



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 31, 2020

Aelicia L. Thomas, Esq.
Attorney for the Town of Pace
Post Office Box 912
Rosedale, Mississippi 38769

Re: Mayor's Compliance with Board Orders

Dear Ms. Thomas:

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

Questions Presented

If the Board of Aldermen moves, obtains a second and approves specific action to be taken by the Mayor, such as ensuring a municipal employee appears at the next Board meeting, does the Mayor have the right to disregard this order?

What action, if any, can the Board of Aldermen take against the Mayor for his willful refusal to carry out the Board's orders?

Can the City Clerk call the City Attorney or Aldermen and inform them that the Board is asking her to do things that directly goes against the Board's orders?

If the Board ordered a reduction in the Mayor's salary, can the Mayor give the City Clerk orders to write his paycheck for the amount he was receiving instead of the new salary amount?

Brief Response

Pursuant to Miss. Code Ann. Section 7-5-25, opinions of the Attorney General are issued upon questions of law for the future guidance of those officials entitled to receive them, relevant to their respective duties.

An Attorney General's opinion can neither validate nor invalidate past action of the municipal governing authorities. Therefore, this opinion is prospective in nature and cannot address those actions which already may have occurred.

While Aldermen are entitled to information necessary to enable the Board to perform its legislative duties, ordering the Mayor to ensure the attendance of a particular employee at a Board meeting is not the appropriate method for acquiring such information. Further, such an order directing the Mayor of a code charter municipality to produce a particular employee to appear at the next Board meeting appears to be an encroachment upon the executive powers of the Mayor and not an exercise of the legislative powers of the Board of Aldermen. Any attempt by the Board of Aldermen to exercise executive powers of the municipality would result in a separation of powers doctrine violation.

If an elected official fails to perform his or her duties as required by an ordinance lawfully adopted by the Board of Aldermen in full compliance with Miss. Code Ann. Section 21-3-15(2)(b), the Town may seek a writ of mandamus pursuant to Miss. Code Ann. Section 11-41-1 from a court of competent jurisdiction to force compliance. MS AG Op., *Barton* (June 17, 2016).

Absent municipal policy to the contrary, we find no restrictions with whom a city clerk may communicate regarding his/her duties or municipal grievances.

If a Mayor's salary has been lawfully reduced, the Mayor would not have the authority to direct the City Clerk to write his/her paycheck for the amount he/she previously received instead of the newly adjusted salary.

Applicable Law and Discussion

Pursuant to Miss. Code Ann. Section 21-3-15, the Mayor of a code charter municipality exercises the executive power of the municipality and the Board of Aldermen exercises the legislative power of the municipality. The Mayor is the chief executive officer of the municipality and has superintending control of all the officers and affairs of the municipality. MS AG Op., *Hardin* (May 10, 1990). The Board of Aldermen is the legislative branch of municipal government and its duties involve the passing of ordinances, orders and resolutions which govern the operation of municipal government. MS AG Op., *Wakeland* (June 21, 2019); MS AG Op., *Buckhaults* (June 18, 1996).

A Mayor is required by law to enforce lawfully enacted ordinances, resolutions, and orders of the Board of Aldermen pursuant to Section 21-3-15. MS AG Op., *McCaughn* (November 20, 2009). However, a Board of Aldermen may not enact orders that usurp the executive powers of the Mayor. While we cannot opine upon whether the order in question was adopted in full compliance with Section 21-3-15 as such is a question of fact, an order directing the Mayor of a code charter municipality to produce a particular employee to appear at the next Board meeting appears to be an encroachment on the executive powers of the Mayor and not an exercise of the legislative powers of the Board of Aldermen. Any attempt by the Board of Aldermen to exercise executive powers of the municipality would result in a separation of powers doctrine violation. MS AG Op., *Carouthers* (June 28, 2019).

We have consistently opined that Aldermen are entitled, without charge, to reasonable access to information required to perform the duties of the office and may request that such information is provided to them in a reasonable and timely manner. MS AG Op., *Bailey* (April 24, 2015); MS AG Op., *Custom* (May 29, 2012); MS AG Op., *Haney* (March 9, 2007); MS AG Op., *Owens* (March 3, 2000). Because an alderman has a duty to inform himself to the best of his ability on matters that relate to the conduct of municipal business, he is entitled to the information, regardless of the approval of the Mayor, and “should insist on access to any records or information which are necessary in carrying out the duties of office of an alderman ...” MS AG Op., *Gilmore* (November 9, 2012); MS AG Op., *St. Pe’* (April 29, 2011); MS AG Op., *Miller* (December 28, 2009).

While Aldermen are prohibited from “directing” municipal employees, Aldermen may request information directly from municipal department heads and employees without having to consult with the Mayor. MS AG Op., *Carroll* (November 14, 2016); MS AG Op., *Anderson* (September 9, 2011); MS AG Op., *Jones* (September 19, 2003). Certainly, there is no prohibition barring Aldermen from inquiring about municipal issues within municipal departments or listening to municipal employees discuss existing problems within their departments and then addressing the matter at a meeting. MS AG Op., *Miller* (March 5, 2010). In fact, an Alderman may observe the operation of a municipal department for the purpose of reporting to the entire Board, provided the alderman is not involved in the daily operation of the department and is not making administrative decisions for the department. MS AG Op., *Hurt* (October 13, 2006); MS AG Op., *Croft* (August 26, 2005); MS AG Op., *Via* (December 10, 2004); MS AG Op., *Moore* (February 14, 1997).

However, a Mayor of a code charter municipality, in order to eliminate disruption in municipal business, may direct his employees to continue working on scheduled assignments provided that such direction is not for the purpose of denying Aldermen access to municipal information. MS AG Op., *St. Pe’* (October 19, 2018). While a Mayor has the authority to give directives to the municipal employees or department heads regarding their duties, to the extent a directive adversely impacts the ability of the legislative branch to obtain information necessary to make decisions and to carry out the business of the city, such would be contrary to the statutory scheme set out for the Mayor/alderman form of government. MS AG Op., *Goddard* (June 16, 2006).

Based upon the above and foregoing, we are of the opinion that, while Aldermen are entitled to information necessary to enable the Board to perform its legislative duties, ordering the Mayor to ensure the attendance of a particular employee at a Board meeting is not the appropriate method for acquiring such information.

In answer to your second question, if an elected official fails to perform his or her duties as required by an ordinance lawfully adopted by the Board of Aldermen in compliance with Section 21-3-15(2)(b), the Town may consider seeking a writ of mandamus pursuant to Section 11-41-1 from a court of competent jurisdiction to enforce compliance. MS AG Op., *Barton* (June 17, 2016).

In answer to your third question, we find no restriction as to whom a city clerk may communicate regarding his/her duties or municipal grievances, absent municipal policy to the contrary.

In answer to your fourth question, a Board of Aldermen may reduce or increase the salary of a Mayor during his/her term of office, provided the salary is set in good faith and is not arbitrary and unreasonable when considered with the municipal resources and duties of the office. MS AG Op.,

Aelicia L. Thomas, Esq.

July 31, 2020

Page 4

Guy (March 30, 2012)(citing *Alexander v. Edwards*, 71 So.2d 785 (Miss. 1954)); MS AG Op., *Holder* (November 29, 2010); MS AG Op., *Bradley* (July 10, 2006); MS AG Op., *Polston* (May 18, 1995); MS AG Op., *Greer* (January 12, 1994).

If a Mayor's salary has been lawfully reduced, the Mayor would not have the authority to direct the city clerk to write his/her paycheck for the amount he/she previously received instead of the newly adjusted salary.

Miss. Code Ann. Section 21-39-13 governs the issuance of checks in code charter municipalities and states in relevant part:

The clerk of the municipality shall draw all warrants or checks for claims and accounts allowed and approved by the governing authorities. The warrants or checks shall be signed by the Mayor or a majority of the members of the Board of Aldermen in any municipality operating under a Mayor-alderman form of government, and attested by the clerk, and to which there shall be affixed the seal of the municipality. The governing authorities of any municipality may adopt the use of a standard check signing machine to be used in lieu of the manual signing of warrants or checks under such terms and conditions as the governing authorities shall deem meet and proper for the protection of the interest of the municipality.

Thus, if the Mayor shall refuse to sign his/her paycheck in the amount as authorized by the Board of Aldermen, then a majority of the members of the Board of Aldermen may sign the check. Checks must be issued in accordance with the procedures set forth by Section 21-39-13. MS AG Op., *Hatcher* (July 19, 1996).

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
Assistant Attorney General