



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 5, 2020

Mr. Don Lazarus
Chairman, Civil Service Commission Board
City of McComb
Post Office Box 766
McComb, Mississippi 39649

Re: Civil Service Commission

Dear Chairman Lazarus:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

Does Miss. Code Ann. Section 21-31-1, *et seq.* supersede the Special Charter of the City of McComb regarding the police chief's right to civil service protection?

Brief Response

If the police chief is a full paid employee, the governing authorities of the City of McComb may not remove the civil service protection afforded to him/her by Miss. Code Ann. Sections 21-31-1, *et seq.*, including the right to request a hearing before the Civil Service Commission.

Applicable Law and Discussion

We reference our previously issued opinion to the Civil Service Commission for the City of McComb, in which we stated the governing authorities of the City of McComb could not remove the civil service protection afforded to the fire chief by Miss. Code Ann. Sections 21-31-1 through 21-31-27. *See*, MS AG Op., *Lazarus* (February 15, 2019).

The civil service system established by Miss. Code Ann. Sections 21-31-1 through 21-31-27 is mandatory and was intended to cover the employees of the fire and/or police departments of those municipalities coming within its purview. *City of Laurel v. Samuels*, 469 So.2d 530 (Miss. 1985).

Mr. Don Lazarus

June 5, 2020

Page 2

In *Quinn v. City of McComb*, the Mississippi Supreme Court stated that, “Section 88 of the Constitution is no obstacle, because in *McClure v. City of Natchez*, 151 Miss. 718, 118 So. 616 (1928), and the authorities there cited, it was held that the Legislature may amend the charters of municipalities, operating under special charters, by a general law applying to all municipalities.” 212 Miss. 730, 738 (1951); *see also*, MS AG Op., *Sullivan* (October 19, 2011); MS AG Op., *Turnage* (March 23, 2012).

Section 21-31-1 of the Mississippi Code Annotated provides, in relevant part:

- (1) A civil service commission is created in every municipality described in subsection (2) which has a full paid fire and police department.
- (2) The provisions of subsection (1) of this section shall apply to:

(g) Any municipality having a population of more than ten thousand (10,000) according to the federal census of 1970, which is located within a Class 1 county in which U.S. Highway 51 and U.S. Highway 98 intersect and bounded on the south by the State of Louisiana . . .

While special charter provisions generally prevail over provisions of general municipal law, the Mississippi Legislature has made the civil service provisions of Section 21-31-1 *et seq.* specifically applicable to the City of McComb via Section 21-31-1(2)(g). Therefore, the Legislature has amended the McComb Special Charter to place the full paid police and fire department employees, including the chiefs, under the cited statutory civil service provisions. Chapter 31, Title 21 is, therefore, controlling over the provisions of Section 6 of the McComb Special Charter. *See* MS AG Op., *Gaylor* (December 15, 2006).

As to the coverage afforded by the civil service system, Section 21-31-13 specifically requires that coverage be afforded to “all full paid employees of the fire and/or police departments of each municipality coming within its purview, including the chiefs of those departments.” If the police chief is a full paid employee of the police department, the City of McComb must provide civil service coverage based upon the express requirement of coverage for chiefs of the fire and police departments contained in Section 21-31-13. Thus, the municipal governing authorities may not remove civil service coverage from the position of a full paid police chief.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Kim Turner*

Kim Turner
Assistant Attorney General