Community Redevelopment Agency

Number: INFORMAL

Date: February 28, 2017

February 24, 2017

Ms. Kimberly L. Rothenburg
City Attorney
City of West Palm Beach
Post Office Box 3366
West Palm Beach, Florida 33402-3366

Dear Ms. Rothenburg:

On behalf of the West Palm Beach Community Redevelopment Agency (CRA), you ask for assistance in determining the mayor's role as a member of the agency's governing board. Your question arises when considering that the city's charter authorizes the mayor to veto legislative actions of the city commission and as the executive head of the city to select designated department heads.

In sum, the mayor's veto authority is a substantive power granted by the city charter affecting legislative action taken by the city commission and is not applicable to actions taken by the governing board of the community redevelopment agency, a separate and distinct governing entity. The ability of the mayor, as a member of the CRA board, to select the executive director for the agency would require an interpretation of the agency's bylaws or other actions taken by the CRA board and is not dependent upon or directed by the mayor's authority under the city charter.

As discussed by this office in Attorney General Opinion 2015-05, a city's governing board, having exercised its authority to appoint itself as the governing board of the city's community redevelopment agency, has no authority to change the composition of the board. The opinion contains a detailed discussion of the Community Redevelopment Act, part III, Chapter 163, Florida Statutes, specifically highlighting section 163.357(1)(b), Florida Statutes:

"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.)

Moreover, section 163.357(1)(a), Florida Statutes, states that when the governing body of the city declares itself to be the CRA board, "all the rights, powers, duties, privileges, and immunities *vested by this part* in an agency will be vested in the governing body of the county or municipality[.]" (e.s.) Thus, the powers of a CRA governing board and any limitations thereon are prescribed by the statute and do not arise from the city's charter.

In the present situation, you relate that the city commission of West Palm Beach has appointed itself as the governing board of the CRA. While this office does not interpret the charter provisions of a city, under the charter, the mayor is recognized as a voting member of the city commission only for the purpose of breaking a tie vote.[1] The mayor is also given "power to veto legislation within forty-eight (48) hours after the adjournment of any city commission meeting."[2]

As noted above, however, the members of the city commission are not functioning in their role as city commissioners or passing legislation subject to veto when performing duties as members of the CRA – a legal entity, separate, distinct, and independent from the governing body of the municipality. The statute prescribes that "[a]ction may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number."[3] Much like the inability of the city to change the composition of the governing board of the CRA prescribed by the Community Redevelopment Act, it would be beyond the authority of the city to alter the powers and duties of the CRA members or to allow the mayor's veto power over city legislation to be insinuated into the mayor's role as a member of the governing board of the CRA.

Where the Legislature has prescribed the manner in which something is to be done, it by implication prohibits its being accomplished in another manner.[4] Moreover, while you indicate that the bylaws of the CRA provide for the agency to operate under the Rules of Procedure of the city commission, the mayor's veto power over city legislation is a substantive power arising from a specific grant of authority in the city's charter and would not alter the substantive powers granted to the governing board in the Community Redevelopment Act.

Section 163.356(3)(c), Florida Statutes, requires that the governing body of a county or municipality designate a chair and vice chair from among the commissioners of a CRA. The statute further authorizes the CRA to "employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it requires, and determine their qualifications, duties, and compensation." While you have posited that the mayor's authority under the city charter to hire or appoint departmental heads provides the authority for the appointment of the CRA's executive director, as discussed above, the city's charter does not control the actions of the CRA.

I trust these informal comments will be of assistance to you in the resolution of this matter.

Sincerely,

Lagran Saunders
Director
Opinions Division

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[1] Section 3.01. – Mayor, West Palm Beach, FL Code of Ordinances.

[2] Section 3.02. – Mayor's veto power, West Palm Beach, FL Code of Ordinances.

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

[4] *See Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944) (where Legislature prescribes the mode, that mode must be observed; express statutory direction as to how a thing is to be done is implied prohibition of its being done in any contrary manner).