



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

May 14, 2020

The Honorable Joel R. Carter, Jr.
Mississippi Senator, District 49
Post Office Box 1300
Gulfport, Mississippi 39502

Re: Appointment of Executive Director of the Mississippi Public Utilities Staff

Dear Senator Carter:

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

Questions Presented

Is the Executive Director of the Mississippi Public Utilities Staff a fixed-term position?

Is a Legislator eligible to be considered for appointment to the Executive Director of the Mississippi Public Utilities Staff?

Brief Response

The Executive Director of the Public Utilities Staff is a fixed, six-year term position pursuant to Miss. Code Ann. Section 77-2-7.

A Legislator may be considered for the appointment of the Executive Director of the Public Utilities Staff provided he/she satisfies the statutory requirements of the position as set forth by Miss. Code Ann. Section 77-2-7(2).

A separate advisory opinion should be requested of the Mississippi Ethics Commission in order to determine whether an appointment of a member of the Legislature would violate Section 109, Miss. Const. of 1890 or Mississippi ethics statutes, specifically Miss. Code Ann. Section 25-4-105(2).

Background Facts

By an amendment to the Public Utilities Act, the Legislature created the Mississippi Public Utilities Staff, an independent agency, entirely separate from the Public Service Commission. Section 77-2-7 created the position of the Executive Director of the public utilities staff, who, by this statute, is directed to “establish the organizational structure of the staff” and afforded “the authority to create units as deemed appropriate to carry out the responsibilities of the staff.”

Pursuant to Section 77-2-7(1), the Executive Director of the Public Utilities Staff is appointed by the Governor, from recommended candidates selected by the Public Service Commission, with the advice and consent of the Senate, to serve for a term of six years. The statute further provides that “[t]he executive director shall serve at the will and pleasure of the Governor.”

Based upon a factual clarification provided by a telephone conversation subsequent to our receipt of your request, it is our understanding that if a member of the Legislature was appointed to the position of Executive Director that person would resign his/her legislative seat so as to avoid a violation of the separation of power doctrine.

Legal Analysis

Miss. Code Ann. Section 77-2-7(1), which creates the position of the Executive Director of the Public Utilities Staff, states as follows:

An executive director of the public utilities staff shall be appointed, on or before July 1, 1990, by the Governor, from recommended candidates to be selected by the Public Service Commission, with the advice and consent of the Senate, to serve for a term of six (6) years. On or before May 15, 1990, the Public Service Commission shall submit to the Governor a list of not less than three (3) and no more than six (6) qualified candidates for the position of executive director. The Governor shall appoint the executive director from the list of qualified candidates nominated. Within sixty (60) days prior to the expiration of the term of the executive director, the Public Service Commission shall submit the names of candidates to the Governor in the manner provided herein. Whenever any vacancy shall occur in the position of executive director the Public Service Commission shall nominate and the Governor shall appoint an executive director, as provided herein, to fill the unexpired term. The executive director shall serve at the will and pleasure of the Governor.

This office has previously opined that,

[o]nce an appointment has been made to public office, then the appointee acquires a definite term of office either by operation of a specific statute or operation of the general provisions of Section 25-1-1, Mississippi Code of 1972. Absent statutory or constitutional provision for removal at the will and pleasure of the appointing authority, the appointed officer acquires a term subject only to the applicable

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statutory or constitutional provision of removal or impeachment, or otherwise created vacancy.

MS AG Op., *Finch* (October 24, 1985); MS AG Op., *Walters* (December 3, 1999)(once appointed, a member of the port authority serves for a term of four years and can only be removed pursuant to a specific statutory provision).

Section 77-2-7(1) clearly states that the Executive Director of the Public Utilities Staff shall serve for a term of six years. Previous appointments to the position of Executive Director have been confirmed by the Mississippi Senate for a definite term of six years.¹ Thus, it is the opinion of this office that the appointed position of the Executive Director of the Public Utilities Staff is a fixed-term position pursuant to Miss. Code Ann. Section 77-2-7(1).

A sitting Legislator may be considered for appointment to the position of Executive Director of the Public Utilities Staff provided he/she satisfies the statutory requirements of the position as set forth by Section 77-2-7(2). As the fact pattern presented indicates that the Legislator would resign his/her seat prior to accepting an appointment to this position, we have no reason to opine on the question of whether the separation of powers doctrine is violated by the simultaneous holding of both a seat in the Legislature and the position of Executive Director.

Whether a former Legislator could be appointed to this position immediately or must wait one year after resigning his/her seat in the Legislature is a determination which must be made by the Mississippi Ethics Commission, as it is dependent upon an interpretation of Section 109, Miss. Const. of 1890 and Miss. Code Ann. Section 25-4-105(2).

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 P. Turner

Kim P. Turner

¹ See 2014 Mississippi Senate Nomination Number 57, “Virden Cameron Jones, Madison, Mississippi, Executive Director of the Mississippi Public Utilities Staff, six year term beginning July 1, 2014 and ending June 30, 2020” and 2009 Mississippi Senate Nomination Number 40, “Robert Guinn (Bobby) Waites, Brandon, Mississippi, Executive Director of the Public Utilities Staff, six year term beginning July 1, 2008 and ending June 30, 2014.”