



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

September 30, 2021

Bobby Moak, Esq.  
Attorney, City of Brookhaven  
Post Office Box 560  
Brookhaven, Mississippi 39602-0560

Re: Eligibility Requirement for City Judge

Dear Mr. Moak:

The Office of the Attorney General has received your request for an official opinion.

#### **Question Presented**

May an attorney, who is not a qualified elector of Lincoln County, serve as the City Judge for the City of Brookhaven?

#### **Brief Response**

Yes. Because Mississippi Code Annotated Section 21-23-3 provides an exception to the qualified elector requirement for municipalities within the purview of Section 21-23-5, Brookhaven's municipal judge is not required to be a qualified elector of Lincoln County.

#### **Applicable Law and Discussion**

Section 21-23-3 provides, in pertinent part,

In all municipalities having a population of ten thousand (10,000) or more, according to the latest available federal census, there shall be a municipal judge and a prosecuting attorney, who shall be appointed by the governing authorities of the municipality at the time provided for the appointment of other officers . . . *Except as otherwise provided in Section 21-23-5*, a municipal judge shall be a qualified elector of the county in which the municipality is located and shall be an attorney at law.

Miss. Code Ann. § 21-23-3 (emphasis added).

Section 21-23-5 provides, in pertinent part:

If the authorities of any municipality having a population of less than twenty thousand (20,000) according to the latest available federal census appoint a municipal judge, he shall be an attorney licensed in the State of Mississippi or a justice court judge of the county in which the municipality is located.

Miss. Code Ann. § 21-23-5.

In your request, you provide that the current population of Brookhaven, Mississippi is approximately 12,200 citizens. Assuming your provided figures are correct,<sup>1</sup> the Brookhaven Municipal Judge must meet the eligibility requirements provided in Section 21-23-5, which governs municipalities with a population less than 20,000, and Section 21-23-3, which governs municipalities of 10,000 citizens or more.

Because Section 21-23-3 provides an exception to the qualified elector requirement for those municipalities within the purview of Section 21-23-5, the municipal judge in Brookhaven must be an attorney who is licensed in the State of Mississippi or a justice court judge of the county in which Brookhaven is located, Lincoln County. Section 21-23-5—unlike Section 21-23-3—contains no requirement that the municipal judge be a qualified elector of the county in which the municipality is located. Thus, Brookhaven’s municipal judge is not required to be a qualified elector of Lincoln County.

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/ Abby Cummings*

Abby Cummings  
Special Assistant Attorney General

---

<sup>1</sup> This opinion assumes that Lincoln County is not “an area in excess of nine hundred thirty-five (935) square miles and having a county court,” which would entitle the governing authorities of municipalities therein to “follow the provisions as set out in Section 21-23-5 for municipalities having a population of less than ten thousand (10,000)” when appointing a municipal judge. Miss. Code Ann. § 21-23-3.