Community Redevelopment Agency -- Municipality

Number: AGO 2015-05

Date: January 30, 2015

Subject:
Community Redevelopment Agency -- Municipality

Mr. James C. Brady
Arnstein & Lehr LLP
200 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301

Dear Mr. Brady:

As City Attorney for the City of Lauderdale Lakes, you have asked for my opinion on substantially the following questions:

1. May the City of Lauderdale Lakes, through an adopted ordinance, change the Commission of the Lauderdale Lakes Redevelopment Agency from the original Commission adopted pursuant to section 163.357(1), Florida Statutes, to one established under section 163.356(2), Florida Statutes?

2. May the City of Lauderdale Lakes, by ordinance, provide for a seven-member Commission for the Lauderdale Lakes Redevelopment Agency, pursuant to section 163.357(1)(c), Florida Statutes, by appointing one or two additional members to the CRA Commission, in circumstances in which the original seven-member governing body appointed itself as the CFA Commission, but a recent city charter revision reduced the number of the governing body to six (6) members?

In sum:

1. Having exercised its authority to appoint a board of commissioners for the Lauderdale Lakes Redevelopment Agency and having appointed the city commission to serve as the board of that agency, the city has no authority to change the composition of the board of commissioners.

2. Section 163.357(1)(c), Florida Statutes, provides that a governing body which consists of five members may appoint two additional persons to act as members of the community redevelopment agency. The statute does not authorize a governing body of six to appoint any additional persons to the community redevelopment agency.

According to your letter, the City of Lauderdale Lakes established the Lauderdale Lakes Community Redevelopment Agency (the "CRA") in 2000, and appointed the City's seven-member governing body as the CRA's Commission or governing board. In 2013, the Charter of the City of Lauderdale Lakes was revised and beginning with the election of November 2014, the

City's governing body was reduced to six members which resulted in a reduction in the CRA's board to six members. The charter's changes will result in a final reduction in the city's governing body, and the CRA board, in November 2016, when the city's governing body will be reduced to five members. The city is concerned that, with a governing board of six members, the CRA "will find itself hamstrung by tie votes on items of vital business." You have contacted this office for assistance in determining whether the city is authorized to alter the composition of the CRA board.

The Community Redevelopment Act, Part III, Chapter 163, Florida Statutes, was enacted to enable counties and municipalities to eliminate and prevent the development or spread of slums and urban blight, encourage needed community redevelopment, and provide for the redevelopment of slums and blighted areas.[1] Upon making the requisite findings, a county or municipality is authorized to create a community redevelopment agency to carry out the purposes set forth in the act.[2]

The act prescribes with particularity the structural organization and powers of such agencies and the composition, number, and terms of office of the members thereof. Section 163.356(2), Florida Statutes, provides that the governing body of the county or municipality creating the community redevelopment agency shall appoint by ordinance a board of commissioners for the agency "which shall consist of not fewer than five or more than nine commissioners." The governing body of the county or municipality is authorized to remove a commissioner "for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he or she has been given a copy of the charges at least 10 days prior to such hearing and has had an opportunity to be heard in person or by counsel."[3]

As an alternative to the appointment of a board of commissioners, the governing body may declare itself to be a community redevelopment agency through adoption of a resolution.[4] In such cases all rights, powers, duties, privileges, and immunities vested by Part III, Chapter 163, Florida Statutes, in the community redevelopment agency are vested in the governing body of the municipality.[5] Section 163.357(1)(b), Florida Statutes, provides:

"The members of the governing body shall be the members of the agency, but such members constitute *the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality*. If the governing body declares itself to be an agency which already exists, the new agency is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency." (e.s.)

According to your letter, the City Commission of the City of Lauderdale Lakes has exercised this option and designated itself to be the community redevelopment agency.

In Attorney General Opinion 84-74, this office concluded that a city commission was not authorized to alter the composition of a community redevelopment agency or to increase or decrease the number or ratio of its members, given the specific statutorily prescribed organization and powers of these agencies.[6] That opinion required consideration of whether a city commission, if it declared itself to be the community redevelopment agency pursuant to section 163.357(1), Florida Statutes, was authorized to alter the composition of the board of commissioners of the agency by changing the ratio or number of city commissioners and citizens

sitting on the board from that prescribed in the statute. In response to that question, the opinion concluded that the governing body of a municipality in establishing a community redevelopment agency pursuant to Part III, Chapter 163, Florida Statutes, the Community Redevelopment Act of 1969, as amended, does not have the authority to alter the composition of the board of commissioners of the community redevelopment agency from that prescribed by statute.

In a later opinion of this office, Attorney General Opinion 89-60, the question presented was whether a city council member who served as a member of the community redevelopment agency established pursuant to Part III, Chapter 163, Florida Statutes, could resign as a member of the community redevelopment agency. The city council in that request had designated itself as the board of commissioners of the CRA. After reviewing the provisions of Part III, Chapter 163, Florida Statutes, prescribing with particularity the structural organization and powers of such agencies and the composition and number of its members and their terms of office, it was concluded that no provision of Part III, Chapter 163, Florida Statutes, granted an individual member of the governing body of a municipality, the discretion or option of whether to serve as a member of that board. As the Attorney General Opinion notes:

"The authority of public officers to proceed in a particular way or under specific conditions implies a duty not to proceed in any other manner than that which is authorized by law.[7] Therefore, it appears that an individual would not be authorized to resign from one office and not the other. The two positions work in tandem; to be a member of the city council entails being a member of the board of commissioners of the redevelopment agency. Once the governing body has elected to serve as the board of commissioners for the community redevelopment agency, the individual members of the governing body of the municipality would appear to be bound by such an election."

Similarly, the City of Lauderdale Lakes elected in 2000 to appoint itself as the Commission for the Lauderdale Lakes Redevelopment Agency pursuant to section 163.357(1)(a), Florida Statutes. Nothing in section 163.357, Florida Statutes, authorizes the city to alter this election or to modify the composition of the board outside the scope of the statute. Section 163.357(1)(c), Florida Statutes, does provide a municipal governing body of five members which has appointed itself as the CRA board, the discretion to appoint two additional persons to act as members of the CRA. No authority is extended by the statute to act otherwise.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* s. 163.335, Fla. Stat., setting forth the legislative findings and declarations of necessity.

[2] *See* ss. 163.355 and 163.356, Fla. Stat., providing for the finding of necessity by the county or municipality and the creation of the community redevelopment agency.

[3] Section 163.356(4), Fla. Stat.

[4] Section 163.357(1)(a), Fla. Stat.

[5] *See* s. 163.357(1)(b), Fla. Stat., providing:

"The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality. If the governing body declares itself to be an agency which already exists, the new agency is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency."

[6] *Citing First Nat. Bank of Key West v. Filer*, 145 So. 204, 207 (Fla. 1933) (authority of public officers to proceed in a particular way or only upon specific conditions implies a duty not to proceed in any other manner than that which is authorized by law); *and see, e.g.,* Ops. Att'y Gen. Fla. 98-16 (1998) (city commission serving as governing body of CRA cannot remove one of its members only from CRA nor may member resign from CRA while still retaining seat on city commission); 91-49 (1991) (city commission declaring itself to be CRA is a separate, distinct and independent legal entity, chairman and vice chairman of which are designated by city commission); 89-60 (1989) (member of governing body of municipality not authorized to resign from CRA board where governing body of municipality has designated itself as head of agency pursuant to s. 163.357, Fla. Stat.)

[7] *First National Bank of Key West v. Filer*, 145 So. 204, 207 (Fla. 1933) (where the Legislature has prescribed the mode, that mode must be observed). *And see* Op. Att'y Gen. Fla. 84-74 (1984) (municipal governing body in establishing community redevelopment agency does not have authority to alter composition of board of commissioners of agency from that prescribed by statute). *Cf.* Op. Att'y Gen. Fla. 84-56 (1984) (where Legislature has prescribed term and cycle of membership of governing body of municipal housing authority, municipality has no authority to alter such terms); Op. Att'y Gen. Fla. 78-115 (1978).