

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 9, 2018

Gene Barton, Esq.
Attorney, City of Okolona
Post Office Box 147
Okolona, Mississippi 38860

Re: Designation of existing employee to handle animal control and code enforcement

Dear Mr. Barton:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

You inquire as to whether a mayor in the City of Okolona may, upon approval of the city council, revise the job descriptions of certain municipal employees by adding job responsibilities and adjust the employees' salaries accordingly. Specifically, you provide the following:

I have been requested by the City Council of Okolona, Mississippi to pose the following question: The Mayor proposes with the approval of the City Council to change the job description and designate two (2) in the Department of Public Works. Specifically, he proposes to add to the job description of one of these employees the responsibilities of animal control and maintenance of the dog pound. With respect to the second employee, he proposes to add to the job description the responsibilities and duties of code enforcement officer; thereby keeping both jobs "in house" with the City and not contracting them out.

The Board would be responsible for setting the appropriate compensation for these individuals with these enhanced job descriptions at their discretion. The Board has some questions as to whether the City could change the job descriptions [to] include additional responsibilities such as animal control and/or code enforcement. Could you please provide a written opinion for the benefit of the Board as to whether the Mayor with

the approval of the City Council may make these positions "in house" by creating additional job responsibilities for certain individuals who are already employed by the City and with the approval of the City Council adjust their salaries appropriately.

Response

Any revisions to municipal employee job descriptions and adjustments to salaries would be made by an official action of the city council. The mayor in the City of Okolona may not unilaterally revise job descriptions nor add additional responsibilities to municipal employees as such authority rests with the city council. Furthermore, he has no authority to set the salaries of municipal employees as that authority has been expressly granted to the city council pursuant to the provisions of the private charter.

Applicable Law and Discussion

According to our records, the City of Okolona is a private charter municipality and, as such, the powers of the municipality flow directly from its charter.¹ It is well-settled that questions concerning the workings of a municipality operating under a private or special charter should be answered by reference to the specific provisions of that charter. MS AG Op., Lowe (November 3, 2000). Thus, we look to the provisions of the subject municipality's private charter in order to respond to your inquiry.

Upon review of the municipality's private charter, Section 26 specifically provides the following:

Be it further enacted, That **the City Council** shall have power to make and establish rules and bylaws for its own government; to appoint and regulate the time of its meetings; and manner of being convened in special meetings, and to alter the same at pleasure; and **to create such subordinate offices as may be necessary, for such terms and with such regulations**, and to be elected as said Council may by ordinance prescribe. A majority of said Council shall constitute a quorum, and the Mayor shall be the ex-officio President and the presiding officer thereof, and shall vote at all elections of officers, and shall give the casting vote when a tie occurs in voting on any question or business matter of said Council. Said **Council may delegate the administration of the various affairs of said City to subordinate officers**, and committees of its own members with adequate powers.

In addition, Section 30 states that:

¹We note that a copy of the private charter was not included in your opinion request. We have been provided with a copy of the City of Okolona's private charter in the past and assume, for the purposes of this opinion, that it is a current copy and base our opinion on that assumption.

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...the officers of said City shall for their services, respectively, receive **such compensation by salary or perquisites, or both, as may be by the City Council established and ordained.**

Furthermore, Section 35 provides that the:

...**City Council shall by ordinance, prescribe and define, the fees, duties and liabilities of all City officers,** and may direct the manner of proceeding for the recovery of the penalties when the conditions are broken of the official bonds.

(Emphasis ours.)

It is clear from the language contained in the aforementioned sections of the private charter of the City of Okolona that the authority to prescribe the duties of its municipal officers and employees and to set salaries has been granted to the city council. The authority to "prescribe the duties" includes, in our opinion, the power to revise job descriptions and to establish "in house" positions or otherwise. Based on the language contained in the aforementioned provisions, the mayor does not hold any authority to revise job descriptions nor to add additional responsibilities to municipal employees as such authority rests with the city council. Likewise, the mayor holds no power to set the salaries of municipal officers and employees as that authority has been expressly granted to the city council pursuant to the provisions of the City of Okolona's private charter.

You note in your opinion request that the mayor would complete the proposed actions "with the approval of the City Council." We have consistently opined that duties that have been expressly assigned to a public officer/body may not be delegated. MS AG Op., Abide (February 10, 2017); MS AG Op., St. Pe' (January 31, 2014); MS AG Op., Harness (January 18, 2013); MS AG Op., Jacks (July 25, 2008); MS AG Op., Bell-Martin (November 7, 1997). Thus, the mayor in the subject municipality may not revise job descriptions, add additional responsibilities to municipal officers or employees nor adjust salaries even when the city council approves such action by the mayor. Any action to impose additional duties on municipal employees or to adjust salaries falls squarely within the authority of the city council in accordance with the City of Okolona's private charter.

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

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General