



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 3, 2023

The Honorable Kyle Crider
Alderman, City of Lumberton
Post Office Box 211
Lumberton, Mississippi 39455

Re: Change in Residency

Dear Mr. Crider:

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

Background

According to your request, it was brought up at the June meeting of the Lumberton Board of Aldermen that one of the aldermen purchased a home outside the district he represents. Questions have arisen as to when the alderman loses his eligibility to serve.

Questions Presented

1. Can the Board of Aldermen pay for an alderman to attend a conference if the Board voted to take his name off the motion to attend the conference, and the Mayor later vetoed the motion?
2. If an alderman moves out of the district he represents, may he continue to serve as an alderman until he changes his homestead exemption?

Brief Response

1. We understand that the conference has already occurred and that the alderman is not seeking reimbursement for his travel. Pursuant to Section 7-5-25, this office may only opine on prospective questions of law. An Attorney General's Opinion can neither validate nor invalidate past action. Thus, we must decline to respond by official opinion to this portion of your request.

2. An alderman vacates his position when he abandons his municipal residence for another residence outside his district with no intent to return.

Applicable Law and Discussion

In 2021, the Mississippi Supreme Court reiterated the longstanding residency rule for voting and holding public office: “For purposes of voting law, residence and domicile are equivalent, and a domicile or residence ‘continues until removal to another locality with intent to remain there and abandonment of the old domicile without intent to return.’” *Harreld v. Banks*. 319 So. 3d 1094, 1109-10 (Miss. 2021) (quoting *Hubbard v. McKey*, 193 So. 2d 129, 132 (Miss. 1966)); *see also* MS AG Op., *Johnson* (Jan. 19, 1996). “If any . . . municipal officer during the term of his office shall remove out of the . . . municipality for which he was elected or appointed, such office shall thereby become vacant and the vacancy be supplied as by law directed.” Miss. Code Ann. § 25-1-59. Whether a particular alderman has removed himself from the municipality —thereby vacating his office— is a question of fact that must be determined by the board of aldermen and subject to judicial review. MS AG Op., *Thomas* at *1 (Mar. 29, 2019).

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