



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 31, 2020

The Honorable Leroy Brooks
Lowndes County Supervisor, District Five
Post Office Box 1364
Columbus, Mississippi 39703

Re: Personnel Handbook; County Administrator

Dear Supervisor Brooks:

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

Questions Presented

1. May the current board of supervisors make changes to a personnel handbook adopted by the previous board of supervisors?
2. Must the board of supervisors advertise for the position of county administrator?
3. Can the board of supervisors create additional county positions without the recommendation of the county administrator or road manager and, if so, must the new job descriptions and qualifications be placed upon the meeting minutes before publicly advertising for the positions?

Background

Based upon a telephone conversation after we received your request, it is our understanding that the board of supervisors has appointed a county administrator. The board now intends to create the position of, and appoint, an assistant county administrator.

Brief Response

1. A personnel handbook, adopted by a previous board, shall remain in effect unless and until the present board takes official action to amend or void said handbook.

2. Pursuant to Mississippi Code Annotated Section 7-5-25, opinions of the Attorney General are limited to prospective questions of state law. An opinion can neither validate nor invalidate past action of a board of supervisors. For this reason, we cannot issue an opinion in response to your question regarding whether the board was required to advertise for the position of county administrator.
3. Pursuant to Section 19-4-7(a), if the board of supervisors delegates to the county administrator authority to employ an office clerk and other technical and secretarial assistance for the board and it is determined, consistent with the facts, that the employment of an assistant county administrator constitutes the employment of an “office clerk” or “other technical and secretarial assistance for the board,” the county administrator would be empowered to hire an assistant county administrator.

Applicable Law and Discussion

With respect to your first question, the Mississippi Supreme Court, as well as official opinions of this office, have long held that governing authorities may not bind successors in office in the exercise of their discretionary authority, unless there is “express statutory authority” to do so. MS AG Op., *Matthews* at *1 (Mar. 21, 2011) (citing *Biloxi Firefighters Assoc. v. City of Biloxi*, 810 So. 2d 859 (Miss. 2002); MS AG Op., *Barton* at *1 (Jan. 8, 2014); MS AG Op., *Jacks* at *2 (Feb. 26, 2010). County personnel policies or personnel procedures, or the implementation of a county-wide system of personnel administration is not binding upon a successor board. MS AG Op., *Mathis* at *1 (Dec. 1, 2003); MS AG Op., *Beasley* at *1 (May 17, 1989).

A personnel handbook, duly adopted by a previous board, is voidable at the discretion of the successor board. Thus, the personnel handbook shall remain in effect unless and until the new board takes such action to make changes or to void the handbook altogether. See MS AG Op., *Lambert* at *1 (Oct. 31, 2019); MS AG Op., *Brown* at *1 (June 9, 2017); see also *Northeast Mental Health-Mental Retardation Com'n v. Cleveland*, 187 So. 3d 601 (Miss. 2016).

As stated above, we cannot respond to your second question by official opinion as it now pertains to past action of the Board.

In response to your third question, Mississippi Code Annotated Section 19-4-7(a) expressly empowers the county administrator, subject to board approval, to employ an office clerk and such other technical and secretarial assistance for the board as may be needed. Section 31-7-101 empowers the county administrator to appoint, under certain circumstances, the county purchase clerk and the county receiving clerk, subject to board approval. Section 31-7-107 empowers the county administrator to appoint the county inventory control clerk in certain cases.

Beyond these positions, the county administrator’s authority to employ personnel depends primarily upon what has been delegated by the board of supervisors pursuant to Sections 19-2-9 and 19-4-7. The employees of the county road department, however, are an exception to this rule. Those employees fall under direct jurisdiction of the county road manager.

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Mississippi Code Annotated Section 65-17-1 states, in pertinent part:

The county road manager shall employ, subject to approval of the board of supervisors, such assistants and employees as may be necessary in conformity with the budget and county policies and procedure with respect to personnel and subject to approval of the board as to salary or other compensation to be paid. He shall have supervision and jurisdiction over personnel and assignments of personnel engaged in the work of the road department.

Miss. Code Ann. § 65-17-1; *see also* MS AG Op., *Brooks* at *1 (Aug. 11, 1994); MS AG Op., *Colson* at *1 (Feb. 16, 1994) (opining that the county board of supervisors may not employ an assistant road manager without the individual having been recommended to the position by the county road manager).

Based upon these statutes and previous opinions of this office, it is our opinion that an assistant county administrator may be employed by the county administrator pursuant to Section 19-4-7(a), if that authority has been delegated to the county administrator by the board of supervisors and if the employment of an assistant county administrator is found to constitute the employment of an “office clerk” or “other technical and secretarial assistance for the board.”

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/ *Phil Carter*

Phil Carter
Special Assistant Attorney General