



To: Commissioner Patricia Keon

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

A handwritten signature in blue ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Business Improvement District

Date: August 5, 2016

You have asked me substantially the following question, does the City take a regulatory or legal position that the Business Improvement District is subject to the Sunshine Law. The answer is no. The City has never taken the position that the BID is subject to the Sunshine Law. I would note that it is my understanding that the BID also did not operate under the Sunshine Law for many years, and this disputed issue has only recently arisen. I would also note that I am providing the City's legal position as to whether it would require the BID to comply with the Sunshine Law as a regulatory matter in the City's interactions with the BID. The BID is an organization that should consult its own legal counsel as to the position it will take on this matter.

I would note as an initial matter that I have reviewed the resolutions relating to the BID, and that the City has not affirmatively placed any requirement on the BID to comply with the Sunshine Law. This is the opposite situation of the affirmative imposition of the Sunshine Law by the City of Miami on the Wynwood Business Improvement District:

<http://egov.ci.miami.fl.us/Legistarweb/Attachments/82028.pdf>. I would also note that the Wynwood Improvement District Board is expressly delegated governmental functions and authority by law. Here, the City of Coral Gables did not delegate these types of powers to the BID. This brings me to an analysis of other authority, and particularly the Government in the Sunshine Manual, which is a compilation of authority on the subject including court decisions and Attorney General Opinions.

Private organizations are generally not subject to the Sunshine Law. Government in the Sunshine Manual, Attorney General's Office ("Manual") at p. 7. The Manual addresses economic development organizations, indicating that the dispositive question is whether they have been delegated governmental functions (if yes, they are generally subject to the Sunshine Law in the performance of that function; if no, they are not). Id. at 9. I have reviewed the City's resolutions addressing the Bid special assessment and do not see any delegation of the City's governmental functions. The City consults the BID on certain business-related matters, as it consults the

Chamber of Commerce, but there is no question that the BID represents its business members in these consultations and is not acting on behalf of or as an advisory board of the City.

There is also a multi-factor test that is applied to determine whether a private organization is subject to the Sunshine Law. This test comes from the Florida Supreme Court and has been described by the Attorney General as follows:

"Totality of factors" test

The factors identified by the Florida Supreme Court include the following:

- 1) the level of public funding;
- 2) commingling of funds;
- 3) whether the activity was conducted on publicly-owned property;
- 4) whether the contracted services are an integral part of the public agency's chosen decision-making process;
- 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- 6) the extent of the public agency's involvement with, regulation of, or control over the private entity;
- 7) whether the private entity was created by the public agency;
- 8) whether the public agency has a substantial financial interest in the private entity;
- 9) for whose benefit the private entity is functioning

See A.G. Informal Opinion to Mr. V. James Dickson, 2014 WL 7474848, at *2 (Fla. A.G. Dec. 31, 2014) (describing nine factor test and indicating that central issue is whether the government entity has delegated its governmental or legislative functions to the private organization); see also *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 569 So. 2d 1029, 1031 (Fla. 1992) (establishing nine factor test).

In my opinion, from the information I have reviewed, a majority of these factors support the BID being a private entity that is not subject to the Sunshine Law (#2, 3, 4, 5, 6, 8, and 9).

Ultimately, the BID Board of Directors is composed of business people in the community acting for the economic interests of their fellow businesses. It would make sense that these business people could speak about their business matters outside of public meetings. The purpose of the Sunshine Law, to ensure that governmental decisions are made by collegial bodies in the Sunshine, does not seem implicated here, particularly when combined with the fact that this has been the standard of practice by the BID for many years until the recent dispute.

Once again, I would emphasize that this is the City's regulatory and legal position, which is issued pursuant to section 2-201(e)(1) and (8) of the City Code in response to your question, and that the BID should consult legal counsel to determine its own position.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Cc: [Ramos, Miriam](#); [Suarez, Cristina](#)
Subject: FW: BID
Date: Friday, August 05, 2016 4:38:28 PM

Please publish.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
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City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
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Email: cleen@coralgables.com

-----Original Message-----

From: Leen, Craig
Sent: Friday, August 05, 2016 4:37 PM
To: Keon, Patricia
Cc: Ochoa, Martha
Subject: RE: BID

Commissioner Keon,

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-----Original Message-----

From: Keon, Patricia

Sent: Thursday, July 28, 2016 12:11 PM

To: Leen, Craig; Ochoa, Martha

Subject: BID

Please send me the opinion you wrote on the the BID and the SunShine at my request the beginning of July.

Sent from my iPhone

Commissioner Keon