statewide elective office - i.e. a Florida State Representative position. After careful research and review of the applicable provisions of the City of Coral Gables Municipal Code, the Florida Statutes, and the relevant case law, it is my legal conclusion that the individual in question is not required to resign from the Governing Board because of their seeking election as a Florida State Representative. As detailed below, this conclusion is based upon three considerations: 1) the City's Resign-to-Run law narrowly applies only to those seeking elective office within the City; 2) a member of the Governing Board does not receive a salary and, as such, is exempt from the restrictions outlined in Florida's Resign-to-Run law; and 3). membership on the Governing Board does not qualify as being an "officer" under Florida law, and, therefore, the Resign-to-Run law is inapplicable.

I. SECTION 2-59(E) OF THE CORAL GABLES MUNICIPAL CODE DOES NOT REQUIRE A GOVERNING BOARD MEMBER TO RESIGN BEFORE RUNNING FOR STATEWIDE ELECTIVE OFFICE

The City of Coral Gables, through its Municipal Code, prohibits any City of Coral Gables board member from becoming a candidate for elective political office. More specifically, Chapter 2, Article III, Division I, Section 2-59(e) of the Code states:

No member of any city board shall become a candidate for elective political office during his term. Should any member of a city board qualify as a candidate for elective political office, such qualification shall be deemed a tender of resignation from such board as of the date on which the member qualifies for elective political office.

Coral Gables, Fla., Municipal Code § 2-59(e) (2006). This Office interprets Section 2-59(e) to apply solely to individuals who seek an elective political office *within the City*- i.e. City Commissioner or the City Mayor. Likewise, the City Clerk has also limited this provision's application to only individuals seeking political office *within the City*.

In arriving at this interpretation, this Office examined Florida Statutes and Florida case law to determine the confines of Section 2-59(e). The State of Florida has a similar provision relating to board memberships and seeking elective office. Indeed, Florida Statutes Section 99.012(2), typically referred to as the "Resign-to-Run" law, states: "No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other." Fla. Stat. § 99.012(2).

The Florida Legislature, however, outlined an exception to the Florida Resign to Run Law. Section 99.012(6)(b) expressly states, "this section does not apply to...Persons serving *without salary* as members of an appointive board or authority." Fla. Stat. § 99.012(6)(b) (emphasis added). Importantly, the City's Resign to Run Law does not contain such an exception. This makes the City's resign-to-run law distinguishable from the state's resign-to-run law. Because the City's Law is different in this regard, the logical extension of this distinction is that the City's law is limited in application to only those seeking elective office within the City. Indeed, the Florida Supreme Court has noted that "'municipal ordinances are inferior to Laws of the state and must not conflict with any controlling provision of a statute . . . [thus] a municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.'" *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1246-47 (Fla. 2006) (citing *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993)). Accordingly, a reasonable interpretation of the City's resign-to-run law necessarily requires that the law be read to reconcile and harmonize both the state statute and the City's Municipal provisions, which both concurrently govern this issue. As such, it logically follows that the appropriate legal conclusion here is to find that the City's resign-to-run law is limited in application to only those seeking citywide elective office. To conclude otherwise could result in the City's law being invalidated or found to be pre-empted.

In short, because the individual referenced in your July 8, 2013 email is not seeking an elective office within the City limits, Section 2-59(e) of the City of Coral Gables Municipal Code is not applicable and, therefore, the individual is not required to resign from the Governing Board - a non-salaried position - before seeking statewide elective office.

II. THE RESIGN-TO-RUN LAW DOES NOT REQUIRE THE INDIVIDUAL TO RESIGN FROM THE GOVERNING BOARD BECAUSE GOVERNING BOARD MEMBERS DO NOT RECEIVE A SALARY

In addition to the rationale explained above, Florida's Resign-to-Run Law, codified at Florida Statutes § 99.012, exempts those individuals who are not paid a salary. Specifically, Florida Statutes § 99.012(6)(b) states "[t]his section does not apply to ... b) Persons serving without salary as members of an appointive board or authority." The Florida Division of Elections recognized this exemption in its Advisory Opinion 85-06 where it was asked to determine whether an individual serving on the Board of Adjustment and Appeals and the Personnel Advisory Board for the City of Hollywood had to resign from those boards before seeking elective office as a City Commissioner. There, the Division of Elections concluded that the individual did not have to resign from either board and reasoned:

The Resign to Run Law requires an elected or appointed officer to resign irrevocable when seeking an elected office, the term of which runs concurrently with the term of office he or she currently holds. The Resign to Run Law, however, contains an exception that exempts a person "who serves as a member of any appointive board or authority without salary" from the resignation requirements of Section 99.012(2), Florida Statutes. Therefore, a person who is appointed [to a board]...and who is not paid a salary by [the] board is within this exception to the Resign to Run Law. Such person need not resign or take a leave of absence in order to run.

Fla. Div. Elections, DE 85-06, at p. 1 (January 20, 1985) (quoting Fla. Stat. § 99.012(2)). Under Resolution Number 22952, the City expressly provides that the Governing Board members are to serve without a salary. Resolution Number 22952 states, "[a]ll [Governing Board] members shall serve without remuneration." City of Coral Gables, Resolution No. 22952 (6/10/1980). Therefore, because the Florida Resign-to-Run law creates an express exemption for board members not paid a salary, and the Governing Board does not provide a salary to its members, a member of the Governing Board is not required to resign from the Governing Board under the Resign-to-Run Law.

III. THE RESIGN-TO-RUN LAW DOES NOT REQUIRE THE INDIVIDUAL TO RESIGN FROM THE GOVERNING BOARD BECAUSE THAT POSITION DOES NOT CONSTITUTE AN OFFICE

Additionally, a member of the Governing Board is not required to resign before running for statewide elective office because members of the Governing Board are not officers and, therefore, are exempt from the State's Resign-to-Run law. Indeed, the Florida Division of Elections (the "Division") clarified that "the Resign-to-Run Law requires an elected or appointed officer to resign irrevocably when seeking an elected office." Fla. Div. Elections, DE 86-07 (May 20, 1986) (emphasis in original) (citations omitted). Thus, in order for the Resign-to-Run law to apply to an individual, that individual must be an elected or appointed *officer*.

Under Florida Statutes Section 99.012(1)(a) - Florida's Resign-to-Run Law - the term "officer" means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state ... [w]ith respect to a municipality, the term 'officer' means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter." This definition is in line with Florida jurisprudence. In fact, in determining when a position constitutes an office "Florida courts ... have advised that it is the nature of the powers and duties of a particular position that determines whether it is an 'office' within the scope of the dual office-holding prohibition or an 'employment' outside the scope of the provision." Fla. Fla. Att'y Gen. Op. 2008-15 (2008) (citing *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919)).

Furthermore, in one of the Florida Supreme Court's seminal cases on this issue *State ex rel. Holloway v. Sheats*, the court recognized that an office "implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office." The term 'office' embraces the idea of tenure, duration, and duties in exercising a portion of the sovereign power, conferred or defined by Law and not by contract." *Sheats*, 83 So. at 509; *See also D 'Agostino v.*

City of Miami, -- So. 3d --- Fla. L. Weekly 0167 at 5 (Fla. 3DCA Jan. 23, 2013) (citing *Demings v. Orange County Citizens Review Board*, 15 So. 3d 604 (Fla. 5th DCA 2009) quoting *Holloway v. Sheats* for the proposition that "the term 'office' as used in the Florida Constitution 'implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office' or 'independent authority of a governmental nature'"). Thus, to be regarded as an "officer" the individual must occupy a position that has been delegated a portion of the sovereign power. For instance, in *Demings*, the Fifth District explained its rationale for recognizing that the Sheriff of Orange County was a constitutional *officer* by stating:

As an independent constitutional officer, the Sheriff does not derive his authority from the County's charter or the board of county commissioners, and *is neither generally accountable to the Board for his conduct in office nor subject to the board's direction in the fulfillment of his duties. In the event of misconduct or misfeasance by the Sheriff, it is Florida's governor who is authorized to suspend the Sheriff from office-and not the County's governing board.* Art. N, § 7(a), Fla. Const.9 And, ultimately, the Sheriff is independently accountable to the electorate of Orange County.

15 So. 3d at 610 (citing *Sheats*, 83 So. at 509) (emphasis added). While the *Demings* court analyzed the delegation of sovereign powers to a constitutional officer it remains persuasive authority for purposes of the question presented here in that it acknowledged that where an individual is not accountable to a Board nor subject to a Board's direction, but rather, serves at the will of the electorate then that individual is an officer. Likewise, the Florida Attorney General conducted a similar analysis in Florida Attorney General Opinion 80-01 where the Florida Attorney General issued an advisory opinion regarding whether an individual had to resign their position as Coordinator of Exceptional Education before seeking elected office as the Superintendent of Schools. The Attorney General, ultimately concluded that the individual was an employee as opposed to an officer and, therefore, did not have to resign their position in accordance with the Resign-to-Run Law. Notably, in reaching this conclusion, the Florida Attorney General discussed the guidelines the Florida Supreme Court laid out in *State ex rei. Clyatt v. Hocker*, 22 So. 721, 723-24 (Fla. 1897) and *Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919), and stated:

Applying the general considerations specified above to the facts of your inquiry, I can only conclude that a coordinator of exceptional education is an employee, not an officer. The office of coordinator of exceptional education is nowhere created by Jaw. His duties are exclusively administrative and ministerial in nature; he exercises no sovereign power in his own right. While the coordinator appears to have some input into the policymaking process, it would be inaccurate to say that any of this important governmental power resides in him. It is the school board's function to make policy decisions.

Fla. Att'y Gen. Op., at p.3. Thus, based upon the definition of "officer" contained within Florida Statutes § 99.012(1)(a) and the guidelines set forth in the above discussed cases (*Sheats*, *D'Agastino*, and *Demmings*) and Florida Attorney General Advisory Opinion 80-01, a delegation of sovereign powers, such as is necessary to be an "officer" under the Resign-to-Run Law, requires that the individual have independent authority such that he or she does not operate under the direction of a political body (e.g. a City Commission) and is not accountable to a political body (e.g. a City Commission).

Here, it does not appear that the Governing Board has been delegated any portion of the City's sovereign power. Instead, the Governing Board, was created pursuant to Coral Gables City Commission Resolution Number 22952, thus, the very existence of the Governing Board stems from the City Commission. Indeed, in accordance with Resolution Number 22952, Governing Board members are appointed by the City Commission, the Historic Preservation Board, and the City Manager. Moreover, the Governing Board has limited authority, jurisdiction, and fundraising abilities. More specifically, Resolution Number 22952 states:

The Coral Gables House Governing Board's jurisdiction shall be limited to the activities and administration of Coral Gables House. The Board shall adhere to all professional standards as deemed appropriate and set forth by the American Association of Museums ... The Board will have the authority to approve, *upon application*, the use of the property *in accordance with established guidelines*.. The Board will also have authority to raise funds - the method of fundraising, however, *shall be approved* by the City Manager.

City of Coral Gables, Resolution Number 22952 (June 10, 1980) (emphasis added). And, importantly, like with all other City boards: 1) the Governing Board is required to submit an annual report to the City Manager, Section 2-66 of the Municipal Code; 2) a member of the Governing Board can be removed for excessive absences, Section 2-61 of the Municipal Code; and 3) the Governing Board member's term expires when the nominating Commissioner leaves office.

As further evidence that the Governing Board has not been delegated any portion of the City's sovereign power, the Governing Board is generally regarded as an advisory board, as indicated by City of Coral Gables Resolution Number 2003-164. In fact, Coral Gables Resolution Number 2003-164 lists various advisory boards within the City, with the Governing Board included on the list. City of Coral Gables, Resolution Number 2003-164 (August 26, 2003)

Therefore, because there has been no delegation of the sovereign power, membership on the Governing Board does not constitute an "office" for purposes of the Resign-to-Run Law. Accordingly, there is no requirement that a Governing Board Member resign before seeking a statewide elective office.

IV. CONCLUSION

For the reasons outlined above, it is my legal conclusion that the individual in question is not required to resign from the Governing Board because of their seeking election as a Florida State Representative. This conclusion is based upon three considerations: 1) the City's Resign-to-Run law narrowly applies only to those seeking elective office within the City; 2) a member of the Governing Board does not receive a salary and, as such, is exempt from the restrictions outlined in Florida's Resign-to-Run law; and 3). membership on the Governing Board does not qualify as being an "officer" under Florida law, and therefore, the Resign-to-Run law is inapplicable. Should you have any questions and/or concerns, please feel free to contact me.

LEGAL MEMORANDUM

To: Craig E. Leen, City Attorney

From: Yaneris Figueroa, Special Counsel to the City Attorney's Office

Approved By: Bridgette N. Thornton Richard

RE: Legal Opinion Addressing the Resign-to-Run Law As It Applies to Membership on the Coral Gables Merrick House Governing Board and Seeking Statewide Elective Office

Date: July 18, 2013

You have asked me to determine whether a member of the Coral Gables Merrick House Governing Board (the "Governing Board") must resign from the Governing Board before seeking statewide elective office — i.e. a Florida State Representative position. After careful research and review of the applicable provisions of the City of Coral Gables Municipal Code, the Florida Statutes, and the relevant case law, it is my legal conclusion that the individual in question is not required to resign from the Governing Board because of their seeking election as a Florida State Representative. As detailed below, this conclusion is based upon three considerations: 1) the City's Resign-to-Run law narrowly applies only to those seeking elective office within the City; 2) a member of the Governing Board does not receive a salary and, as such, is exempt from the restrictions outlined in Florida's Resign-to-Run law; and 3). membership on the Governing Board does not qualify as being an "officer" under Florida law, and, therefore, the Resign-to-Run law is inapplicable.

I. SECTION 2-59(E) OF THE CORAL GABLES MUNICIPAL CODE DOES NOT REQUIRE A GOVERNING BOARD MEMBER TO RESIGN BEFORE RUNNING FOR STATEWIDE ELECTIVE OFFICE

The City of Coral Gables, through its Municipal Code, prohibits any City of Coral Gables board member from becoming a candidate for elective political office. More specifically, Chapter 2, Article III, Division I, Section 2-59(e) of the Code states:

No member of any city board shall become a candidate for elective political office during his term. Should any member of a city board qualify as a candidate for elective political office, such qualification shall be deemed a tender of resignation from such board as of the date on which the member qualifies for elective political office.

Coral Gables, Fla., Municipal Code § 2-59(e) (2006). This Office interprets Section 2-59(e) to apply solely to individuals who seek an elective political office *within the City* — i.e. City Commissioner or the City Mayor. Likewise, the City Clerk has also limited this provision's application to only individuals seeking political office *within the City*.

In arriving at this interpretation, this Office examined Florida Statutes and Florida case law to determine the confines of Section 2-59(e). The State of Florida has a similar provision relating to board

memberships and seeking elective office. Indeed, Florida Statutes Section 99.012(2), typically referred to as the “Resign-to-Run” law, states: “No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.” Fla. Stat. § 99.012(2).

The Florida Legislature, however, outlined an exception to the Florida Resign to Run Law. Section 99.012(6)(b) expressly states, “this section does not apply to...Persons serving *without salary* as members of an appointive board or authority.” Fla. Stat. § 99.012(6)(b) (emphasis added). Importantly, the City’s Resign to Run Law does not contain such an exception. This makes the City’s resign-to-run law distinguishable from the state’s resign-to-run law. Because the City’s law is different in this regard, the logical extension of this distinction is that the City’s law is limited in application to only those seeking elective office within the City. Indeed, the Florida Supreme Court has noted that “municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute . . . [thus] a municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.” *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1246-47 (Fla. 2006) (citing *Thomas v. State*, 614 So. 2d 468, 470 (Fla.1993)). Accordingly, a reasonable interpretation of the City’s resign-to-run law necessarily requires that the law be read to reconcile and harmonize both the state statute and the City’s Municipal provisions, which both concurrently govern this issue. As such, it logically follows that the appropriate legal conclusion here is to find that the City’s resign-to-run law is limited in application to only those seeking citywide elective office. To conclude otherwise could result in the City’s law being invalidated or found to be pre-empted.

In short, because the individual referenced in your July 8, 2013 email is not seeking an elective office within the City limits, Section 2-59(e) of the City of Coral Gables Municipal Code is not applicable and, therefore, the individual is not required to resign from the Governing Board — a non-salaried position — before seeking statewide elective office.

II. THE RESIGN-TO-RUN LAW DOES NOT REQUIRE THE INDIVIDUAL TO RESIGN FROM THE GOVERNING BOARD BECAUSE GOVERNING BOARD MEMBERS DO NOT RECEIVE A SALARY

In addition to the rationale explained above, Florida’s Resign-to-Run Law, codified at Florida Statutes § 99.012, exempts those individuals who are not paid a salary. Specifically, Florida Statutes § 99.012(6)(b) states “[t]his section does not apply to . . . b) Persons serving without salary as members of an appointive board or authority.” The Florida Division of Elections recognized this exemption in its Advisory Opinion 85-06 where it was asked to determine whether an individual serving on the Board of Adjustment and Appeals and the Personnel Advisory Board for the City of Hollywood had to resign from those boards before seeking elective office as a City Commissioner. There, the Division of Elections concluded that the individual did not have to resign from either board and reasoned:

The Resign to Run Law requires an elected or appointed officer to resign irrevocable when seeking an elected office, the term of which runs concurrently with the term of office he or she currently holds. The Resign to Run Law, however, contains an exception that exempts a person "who serves as a member of any appointive board or authority without salary" from the resignation requirements of Section 99.012(2), Florida Statutes. Therefore, a person who is appointed [to a board]...and who is not paid a salary by [the] board is within this exception to the Resign to Run Law. Such person need not resign or take a leave of absence in order to run.

Fla. Div. Elections, DE 85-06, at p. 1 (January 20, 1985) (quoting Fla. Stat. § 99.012(2)). Under Resolution Number 22952, the City expressly provides that the Governing Board members are to serve without a salary. Resolution Number 22952 states, "[a]ll [Governing Board] members shall serve without remuneration." City of Coral Gables, Resolution No. 22952 (6/10/1980). Therefore, because the Florida Resign-to-Run law creates an express exemption for board members not paid a salary, and the Governing Board does not provide a salary to its members, a member of the Governing Board is not required to resign from the Governing Board under the Resign-to-Run Law.

III. THE RESIGN-TO-RUN LAW DOES NOT REQUIRE THE INDIVIDUAL TO RESIGN FROM THE GOVERNING BOARD BECAUSE THAT POSITION DOES NOT CONSTITUTE AN OFFICE.

Additionally, a member of the Governing Board is not required to resign before running for statewide elective office because members of the Governing Board are not officers and, therefore, are exempt from the State's Resign-to-Run law. Indeed, the Florida Division of Elections (the "Division") clarified that "the Resign-to-Run Law requires an elected or appointed officer to resign irrevocably when seeking an elected office." Fla. Div. Elections, DE 86-07 (May 20, 1986) (emphasis in original) (citations omitted). Thus, in order for the Resign-to-Run law to apply to an individual, that individual must be an elected or appointed *officer*.

Under Florida Statutes Section 99.012(1)(a) — Florida's Resign-to-Run Law — the term "‘officer’ means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state . . . [w]ith respect to a municipality, the term ‘officer’ means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter." This definition is in line with Florida jurisprudence. In fact, in determining when a position constitutes an office "Florida courts...have advised that it is the nature of the powers and duties of a particular position that determines whether it is an ‘office’ within the scope of the dual office-holding prohibition or an ‘employment’ outside the scope of the provision." Fla. Att’y Gen. Op. 2008-15 (2008) (citing *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919)).

Furthermore, in one of the Florida Supreme Court's seminal cases on this issue *State ex rel. Holloway v. Sheats*, the court recognized that an office "implies a delegation of a portion of the sovereign

power to, and the possession of it by, the person filling the office.’ The term ‘office’ embraces the idea of tenure, duration, and duties in exercising a portion of the sovereign power, conferred or defined by law and not by contract.” *Sheats*, 83 So. at 509; *See also D’Agastino v. City of Miami*, --- So. 3d --- Fla. L. Weekly D167 at 5 (Fla. 3DCA Jan. 23, 2013) (citing *Demings v. Orange County Citizens Review Board*, 15 So. 3d 604 (Fla. 5th DCA 2009) quoting *Holloway v. Sheats* for the proposition that “the term ‘office’ as used in the Florida Constitution ‘implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office’ or ‘independent authority of a governmental nature’”). Thus, to be regarded as an “officer” the individual must occupy a position that has been delegated a portion of the sovereign power. For instance, in *Demings*, the Fifth District explained its rationale for recognizing that the Sheriff of Orange County was a constitutional *officer* by stating:

As an independent constitutional officer, the Sheriff does not derive his authority from the County’s charter or the board of county commissioners, and *is neither generally accountable to the Board for his conduct in office nor subject to the board’s direction in the fulfillment of his duties. In the event of misconduct or misfeasance by the Sheriff, it is Florida’s governor who is authorized to suspend the Sheriff from office—and not the County’s governing board.* Art. IV, § 7(a), Fla. Const.⁹ And, ultimately, the Sheriff is independently accountable to the electorate of Orange County.

15 So. 3d at 610 (citing *Sheats*, 83 So. at 509) (emphasis added). While the *Demings* court analyzed the delegation of sovereign powers to a constitutional officer it remains persuasive authority for purposes of the question presented here in that it acknowledged that where an individual is not accountable to a Board nor subject to a Board’s direction, but rather, serves at the will of the electorate then that individual is an officer. Likewise, the Florida Attorney General conducted a similar analysis in Florida Attorney General Opinion 80-01 where the Florida Attorney General issued an advisory opinion regarding whether an individual had to resign their position as Coordinator of Exceptional Education before seeking elected office as the Superintendent of Schools. The Attorney General, ultimately concluded that the individual was an employee as opposed to an officer and, therefore, did not have to resign their position in accordance with the Resign-to-Run Law. Notably, in reaching this conclusion, the Florida Attorney General discussed the guidelines the Florida Supreme Court laid out in *State ex rel. Clyatt v. Hocker*, 22 So. 721, 723-24 (Fla. 1897) and *Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919), and stated:

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Fla. Att’y Gen. Op., at p.3. Thus, based upon the definition of “officer” contained within Florida Statutes § 99.012(1)(a) and the guidelines set forth in the above discussed cases (*Sheats*, *D’Agastino*, and *Demmings*) and Florida Attorney General Advisory Opinion 80-01, a delegation of sovereign powers, such as is necessary to be an “officer” under the Resign-to-Run Law, requires that the individual have independent authority such that he or she does not operate under the direction of a political body (e.g. a City Commission) and is not accountable to a political body (e.g. a City Commission).

Here, it does not appear that the Governing Board has been delegated any portion of the City’s sovereign power. Instead, the Governing Board, was created pursuant to Coral Gables City Commission Resolution Number 22952, thus, the very existence of the Governing Board stems from the City Commission. Indeed, in accordance with Resolution Number 22952, Governing Board members are appointed by the City Commission, the Historic Preservation Board, and the City Manager. Moreover, the Governing Board has limited authority, jurisdiction, and fundraising abilities. More specifically, Resolution Number 22952 states:

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City of Coral Gables, Resolution Number 22952 (June 10, 1980) (emphasis added). And, importantly, like with all other City boards: 1) the Governing Board is required to submit an annual report to the City Manager, Section 2-66 of the Municipal Code; 2) a member of the Governing Board can be removed for excessive absences, Section 2-61 of the Municipal Code; and 3) the Governing Board member’s term expires when the nominating Commissioner leaves office.

As further evidence that the Governing Board has not been delegated any portion of the City’s sovereign power, the Governing Board is generally regarded as an advisory board, as indicated by City of Coral Gables Resolution Number 2003-164. In fact, Coral Gables Resolution Number 2003-164 lists various advisory boards within the City, with the Governing Board included on the list. City of Coral Gables, Resolution Number 2003-164 (August 26, 2003)

Therefore, because there has been no delegation of the sovereign power, membership on the Governing Board does not constitute an “office” for purposes of the Resign-to-Run Law. Accordingly, there is no requirement that a Governing Board Member resign before seeking a statewide elective office.

IV. CONCLUSION

For the reasons outlined above, it is my legal conclusion that the individual in question is not required to resign from the Governing Board because of their seeking election as a Florida State Representative. This conclusion is based upon three considerations: 1) the City's Resign-to-Run law narrowly applies only to those seeking elective office within the City; 2) a member of the Governing Board does not receive a salary and, as such, is exempt from the restrictions outlined in Florida's Resign-to-Run law; and 3) membership on the Governing Board does not qualify as being an "officer" under Florida law, and therefore, the Resign-to-Run law is inapplicable. Should you have any questions and/or concerns, please feel free to contact me.