



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 17, 2024

The Honorable Ken Featherstone
Mayor, City of Indianola
101 Front Street
Indianola, Mississippi 38751

Re: Swearing In of Member of Board of Aldermen

Dear Mayor Featherstone:

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

Question Presented

If a duly reelected member of the board of aldermen has not been sworn in for each new term (every four years), but was initially sworn in under a previous administration, is there any effect on the laws and ordinances the subject alderman voted on?

Brief Response

Assuming Indianola's special charter is silent on this question, at a minimum, the subject alderman would be considered a de facto officer, and a de facto officer's official acts are valid and binding.

Applicable Law and Discussion

As an initial matter, if Indianola's special charter speaks to this issue, then the charter controls. See MS AG Op., *Gaylor* at *1 (Dec. 15, 2006) (“[W]here the provisions of a special charter conflict with general law[,] . . . the specific provisions of a municipal special charter will take precedence over the provisions of general municipal law.”); MS AG Op., *Lowe* at * 1 (Feb. 13, 2009) (“[P]rovisions of a special charter that are contrary to general statutory provisions are viewed by this office as exceptions to the general law, except where the general statutes expressly provide otherwise.”). However, because this office cannot interpret special charters, this opinion is limited to interpretation of state law.

This office has previously opined that “[b]efore a municipal officer is qualified to discharge the duties and functions of that office, the officer must first be sworn in and take the oath of office as provided by Article 14, Section 268 of the Mississippi Constitution of 1890.” MS AG Op., *Minor*

Hon. Ken Featherstone

September 17, 2024

Page 2

at *1 (Mar. 18, 2005). Mississippi Code Annotated Section 21-15-3 likewise provides: “[a]t the first regular meeting of the governing authorities succeeding each regular municipal election, they shall elect the officers to be elected by them and such officers shall take the oath of office.”

In your request, you indicate that the subject alderman was initially sworn into office under a previous administration but due to oversight was not re-sworn in for subsequent terms served. At a minimum, the subject alderman would be considered an officer de facto. “An officer de facto is one who exercises the powers and discharges the functions of an office, being then in possession of the same under color of authority, but without actual right thereto.” *Oliver v. State*, 362 So. 3d 1110, 1113 (Miss. Ct. App. 2019) (quoting *Upchurch v. City of Oxford*, 17 So. 2d 204, 204 (Miss. 1944)). Pursuant to Section 25-1-37, “the official acts of de facto officers are valid and binding.” MS AG Op., *Davis* at *2 (Jan. 31, 2011). Specifically, Section 25-1-37 provides:

The official acts of any person in possession of a public office and exercising the functions thereof shall be valid and binding as official acts in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold the office or not and whether such person be lawfully qualified or not; but such person shall be liable to all the penalties imposed by law for usurping or unlawfully holding office, or for exercising the functions thereof without lawful right or without being qualified according to law.

The status of the subject alderman requires a factual determination that cannot be made by this office. *See* Miss. Code Ann. § 7-5-25. This said, even if it is determined that the subject alderman has been acting as a de facto officer, there is no effect on the laws and ordinances he or she voted on.

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