



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

November 23, 2021

Kimberly Jones Merchant, Esq.  
Attorney for the City of Indianola  
549 South Washington Avenue  
Greenville, Mississippi 38701

Re: Appointment of Municipal Judge

Dear Ms. Merchant:

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

### **Questions Presented**

1. When determining the latest available federal census, should the Board of Aldermen use the 2010 or the 2020 Census?
2. Under what condition is a governing authority required to appoint a municipal judge who is a qualified elector of the county in which the municipality is located and an attorney at law?
3. Under what condition is a governing authority allowed to appoint a municipal court judge who is only licensed in the State of Mississippi or a justice court judge of the county in which the municipality is located?
4. If the governing authority is required to appoint a municipal judge who is a qualified elector of the county in which the municipality is located, but cannot agree on a candidate within the county to serve as the municipal court judge, is there any event that will allow the governing authority to appoint a municipal judge who is a resident of a county other than the county in which the municipality is located?
5. If it is determined that the population is ten thousand or more, is there any circumstance wherein the City can appoint a judge outside of Sunflower County?

### **Brief Response**

1. To the extent the 2020 census figures have been finalized and made official, they constitute the results of the "latest available federal census." However, preliminary figures may not be used as the latest available federal census.

2. Municipalities that have a population of 20,000 or more are required to appoint a municipal judge who is an attorney at law and is a qualified elector of the county in which the municipality is located.
3. Municipalities that have a population of less than 20,000 may appoint a municipal court judge who is a licensed attorney in the State of Mississippi or a justice court judge of the county in which the municipality is located.
4. We find no authority for the governing authority to appoint an attorney who resides outside the county in which the municipality is located as described in your request based on a failure of the governing authorities to agree on which attorney within the county should be appointed.
5. See our response to questions 2 and 3.

### **Applicable Law**

With respect to your first question, relying upon a Mississippi Supreme Court decision, we recently opined that “[u]ntil the preliminary figures of the 2020 census become finalized and official, the official results from the 2010 census constitute the ‘latest available federal census’ as contemplated by Section 21-23-2.” MS AG Op., *Fratesi* at \*1 (Sept. 3, 2021). To the extent the 2020 census figures have been finalized and made official, they constitute the results of the “latest available federal census.”

Turning to your second and third questions, Section 21-23-3 provides, in 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 any municipality having a population of less than ten thousand (10,000) according to the latest available federal census, it shall be discretionary with the governing authorities of the municipality as to whether or not a municipal judge or a prosecuting attorney, or both, shall be appointed. *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.* The mayor or mayor pro tempore shall not serve as a municipal judge.

Miss. Code Ann. § 21-23-5 (emphasis added).

This office recently opined that municipalities with a population of 10,000 or more but less than 20,000, must meet the eligibility requirements of both Sections 21-23-3 and 21-23-5. MS AG Op., *Moak* at \*2 (Sept. 30, 2021). Reading those statutes together, we found that the municipal judge for the City of Brookhaven, with a population of approximately 12,000, did not have to be a qualified elector of the county in which Brookhaven is located:

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.

*Id.* Accordingly, a municipal judge for a municipality with a population—according to the latest available federal census—of less than 20,000 does not have to be a qualified elector of the county in which the municipality is located. Such judges must merely be an attorney who is licensed to practice law in Mississippi or a justice court judge of the county in which the municipality is located. *Id.*

However, a municipal judge for a municipality with a population of 20,000 or more must 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.

With respect to your fourth question, we find no authority for the governing authority to deviate from the aforementioned statutes based on a failure of the governing authorities to agree on a candidate for municipal judge.

Your fifth question is answered by our combined responses to questions two and three.

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