



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

March 13, 2025

Mr. Gary Yarborough, Esq.
Attorney, Hancock County
854 Highway 90
Bay St. Louis, Mississippi 39520

Re: Separation of Powers: City Council and County Solid Waste/Zoning
Enforcement Officer

Dear Mr. Yarborough:

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

Background

According to your request, a county employee intends to run for city council in Bay St. Louis where, if elected, she will be one of seven council members. Bay St. Louis operates a mayor-council form of government. The county employee presently serves as the solid waste/zoning enforcement officer for Hancock County (the "County"). She reports to the County's building official, who in turn reports to the county administrator. A summary of the job description for the position of solid waste/zoning enforcement officer is as follows:

- Perform a variety of field and office work in support of the County's zoning ordinance and solid waste enforcement program
- Receive and respond to citizen complaints and reports from other agencies and departments on alleged violations
- Conduct field investigations
- Issue and post warning notices
- Prepare evidence in support of legal action taken by the County or solid waste authority
- Maintain accurate documentation and case files on all investigations, inspections, and enforcement actions
- Prepare a variety of written reports, memos, and correspondence related to enforcement activities
- Patrol assigned areas to identify and evaluate problem areas and/or ordinance violations
- Operate computer to enter, process, and acquire data
- Perform related duties required

Question Presented

Does the separation of powers doctrine prohibit the County's solid waste/zoning enforcement officer from keeping employment if elected to a city council position?

Brief Response

Based narrowly on the job description as presented in your request, because the County's solid waste/zoning officer does not exercise core powers, the separation of powers doctrine does not prohibit the County's solid waste/zoning enforcement officer from keeping employment if elected to a city council position.

Applicable Law and Discussion

The scope of this opinion is limited to whether simultaneous service in two public positions violates the separation of powers doctrine. We refer you to the Mississippi Ethics Commission regarding potential conflicts of interest or other ethical implications arising out of simultaneous service. Additionally, this opinion is based solely on the job description presented in your request. A change in job description for the County's solid waste/zoning officer may also change the answer to this request.

The separation of powers doctrine prohibits a person from holding positions in two different branches of government if both positions exercise "core powers" within their respective branch. *See* MISS. CONST. art. I, § 2; MS AG Op., *Hudson* at *1 (June 26, 2020). "'Core power' has been defined by the Court to include those circumstances 'where the acts are ongoing and are in the upper level of governmental affairs and have a substantial policy-making character.'" MS AG Op., *Hudson* at *1 (quoting *Dye v. State*, 507 So. 2d 332, 343 (Miss. 1987)). "[L]ow level administrative matters," on the other hand, do not equate to an exercise of core power. *Dye*, 507 So. 2d at 343.

To begin, "[i]t is clear, based upon the language in Mississippi Code Annotated Section 21-8-9, that a member of the city council holds an office within the legislative branch of government." MS AG Op., *Turnage* at *2 (Oct. 10, 2008). A county officer, on the other hand, serves in the executive branch of government. *See, e.g., id.*; MS AG Op., *Cobbins* at *1 (Oct. 7, 2005). In your request, you provide the job description for the County's solid waste/zoning officer. The description does not appear to include duties within the "upper level of governmental affairs" with "policy-making character." *Dye*, 507 So. 2d at 343. Rather, the listed duties are administrative in nature — for example, responding to citizen complaints, issuing warning notices, maintaining documentation, and preparing a variety of written reports. This indicates that the County's zoning enforcement/safety officer does not exercise core powers within the executive branch. *See* MS AG Op., *Turnage* at *2 (opining no separation of powers violation for a member of the city council to simultaneously serve as a county inventory clerk/safety officer with ministerial duties due to lack of core powers in county positions).

Mr. Gary Yarborough, Esq.

March 13, 2025

Page 3

Further, you state that the County's solid waste/zoning enforcement officer reports to the County's building officer, who in turn reports to the county administrator. "[T]he Mississippi Court of Appeals has held the county administrator does not exercise core powers." MS AG Op., *Liner* at *1 (Jan. 31, 2020) (citing *Zimmerman v. Three Rivers Planning & Dev. Dist.*, 747 So. 2d 853, 860 (Miss. Ct. App. 1999)). It thus follows that, here, the County's solid waste/zoning enforcement officer likewise does not exercise core powers. See MS AG Op., *Turnage* at *1-2 (concluding county inventory clerk/safety officer working under county administrator does not exercise core powers). It is therefore the opinion of this office that regarding this particular job description, the separation of powers doctrine does not prohibit the County's solid waste/zoning enforcement officer from keeping employment if elected to a city council position.

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