



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 28, 2024

Kimberly Jones Merchant, Esq.
Attorney, City of Indianola
549 S. Washington Avenue
Greenville, Mississippi 38701

Re: Independent Legal Representation for Alderman

Dear Ms. Merchant:

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

Background

According to your request, the city of Indianola (“City”) is facing a lawsuit initiated by its former city clerk. The mayor and an alderman have also been named as defendants in the lawsuit, both in their official capacities as well as individually. Upon receiving notice of the claim, the City’s insurance carrier engaged legal representation on behalf of the City, the mayor, and the alderman. Although matters are currently being handled by counsel retained by the City’s insurance carrier, the alderman has expressed a desire to secure independent legal representation at the City’s expense.

Questions Presented

1. Does the Board of Aldermen for the City have the authority to approve the retention of independent legal counsel for the alderman?
2. If the answer to question one is yes, is it legally permissible for the City to cover the cost of such independent counsel?

Brief Response

1. Mississippi Code Annotated Section 25-1-47(1) provides municipalities with the authority and power, within their discretion, to “provide legal counsel for the defense of any claim, demand, or action, whether civil or criminal, made or brought against any . . . municipal

officer, agent, servant, employee, or appointee as a result of his actions while acting in the capacity of such officer, agent, servant, employee, or appointee.”

2. Municipalities are likewise authorized “to pay for all costs and expenses incident to such investigation and defense” permitted by Section 25-1-47(1). Miss. Code Ann. § 25-1-47(1).

Applicable Law and Discussion

To begin, we note that while this request stems from ongoing litigation, the questions presented are not subject to said litigation.

Section 25-1-47(1) provides:

Any municipality of the State of Mississippi is hereby authorized and empowered, *within the discretion of its governing authorities*, to investigate and provide legal counsel for the defense of any claim, demand, or action, whether civil or criminal, made or brought against any state, county, school district, or municipal officer, agent, servant, employee, or appointee as a result of his actions *while acting in the capacity* of such officer, agent, servant, employee, or appointee; and such municipality is hereby authorized to pay for all costs and expenses incident to such investigation and defense.

(emphasis added). Notably, Section 25-1-47(1) does not prohibit the City from providing additional legal counsel, paid for by the City, where the City’s insurer is already providing legal representation. Indeed, expounding upon Section 25-1-47(1) in regard to a similar factual scenario, this office has previously opined:

If the governing authorities of the City of Lucedale find, consistent with fact and subject to judicial review, that the above civil action arose out of actions of the mayor, chief of police and director of public works while acting in the capacity of their offices or positions, then the municipal governing authorities may in their discretion hire additional attorneys to defend the mayor, chief of police and director of public works. The fact that the city participates in the Municipal Association liability plan does not prohibit the city from hiring additional counsel pursuant to the above statute to defend the mayor, chief of police and director of public works.

MS AG Op., *Shepard* at *1 (Feb. 3, 1993). Still, “prior to proceeding under Section 25-1-47, the City, via its governing authorities, must grant approval of such representation.” MS AG Op., *Brock* at *2 (Dec. 1, 2014). Presuming these requirements are met, Section 25-1-47(1) likewise authorizes the City to “pay for all costs and expenses incident to such investigation and defense.” *See also* MS AG Op., *Brock* at *2. In sum, it is the opinion of this office that the City, in its discretion, may hire additional legal counsel to represent the alderman in accordance with Section 25-1-47(1) and pay the costs and expenses incident to the same, if the City’s governing authorities determine that the alderman was in fact acting in his or her official capacity, and the governing authorities grant prior approval of such representation.

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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