

LAW OFFICE OF WILLIAM DOUGLAS MUIR

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VIA E-MAIL

Office of the City of Miami Attorney
3500 Pan American Drive
Miami, FL 33133

Dear City Attorney:

The City of Miami Commission has passed resolutions in derogation of the public's substantive right to compete for the sale or lease of public land in relation to the development of the City-owned Melreese property, however those resolutions cannot become law under the organic terms of the Florida Constitution. With respect to the City of Miami taxpayer, I would request that the City comply with the terms of its charter, and the Florida constitution. The granting of special privileges to individual private entities by passage of special laws prohibited by the Florida constitution is an unconstitutional practice which the City should not be wasting taxpayer money defending in Court.

R.E. 9 and R.E. 10 passed by the City Commission are special laws granting a privilege to Miami Freedom Park, LLC, prohibited by Fla. Const. Art. 3, § 11(a)(10) and (12)

Florida's Constitutional prohibition against special laws that grant a privilege to a private corporation acts as a limitation on the legislative power of the City Commission. Fla. Const. Art. 3, § 11(a)((12)) (1968). *See also*: Fla. Const. Art. 3, § 11(a)((10)). A "special law" is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is

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illegal.” Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 511 n. 10 (Fla. 2008)(“*See Black’s Law Dictionary*[citation omitted] defining “privilege” as “[a] special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty”); *Merriam-Webster’s Collegiate Dictionary* [citation omitted] defining the word “privilege” as “a right or immunity granted as a peculiar benefit, advantage or favor.”

In interpreting the City of Miami Charter and the Code of Ordinances, the analysis is straightforward. The City Attorney has a duty to enforce the rights belonging to the public which are clearly and certainly established in law. Beginning with the explicit language of Section 29, the City Charter provides in part:

(b) Sales and leases of real property; prohibition. ***Except as otherwise provided in this section, there shall be no sale, conveyance, or disposition of any interest, including any leasehold, in real property owned by the city, the department of off-street parking, or the downtown development authority, unless there has been prior public notice and a prior opportunity given to the public to compete for said real property or interest.*** Any such sale, conveyance, or disposition shall be conditioned upon compliance with: the provisions of this section; such procurement methods as may be prescribed by ordinance; and any restrictions that may be imposed by the city, the department of off-street parking, or the downtown development authority, as appropriate. ***Further, no right, title, or interest shall vest in the transferee of such property unless the sale, conveyance, or disposition is made to the highest responsible bidder, as is determined by the city commission, or the off-street parking board, or the downtown development authority board of directors.***

Further, Chapter 18, Article V of the City of Miami code of ordinances provides:

[Chapter 18, ARTICLE V.](#) - SALE OR LEASE OF CITY'S REAL PROPERTY

Sec. 18-176. - Methods and procedures for sales and leases.

(a) Any sale, conveyance or disposition of any interest, including any leasehold in real property, owned by the city, the off-street parking department, or the downtown development authority shall be made in the manner set forth in this article, and said sale, conveyance or disposition shall be conditioned upon compliance with the provisions of this article V. (Emphasis added.)

[Section 18-177](#) requires competitive sealed bidding or public notice inviting bids in order to allow potential purchasers to compete, with mandatory notice inviting bids:

Sec. 18-177. - Competitive sealed bidding.

(a) Conditions for use. **Competitive sealed bidding shall be used in those circumstances in which it is practicable and advantageous for the city to specify all detailed plans, specifications, standards, terms and conditions relating to a property interest already owned by the city or to be acquired and disposed of by the city, so that adequate competition will result and award may be made to the highest responsible and responsive bidder. In all other instances there shall be a public notice required prior to the sale or disposition of city-owned property in order to allow potential purchasers to compete.**

(b) Invitations for bids. An invitation for bids shall include, but not be limited to, all relevant items stipulated in section 18-79(b), as well as all information necessary to describe the particular property interest owned or to be acquired and disposed of, including any conditions or restrictions upon the use of such property.

(c) Public notice. Notice inviting bids shall be in accordance with the provisions of section 18-79(d).

(d) Prebid conferences. Prebid conferences to discuss the contemplated purchase or disposition of property interest may be held in accordance with provisions of section 18-79(e).

(e) Bid opening. Bid opening shall be in accordance with the provisions of section 18-79(f).

(f) Bid acceptance and evaluation. Bid acceptance and evaluation shall be in accordance with the procedures established by the chief procurement officer.

(g) Award. The city manager shall submit recommendations as to the award to the city commission, which may reject all bids. **The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive bidder whose bid offers the city the highest total compensation from the proposed sale, lease, conveyance or other disposition, as the case may be.** The decision of the city commission shall be final. All contracts shall be approved as to form and correctness by the city attorney, and a copy shall be filed with the city clerk. (Emphasis added).

The City and its officers are not at liberty to ignore words that are expressly placed in the Charter, and the City of Miami code of ordinances. Resolution R.E. 9 and R.E. 10 is a “special law” prohibited by the Florida Constitution, violating Article III, section 11(a)(10, 12) of the Florida Constitution. With respect to the City’s position on this constitutional question, I would request a response in writing as soon as possible from its attorneys, as I believe I have made my

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position clear and ask the City Attorney to take action, so that this unconstitutional resolution is not placed on the November ballot.

Very Truly Yours,

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BY: *William Douglas Muir*
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CC: John A. Greco, Deputy Deputy City Attorney
Christopher A. Green, Division Chief for Litigation and Appeals