



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 18, 2021

The Honorable Patrick Bennett
Alderman, City of Long Beach
126 Jeff Davis Avenue
Long Beach, Mississippi 39560

Re: Ordinances in a Code Charter Municipality

Dear Mr. Bennett:

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

Questions Presented

1. Does the Board of Aldermen (the “Board”) of the City of Long Beach, a code charter municipality, have the exclusive authority to issue city ordinances?
2. If not, can the Board override an ordinance issued by the Mayor?

Brief Response

1. The Board has exclusive authority under Mississippi Code Annotated Section 21-3-15, applicable to code charter municipalities, to adopt ordinances, which, by definition, include resolutions and orders. However, in very limited circumstances, such as a civil emergency proclaimed pursuant to Section 45-17-1, *et seq.*, the mayor has authority to issue orders.
2. An attempt by a mayor to issue an ordinance under Section 21-3-15 would be invalid. If a mayor issues an order during a civil emergency proclaimed pursuant to Section 45-17-1, *et seq.*, the statute does not provide a procedure for a board of aldermen to override such an order.

Applicable Law and Discussion

Pursuant to Section 7-5-25, opinions of the Attorney General are issued on questions of law for the future guidance of those officials entitled to receive them. An Attorney General's opinion can

neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008). Therefore, this opinion is for future guidance only and does not address any action already taken. Article I, Section 1 of the Mississippi Constitution of 1890 sets forth the three branches of government:

The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

Article I, Section 2 provides that “[n]o person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others.”

Section 21-3-15, which outlines the duties and powers of a mayor and board of aldermen in a code charter municipality, provides:

(1) The mayor shall preside at all meetings of the board of aldermen, and in case there shall be an equal division, shall give the deciding vote. The executive power of the municipality shall be exercised by the mayor, and the mayor shall have the superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed.

(2)(a) The legislative power of the municipality shall be exercised by the board of aldermen by a vote within a legally called meeting. No member of the board of aldermen shall give orders to any employee or subordinate of a municipality other than the alderman's personal staff.

(b) Ordinances adopted by the board of aldermen shall be submitted to the mayor. The mayor shall, within ten (10) days after receiving any ordinance, either approve the ordinance by affixing his signature thereto, or return it to the board of aldermen by delivering it to the municipal clerk together with a written statement setting forth his objections thereto or to any item or part thereof. No ordinance or any item or part thereof shall take effect without the mayor's approval, unless the mayor fails to return an ordinance to the board of aldermen prior to the next meeting of the board, but no later than fifteen (15) days after it has been presented to him, or unless the board of aldermen, upon reconsideration thereof on or after the third day following its return by the mayor, shall, by a vote of two-thirds ($\frac{2}{3}$) of the members of the board, resolve to override the mayor's veto.

(3) The term “ordinance” as used in this section shall be deemed to include ordinances, resolutions and orders.

Accordingly, the Board, as the legislative branch of municipal government is charged with passing ordinances, orders, and resolutions that govern the operation of municipal government. MS AG Op., *Thomas* at *2. (July 31, 2020). Section 21-13-1, *et seq.* governs the procedure for passing

such ordinances. The mayor exercises executive powers and is required by law to enforce such ordinances, resolutions, and orders of the board of aldermen. *Id.*

Generally speaking, given the allocation of authority outlined above, any attempt by a mayor to issue an ordinance would be a violation of the separation of powers doctrine. *See* MS AG Op., *White* at *1 (June 2, 2006) (finding mayor of mayor-council municipality lacked authority to regulate certain activities by executive order).

In very limited circumstances, a mayor has statutory authority to issue orders. Notably, for example, in Section 45-17-1, *et seq.*, the mayor is granted authority to proclaim a civil emergency and issue “orders as are necessary for the protection of life and property.” Miss. Code Ann. § 45-17-7(e). This statutory scheme does not expressly provide for an override by the board of aldermen.

Although we do not opine on whether the mayor has in fact issued an invalid or unlawful ordinance, we note that the Mississippi Supreme Court has held that “the unauthorized acts of one of its officials does not estop a municipality from acting in its governmental capacity.” *Suggs v. Town of Caledonia*, 470 So. 2d 1055, 1057 (Miss. 1985).

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/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General