



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

April 26, 2023

Tonya Franklin, Esq.  
Attorney, Town of Arcola  
Post Office Box 134  
Greenville, Mississippi 38702

Re: Secondary Employment for Chief of Police

Dear Ms. Franklin:

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

### **Background**

According to your request, the town of Arcola, Mississippi (the “Town”) seeks to reduce the Chief of Police’s employment to part time. Members of the board of aldermen have inquired as to whether the Chief of Police may serve in a secondary role as an assistant water utility maintenance worker for the Town while also serving as the Chief of Police.

### **Questions Presented**

1. May the Chief of Police, who is currently serving as the sole law enforcement officer for the Town, also serve as an assistant water utility worker for the Town?
2. If the answer to question one is yes, what parameters must be followed to ensure that the Police Chief is serving appropriately in each role to ensure duties are not overlapping?
3. If the answer to question one is yes, how should payment be apportioned?

### **Brief Response**

1. This office has previously opined that there is no separation of powers violation when an individual simultaneously serves in two different positions within the same branch of government. Regarding ethical considerations, we refer you to the Mississippi Ethics Commission.

2. We defer to the Mississippi Ethics Commission on this question.
3. We defer to the Mississippi Ethics Commission and the Office of the State Auditor on this question.

### **Applicable Law and Discussion**

Regarding your first question, the scope of this opinion is limited to whether simultaneous service in two public positions violates the separation of powers doctrine. We refer you to the Mississippi Ethics Commission regarding potential conflicts of interest or other ethical implications arising out of simultaneous service.

Article I, Section 1, of the Mississippi Constitution of 1980 provides that “[t]he 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.” The Separation of Powers Doctrine states:

No 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. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

MISS. CONST. art. I, § 2.

A person cannot hold positions in two different branches of government if both positions exercise “core powers” in that particular branch. MS AG Op., *Hudson* at \*1 (June 26, 2020). “Core power has been defined by the Court to include those circumstances where the acts are ongoing and are in the upper level of governmental affairs and have substantial policy-making character.” *Id.* (internal quotations and citations omitted). An assistant water utility maintenance worker would not be exercising core powers of any branch, and therefore there would be no separation of powers issue under your proposed circumstance. MS AG Op., *Fondren* at \*1 (Dec. 16, 2005) (opining that attorney, as employee of utility, would not exercise core powers).

Moreover, there is no separation of powers violation when an individual simultaneously serves in two different positions within the same branch of government. MS AG Op., *O’Reilly*, at \*1 (May 19, 2006). “A municipal police chief is . . . a position in the executive branch of government.” *O’Reilly* at \*1. “[E]mployment with a municipal utility department would be within the executive branch of government. . . .” MS AG Op., *Farese* at \*1 (Aug. 8, 1990). For each of these reasons, the Chief of Police may also serve as an assistant water utility maintenance worker without violating the Separation of Powers Doctrine.

Regarding your last two questions, this office has previously opined that “[t]he Chief of Police may perform his duties [of secondary public employment] only during hours he is not on duty and being compensated as Chief of Police.” MS AG Op., *Carnathan* at \*1 (Aug. 30, 2019); *see also*

Tonya Franklin, Esq.

April 26, 2023

Page 3

MS AG Op., *Garraway* at \*1 (Jan. 24, 1990) (“It is the opinion of this office that an appointed official . . . on call twenty-four hours a day may, when not on duty, work as a security guard part-time, provided he fulfills all the duties of his office and does not violate city policy.”). However, for topics outside the scope of this opinion, we refer you to the Mississippi Ethics Commission regarding any questions about conflicts of interest and to the Office of the State Auditor for further questions about compensation.

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/ Maggie Kate Bobo*

Maggie Kate Bobo  
Special Assistant Attorney General

OFFICIAL OPINION