



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 14, 2023

Bobby Moak, Esq.
Attorney, City of Brookhaven
Post Office Box 242
Bogue Chitto, Mississippi 39629

Re: Elected Chief of Police

Dear Mr. Moak:

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

Background

According to your request, the Brookhaven Board of Aldermen (“Board”) recently voted to change the office of the chief of police from an elected position to one of appointment pursuant to Section 21-3-3 of the Mississippi Code. The term of the appointed office would begin the first day after the current elected office holder’s elected term ends in 2025. However, the question has now arisen as to whether the Board may amend its ordinance and return the office of chief of police back to one that is elected.

Question Presented

Does the Board have the authority to amend its ordinance and return the office of chief of police back to one that is elected?

Brief Response

Yes, the Board has the authority pursuant to Mississippi Code Annotated Sections 21-13-1 *et seq.*, to amend, repeal, or rescind its ordinance and return the office of chief of police back to an elected position.

Applicable Law and Discussion

Brookhaven is a code charter municipality. Code charter municipalities have the authority to change the office of chief of police from an elected position to an appointed position pursuant to Section 21-3-3, which provides, in part:

The elective officers of all municipalities operating under a code charter shall be the mayor, the aldermen, municipal judge, the marshal or chief of police, the tax collector and the tax assessor. . . . Such governing authorities shall have the further power to provide that all or any of such officers, except those of mayor and aldermen, shall be appointive, in which case the marshal or chief of police, the tax collector, the tax assessor, and the city or town clerk, or such of such officers as may be made appointive, shall be appointed by the governing authorities. Any action taken by the governing authorities to make any of such offices appointive shall be by ordinance of such municipality, and no such ordinance shall be adopted within ninety (90) days prior to any regular general election for the election of municipal officers. No such ordinance shall become effective during the term of office of any officer whose office shall be affected thereby.

The governing authorities of municipalities have the power to pass ordinances in accordance with Sections 21-13-1 *et seq.* Section 21-13-9 provides for the amendment and repeal of municipal ordinances; *see also* Section 21-13-15 (titled “Revision and codification”). Alternatively, this office has “consistently opined that a board may reconsider any action previously taken by it, so long as the reconsideration does not impair contractual obligations already entered into by the board.” MS AG Op., *Thomas* at *1 (July 30, 2010) (internal citations omitted). Thus, it is the opinion of this office that the Board may amend, repeal, or rescind its ordinance making the office of chief of police an appointed position. However, if the Board chooses to do this, it must comply with all applicable election laws and regulations in sufficient time to allow the election to be conducted in accordance with the pertinent election deadlines.

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