



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 14, 2023

Stephen P. Wilson, Esq.
Attorney, City of Meridian
Post Office Box 2809
Meridian, Mississippi 39302-2809

Re: Civil Service Secretary

Dear Mr. Wilson:

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

Questions Presented

1. Which person or entity controls the day-to-day activities of the civil service secretary?
2. Who is responsible for evaluating the performance of the civil service secretary?
3. What aspects of control, if any, does a mayor in a strong mayor form of government have over the civil service secretary's work for the civil service commission?

Brief Response

1. Because the civil service secretary is appointed by the civil service commission and is required to "keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe" in accordance with Mississippi Code Annotated Section 21-31-7, it is the opinion of this office, with respect to commission work, that the civil service commission controls the day-to-day activities of the civil service secretary.
2. With respect to the civil service secretary's work for the civil service commission, the civil service commission has the authority to evaluate the performance of and suspend or discharge the civil service secretary in accordance with Sections 21-31-7 and 21-31-5(2).

3. The mayor does not have control of the civil service secretary's work for the civil service commission.

Applicable Law and Discussion

As an initial matter, your request references the Bylaws and Standing Operating Procedures of the Civil Service Commission of the City of Meridian ("Bylaws"). However, interpretation of these local policies and procedures is outside the scope of an official Attorney General's opinion. MS AG Op., *Tullos* at *1 (Aug. 27, 2018). Further, we do not by official opinion validate or invalidate past action. Pursuant to Section 7-5-25, opinions of this office are limited to prospective questions of state law. MS AG Op., *Brock* at *1 (Nov. 8, 2019). Accordingly, we offer no opinion on the Bylaws or any action previously taken by Meridian's Civil Service Commission or its Mayor.

In municipalities in which a civil service commission ("commission") is required, the commissioners are appointed in accordance with Section 21-31-5. The secretary of the civil service commission ("civil service secretary") is appointed by the commission pursuant to Section 21-31-7 and is required to "keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe." Section 21-31-7 further provides that the civil service secretary is "subject to suspension and discharge in the same *manner* as the commissioners." (emphasis added). Section 21-31-5(2) provides the following procedure for removal of a commissioner:

Any member of such commission may be removed from office for incompetency, incompatibility, dereliction of duty, or other good cause, *by the appointing power*. However, no member shall be removed until charges have been preferred in writing and a full hearing had before the appointing power. Any member being so removed shall have the right of appeal, any time within thirty (30) days thereafter, to the circuit court and may demand a jury trial; such trial shall be confined to the determination of whether the order of removal, made by the appointing power, was, or was not, made in good faith and for cause.

(emphasis added). This office has previously opined that Section 21-31-7 "authoriz[es] the suspension and/or the discharge of the secretary, but it must be done in the same manner, i.e., the same procedure, as that for the removal of civil service commissioners." MS AG Op., *Palmer* at *4 (Mar. 14, 2014). This remains the opinion of this office. However, the *Palmer* opinion goes on to state that because the mayor and city council appoint the commission in a mayor-council form of government, the mayor and city council also have the authority to suspend and/or discharge the commission secretary. *Palmer* at *2. Notably, Section 21-31-5(2) speaks to the authority of the "appointing power" to remove a commissioner. Pursuant to Section 21-8-23(5), the mayor and city council are the appointing authority for the commission in a mayor-council form of government such as Meridian's. However, the civil service secretary is appointed by the commission itself, not the mayor and city council. Miss. Code Ann. § 21-31-7. Accordingly, it is the opinion of this office that the commission, as the appointing power of the civil service secretary, has the authority to remove or suspend the civil service secretary pursuant to Sections 21-31-7 and 21-31-5(2). To the extent that the *Palmer* opinion conflicts, it is hereby modified.

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Because the civil service secretary performs duties as assigned by the commission, and the commission has the authority to suspend or remove the civil service secretary, it is the opinion of this office that the commission controls the day-to-day activities of the civil service secretary with respect to work for the commission. It follows that the commission has the authority to evaluate the civil service secretary's performance with respect to the civil service secretary's work for the commission. Therefore, it is the opinion of this office that the mayor does not have control of the civil service secretary's work for the commission. Your request indicates that the civil service secretary also serves as an employee of the city, separate from his or her role as civil service secretary. Any work that this employee does separate from the work as civil service secretary would be in accordance with any employment laws and regulations applicable to mayor-council forms of government and is outside the scope of this opinion.

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

OFFICIAL OPINION