



To: William Ortiz

From: Yaneris Figueroa, Special Counsel to the City of Coral Gables

Approved: 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 word "Approved".

RE: Legal Opinion Regarding Board Member Seeking Appointment As Special Magistrate

Date: August 8, 2013

You have asked me to determine how an existing Code Enforcement Board Member can be appointed as a Special Magistrate for the City's Red Light Camera program. Additionally, you asked me to consider whether Florida's Dual Office Holding restrictions would preclude the appointment. At this point in time, the City's Red Light Camera program is still in a developmental stage. Thus, the exact process by which a Special Magistrate may be appointed has not yet been determined and, therefore, our Office cannot address your concern at this juncture.

With respect to the Dual Office Holding restrictions, it is our Office's opinion that Florida's Dual Office Holding restriction would preclude an individual from serving as both a Code Enforcement Board member and a Special Magistrate. Under Florida law, an individual is not permitted to hold two (2) offices concurrently. Indeed, Article II, Section 5(a) of the Florida Constitution provides that "[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers." Fla. Const. Art. II, § 5(a). Therefore, no one individual is constitutionally permitted to hold more than one office at any time.

In this case, both positions- Code Enforcement Board Member and Special Magistrate-constitute offices. Indeed, the Florida Attorney General has opined that serving as a member of a Code Enforcement Board constitutes holding an Office for Dual Office Holding purposes. Fla. Att' y. Gen. Op. 2010-19 (June 7, 2010). Specifically, the Attorney General, in its June 7, 2010 opinion, stated "service on a code enforcement board also constitutes an office for purposes of the restriction on dual office holding." *Id.* The Attorney General also opined that "service as a special magistrate . . . constitutes an office within the scope of Article II, section 5(a), Florida Constitution." *Id.* Therefore, because one individual cannot hold two offices pursuant to Florida's Dual Office Holding restriction, and because both positions in question constitute offices, an

individual would be precluded from serving simultaneously in both capacities under Florida's Dual Office Holding restriction.

In addition to the Constitutional restrictions outlined above, this Office is also concerned with the individual serving in both capacities because the Special Magistrate's decisions may be reviewed by the Code Enforcement Board. Indeed, Section 101-190(a) of the City's Municipal Code provides that "[h]earings on requests for mitigation of fines shall be before the City's special master, whose decision may be appealed to the code enforcement board, which decision shall be final and binding." City of Coral Gables, Fla. Mun. Code §01-190(a) (2006). Thus, the individual's decision as Special Magistrate could be reviewed by his fellow members of the Code Enforcement Board, thereby, potentially creating additional legal complications.

Therefore, our Office is of the opinion that the individual Code Enforcement Board member is unable to serve simultaneously as a Special Magistrate. Please note, however, that the Code Enforcement Board member may resign from his position on the Board and then serve as a Special Magistrate for the City.

From: Yaneris Figueroa, Special Counsel to the City Attorney's Office
To: William Ortiz, Code Enforcement Director
Re: Code Enforcement Board Member Seeking Appointment as Special Magistrate
Date: August 8, 2013
Approved and Reviewed by: Bridgette N. Thornton Richard, Deputy City Attorney

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Please feel free to contact me should you have any questions and/or concerns.