

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

September 7, 2018

John L. Walker, Esq.  
General Counsel, Jackson Municipal Airport Authority  
Post Office Box 22849  
Jackson, Mississippi 39225-2849

Re: Jackson Municipal Airport Authority

Dear Mr. Walker:

Attorney General Jim Hood received your letter of request and assigned it to me for research and response.

**Issue Presented**

You inquire as to the effect of the recent amendment to Mississippi Code Annotated Section 21-15-41 on an individual who was already serving in a holdover capacity at the time of its enactment. Specifically, you ask the following:

Our office is General Counsel for the Jackson Municipal Airport Authority ("JMAA"), a public body, corporate and politic, duly created in 1960 pursuant to Mississippi Code Section 61-3-5, by resolution of the City of Jackson, Mississippi. Accordingly, we request an official opinion from your office pertaining to the following issues.

House Bill No. 51 (Laws of 2017, Regular Session)[hereafter "H.B. 51 (2017)"], the applicable provisions of which were codified at Section 21-15-41(1)(2), Miss. Code Ann. (2017 Supp., Section 21-15-41(1), Miss. Code Ann. (2017 Supp.) provided as follows:

No person shall serve in an interim or holdover capacity for longer than one hundred eighty (180) days in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen.

During the 2018 Regular Legislative Session, the Legislature passed House Bill No. 1114 (Laws of 2018, Regular Session)[hereinafter "H.B. 1114 (2018)"] which was codified at Section 21-15-41(1), (2) and (3), Miss. Code Ann. (2018 Supp.). H.B. 1114 (2018), among other things, amended H.B. 51 (2017) to reduce the holdover period of municipal appointees from one hundred eighty (180) days to ninety (90) days. H.B. 1114 (2018)(Sections 1 and 2), codified as Section 21-15-41(1) and (2), Miss. Code Ann. (Supp. 2018) which now provides:

(1) No person shall serve in an interim or hold-over capacity for longer than ninety (90) days in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen. If such position is not filled within ninety (90) days after the expiration of the position's term, or within ninety (90) days after the date of appointment if an interim appointment, the hold-over service or interim appointment shall terminate and no municipal funds may thereafter be expended to compensate the person serving in the position. Further, any action or vote taken by such person after the ninety-day period shall be invalid and without effect. If a council or board of aldermen rejects, or otherwise fails to confirm, an individual submitted by the mayor for appointment, the mayor may not resubmit or reappoint the same individual for that position during the remainder of the mayor's current term in office.

(2) It is the intent of the Legislature that the provisions of this section shall apply to all appointees serving in a hold-over or interim capacity on July 1, 2018. For such appointees, the limitation period for serving in a hold-over or interim capacity shall be no longer than ninety (90) days from July 1, 2018.

\*\*\*

**ISSUE ON WHICH AN OFFICIAL OPINION IS REQUESTED**

Regarding a municipal appointee whose appointed term expired and holdover period began during the interim between when H. B. 51 (2017) came into effect on July 1, 2017, and before the amendment of H.B. 51 (2017) by H.B. 1114 (2018) became effective on July 1, 2018, what is the applicable holdover period for such a municipal appointee: one hundred eighty (180) days pursuant to H.B. 51 (2017) or ninety (90) days pursuant to H.B. 1114 (2018)? Alternatively, does the holdover period of a municipal appointee whose holdover period began before July 1, 2018 run

for one hundred eighty (180) days pursuant to H.B. 51 (2017) from the beginning of his/her holdover period or for ninety (90) days pursuant to H.B. 1114 (2018) after July 1, 2018?

### **Response**

Based upon your factual scenario, the subject municipal airport commissioner can serve no longer than ninety (90) days from July 1, 2018. Naturally, once the governing authorities make a new appointment, or reappoint the same commissioner, the hold-over service would immediately cease.

### **Applicable Law and Discussion**

As you note, in 2017, Mississippi Code Annotated Section 21-15-41 was amended by House Bill 51 (Laws of 2017, Regular Session) to clarify that the service limitation period for municipal appointees serving in an interim or hold-over capacity was limited to a time period not exceeding one hundred eighty (180) days. In addition, H.B. 51 (Laws of 2017) included a provision that provided that such service limitation would apply retroactively to appointees serving in a hold-over or interim capacity on the effective date of the act. In 2018, the Legislature again amended Section 21-15-41 via House Bill Number 1114 (Laws of 2018, Regular Session) to reduce the number of days that an individual may serve in a hold-over capacity from one hundred eighty (180) days to ninety (90) days.<sup>1</sup> Like the 2017 amendment, the 2018 amendment to Section 21-15-41 contained the language regarding retroactive application. Section 21-15-41 now reads as follows:

(1) No person shall serve in an interim or hold-over capacity for longer than ninety (90) days in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen. If such position is not filled within ninety (90) days after the expiration of the position's term, or within ninety (90) days after the date of appointment if an interim appointment, the hold-over service or interim appointment shall terminate and no municipal funds may thereafter be expended to compensate the person serving in the position. Further, any action or vote taken by such person after the ninety-day period shall be invalid and without effect. If a council or board of aldermen rejects, or otherwise fails to confirm, an individual submitted by the mayor for appointment, the mayor may not resubmit or reappoint the same individual for that position during the remainder of the mayor's current term in office.

(2) It is the intent of the Legislature that the provisions of this section shall

---

<sup>1</sup>The effective date of House Bill No. 1114 (Laws of 2018, Regular Session) shall take effect from and after July 1, 2018.

apply to all appointees serving in a hold-over or interim capacity on the effective date of this act. For such appointees, the limitation period for serving in a hold-over or interim capacity shall be no longer than ninety (90) days from July 1, 2018.

(3) Any registered voter who resides in the municipality may file all objections to any matters relating to an alleged violation of this section in the chancery court of the county where the municipality is located. The chancery court is authorized to adjudicate and determine relief as may be proper. The court shall award reasonable attorney's fees and costs to the prevailing party.

We note that we issued an opinion to you on August 4, 2017 concerning the application of Section 21-15-41 to municipal appointments to the Jackson Municipal Airport Authority. In that opinion, we opined the following:

As to your second inquiry, the Legislature set out specific rules relating to persons serving in a hold-over or interim position as of July 1, 2017.

Section 21-15-41(2) provides:

**OFFICIAL OPINION**

(2) It is the intent of the Legislature that **the provisions of this section shall apply retroactively to all appointees serving in a hold-over or interim capacity on the effective date of this act and for such appointees, the one hundred eighty-day limitation period shall commence to run on the effective date of this act.**

(Emphasis added).<sup>2</sup>

MS AG Op., Walker (August 4, 2017) (Footnote original). In our opinion, the same application would apply to the subject factual scenario, except that the limitation period is now ninety (90) days as opposed to one hundred eighty (180) days. Thus, a municipal airport commissioner serving in a hold-over capacity on July 1, 2018 can serve no longer than ninety (90) days from July 1, 2018.

---

<sup>2</sup> But for subsection (2), the statute might create anomalous results. Apparently, there are hold-over appointees in this State that have been serving for years after the expiration of their term of office. If the provisions of subsection (1) were applied literally and retroactively to such appointees, those appointees would be terminated from their position as of dates that were years ago. This is problematic, because subsection (1) also operates to prohibit "municipal funds" from being "expended to compensate" a person serving as a hold-over beyond 180 days and further provides that "any action or vote taken by such person after the one hundred eighty-day period shall be invalid and without effect." Application of these provisions retroactively could call into question the validity of many prior acts of municipal entities and potentially create civil and/or criminal liability for actions that were lawful at the time they were taken. Such an interpretation would interject substantial questions concerning the constitutionality (both federal and state) of the Bill.

John L. Walker, Esq.  
September 7, 2018  
Page 5

As we noted in our prior opinion to you regarding this subject matter, the Legislature's intention by enacting Section 21-15-41 was strictly to establish a limitation on hold-over service, not to establish a grace period for appointments. Additionally, the authority to serve in an interim or hold-over capacity is only triggered when the term of a municipal position expires and the governing authorities have not yet made the appointments for the new term. In other words, the governing authorities may avoid any hold-over service by municipal appointees by making their appointments at the beginning of the new term.

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:   
Leigh Triche Janous  
Special Assistant Attorney General

OFFICIAL OPINION