

## LETTER OF INSTRUCTION



**To:** City of Miami Beach Commissioner Edward Tobin  
**From:** Miami-Dade County Commission on Ethics and Public Trust  
**Date:** October 2013  
**Re:** C 13- 03 (Vazquez v. Tobin)

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A complaint was filed against Respondent, Edward Tobin (Tobin), a City of Miami Beach Commissioner which alleged, among other things, that Tobin exploited his official position by improperly inserting himself into the administrative affairs of the City in contravention of the City Charter, specifically concerning the selection of the Chief of Police. On August 8, 2013, the Ethics Commission found no probable cause to sustain the complaint and dismissed it. However, pursuant to Section 2-1074 (s) of the Ethics Commission's enabling ordinance, the Ethics Commission determined that issuing a Letter of Instruction is appropriate.

Wherefore, the Miami-Dade County Commission on Ethics and Public Trust does hereby issue this Letter of Instruction to City of Miami Beach Commissioner Edward Tobin.

Pursuant to the City's Charter, Section 1.01, the City of Miami Beach is a Commission-City Manager form of government.

**Sec. 1.01. - Corporate existence; form of government; Charter.**

“The City of Miami Beach (hereafter "City") in Dade County, Florida, which was created by the Florida Legislature, shall continue as a municipal corporation with a Commission-City Manager form of government as provided herein and with this document as the Charter for the City.”

Section 4.02. of the City's Charter provides for the functions and powers of the City Manager:

Sec. 4.02. - City Manager—Functions and powers.

“The City Manager shall be the chief executive officer and head of the administrative branch of the City government. Except as specifically provided otherwise in this Charter, the City Manager shall be responsible

to the City Commission for the proper administration of all affairs of the City.”

Subsections (b) and (j) of Section 4.02. delineate that it is the City Manager’s responsibility to appoint department directors and that the Manager has supervision and control over the heads of departments.

“(b)To appoint all directors of the several departments now existing, or to be created, with the consent of the City Commission, and to remove the same at will, except for the Legal Department and the City Clerk's Office.”

“(j) The City Manager shall account to the City Commission for the conduct and acts of the several departments now existing, or hereafter to be created, and he/she shall have supervision and control of the heads of the said departments, and such heads as appointed by the City Manager shall be accountable to the City Manager for the conduct and acts of their departments, except for the Legal Department and the City Clerk's Office.”

Typically, under the commission-manager form of government, the City Manager functions as the chief executive of the government organization. Like a private sector CEO does for a company, the City Manager oversees the day-to-day operations of the city and serves as the chief advisor to the city council. In directing daily operations of the city, the Manager is responsible for ensuring effective and efficient government service. Every city employee ultimately answers to the City Manager, so the Manager has the right to hire and fire staff as appropriate and allowable by law. The City Commission, in this type of government, is the legislative body for the city. Its role is to adopt laws and policies to govern the city. The Commission leaves implementation of the policy up to the city manager and the rest of the city staff. It should be underscored that under Section 4.02 of the City Charter, it is the City Manager who has the power to appoint department heads, including the Chief of Police. The Commission’s role is limited to voting for or against that appointment. Intrusive actions by a member of the Commission into the mechanics of the appointive process violate the spirit of the City Charter and undermine public trust in the integrity of the appointive process.

The Ethics Commission’s investigation into the complaint showed that Tobin openly supported former Bal Harbour Police Chief Tom Hunker (Hunker), to be the chief of the Miami Beach Police Department.

According to the former City Manager, the process for selecting the Chief of Police is that the Manager and his staff advertise the position, collect resumes, interview

applicants and then, make a selection. That selection must be ratified by the City Commission. Under the City's Charter, the Manager is responsible for the appointment of all department directors. The Chief of Police is a department director.

The Ethics Commission, in dismissing the complaint against Tobin, acknowledged that Commissioners, as well as every other citizen of Miami Beach, have a right to provide information, suggestions and recommendations about police chief candidates. It was also determined that the selection process for police chief was not covered by the City's "Cone of Silence"- which restricts the intervention by elected officials on the procurement process or by any prohibition on "ex parte" contact between an elected official and a selection committee member.

We issue this Letter of Instruction for three reasons: First, to remind Commissioner Tobin that the City's Charter clearly delineates the distinct duties and responsibilities of City Commissioners and the City Manager.

Second, we strongly suggest that the City adopt an ordinance clearly establishing the parameters of the legislative role in the appointive process with appropriate remedies for violations. The job advertisement and national search for a police chief ought to be a fair process. The public's trust is diminished when it appears that obtaining a highly responsible government job depends less on the qualifications of the best candidate and more on which candidate has the best connections to the seat of power. The willingness of those connections to manipulate the process behind the scenes can create an appearance of impropriety in the selection process.

Finally, by issuing this Letter of Instruction, we hope to educate all elected officials. We hope that Commissioner Tobin will find this Letter of Instruction helpful and use it as guide in the future.

All persons subject to the jurisdiction of the Miami-Dade County Commission on Ethics and Public Trust are encouraged to seek opinions from the Ethics Commission whenever they have a question regarding the appropriateness of their conduct or the applicability of the ethics code.