



To: City Commission

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

A handwritten signature in black ink, appearing to be "C. Leen", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Ability To Create The Position Of Commission Aide

Date: February 21, 2014

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My office was asked to determine whether the City Charter permits the City Commission to create the position of Commission Aide to assist the City Commission and City Commissioners in the performance of their functions, and to select the person who fills the position. Pursuant to section 2-201(e)(8) of the City Code, authorizing the City Attorney to interpret the City Charter on behalf of the City, my interpretation of the City Charter is as follows:

Under the City Charter, the City Commission has the authority to direct the City Manager and the Human Resources Director in open session to create a Commission Aide position that reports to the City Commission (the City Commission can approve the job description in open session as well). The position could be given responsibilities that will ensure the position is a confidential, exempt position. The City Commission can place that position under the charge of the Commission, and can appoint and remove the person filling that position by resolution. This interpretation is supported by express wording in section 23 of the City Charter explaining the lines of authority between the Commission and the City Manager. This provision gives the Commission ultimate authority as the governing body to direct the City Manager, and City officers and employees (in open session), as well as the ultimate authority to direct the appointment and removal of officers and employees by resolution.

In addition, this interpretation is consistent with other provisions in the Charter and the role of the City Commission and City Manager. The City Commission is the governing body of the City under section 8 of the Charter, as well as section 166.021 of the Florida Statutes. The City Manager is the chief executive officer of the City with day-to-day management authority for those functions placed in his charge. Indeed, section 21 of the Charter, relating to the City Manager, uses this express language "placed in his charge."

The City Manager does not have day-to-day management authority over the City Commission, the City Attorney's Office, or the City Clerk's Office. Those Charter offices and their direct employees are not placed in the City Manager's charge, as their functions are not in his charge. Accordingly, just as the City Attorney's Office can have employees under the charge of the City Attorney, and just as the City Clerk's Office can have employees under the charge of the City Clerk, the City Commission can certainly have employee(s) under its charge as well. A Commission Aide would not have the type of administrative authority that must be under the day-to-day management authority of the City Manager (in contrast to the City Architect, for example, who was the subject of a prior interpretation/opinion; in this prior opinion, I opined that the City Architect would be required to be under the day-to-day management authority of the City Manager because the City Architect exercises administrative discretion under the direction of the City Manager as chief executive officer of the City). Instead, a Commission Aide would be helping the Commission or individual Commissioners in the performance of their policy making, legislative, and oversight functions, which is different than the City Manager's day-to-day administrative and management functions.

Please note, the Commission Aide would not have the authority to direct administrative staff, as individual Commissioners do not have the authority to direct administrative staff. The Commission Aide would have the authority to inquire (i.e. seek and receive information) on behalf of an individual City Commissioner, as individual Commissioners have authority to inquire under section 23 of the Charter. It is also important to note that the Commission Aide could not act as a liaison or conduit in any manner between individual Commissioners to ensure compliance with the Sunshine Law.

Ultimately, as the governing body of the City, particularly in light of the express wording in section 23 of the Charter, the City Commission has the authority to have a Commission Aide under its charge to assist it in its function, and the City Commission may direct the appointment or removal of the person filling that position.



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Ultimately, as the governing body of the City, particularly in light of the express wording in section 23 of the Charter, the City Commission has the authority to have a Commission Aide under its charge to assist it in its function, and the City Commission may direct the appointment or removal of the person filling that position.

## Osle, Zilma

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**From:** Leen, Craig  
**Sent:** Thursday, February 20, 2014 10:56 AM  
**To:** Osle, Zilma; Hernandez, Cristina  
**Cc:** Thornton, Bridgette; Figueroa, Yaneris  
**Subject:** FW: Commission Aide

**Importance:** High

Please place in the opinion folder.

Craig E. Leen  
City Attorney

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**From:** Leen, Craig  
**Sent:** Thursday, February 20, 2014 10:55 AM  
**To:** Commissioners  
**Cc:** Salerno, Patrick; Foeman, Walter  
**Subject:** RE: Commission Aide  
**Importance:** High

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Ultimately, as the governing body of the City, particularly in light of the express wording in section 23 of the Charter, the City Commission has the authority to have a Commission Aide under its charge to assist it in its function, and the City Commission may direct the appointment or removal of the person filling that position.

Craig E. Leen  
City Attorney

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**From:** PatKeon@aol.com [mailto:PatKeon@aol.com]  
**Sent:** Thursday, February 20, 2014 8:56 AM  
**To:** Salerno, Patrick; Leen, Craig  
**Cc:** Cason, Jim; Kerdyk, William; Quesada, Frank; VLago@coralgabales.com  
**Subject:** Commission Aide

To my fellow commissioners: In compliance with the Sunshine laws please do not respond.

Dear Pat:

I am sorry that our meeting time ran out yesterday as I wanted to discuss this with you and I am not available today. I have mentioned the position of Commission Aide to you on various occasions over the last month and you seem concerned with a related charter provision.

I spoke with the City Attorney about this. His legal opinion is that it is within the City Commission's legal authority to do this. I have asked him to provide his opinion, in writing, to the commission as a whole on the compliance of this with Sect. 23 of the charter so it can be discussed at the meeting this Tuesday, Feb. 25<sup>th</sup>.

In an open session this Tuesday, Feb. 25, 2014, it is my intention to ask the Commission as a whole to direct you, the Manager, along with HR to create the position of Commission Aide with discretionary duties to be approved by the commission as a whole as a confidential and exempt employee to assist the Commission with their charter functions. This position is to be established under the direction of the Commission. This is not an administrative position.

I know you do not to discuss items by e-mail but in order for to place this on the agenda as a commission discussion item I need to have this to you this morning. If needed I will ask Craig to put this in what ever format necessary.

I'm sure you are comfortable with this once you have Craig's opinion and if supported by my fellow commissioners will get this done right away. Fortunately for us this is a role that Dannette can move into.

Regards, Pat