

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

February 1, 2019

Moran M. Pope, III, Esq.
Attorney, City of Hattiesburg
Post Office Box 17527
Hattiesburg, Mississippi 39404-7527

Re: Civil Service Commission appointments and coverage

Dear Mr. Pope:

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

Issues Presented

Your inquiries concern the composition of the civil service commission and board of examiners and whether administrative and clerical staff of the fire and police departments fall within the purview of Sections 21-31-1 through 21-31-27 of the Mississippi Code. Specifically, you provide the following:

The City of Hattiesburg ("the City") has a Civil Service Commission ("the Commission") pursuant to *Miss. Code Ann.* Section[s] 21-31-1 *et seq.* (Supp.2018). Only employees of the City's police and fire departments are covered by the Civil Service statutes.

The Commission is in the process of revising its rules which have not been revised in some time. As this is done, we want to be sure the rules are in conformity with the applicable Mississippi Code sections. Several questions have arisen in this revision process, and I am writing to ask your opinion as to these questions.

1. Under *Miss. Code Ann.* Section 21-31-7, the Commission "shall appoint a secretary and a board of examiners, which board shall consist of the fire chief (or a person designated by the fire chief from the fire department to serve in his absence), the police chief (or a person designated by the police chief from the police department to serve in his

absence), and a third person to be named by the commission, all of whom shall serve without compensation... The members of the board and the secretary are subject to suspension and discharge in the same manner as the commissioners.”

In your opinion, who may the Commission appoint as the Commission’s secretary? Specifically, must the commission secretary be a member of the Commission or may the secretary be a City employee from a department other than the police and fire department?

I note that based on the language of the *Miss. Code Ann.* Section 21-31-7, the secretary (as well as the board of examiners) “shall serve without compensation,” and that *Miss. Code Ann.* Section 21-31-11 provides that “the duly constituted authorities...shall provide the commission...with such clerical assistance as may be necessary.” Both of these statutes seem to suggest that the legislature intended that the Commission secretary be a member of the Commission itself rather than a city employee.

Also, Section 21-31-7 provides that “The members of the board [of examiners] and the secretary are subject to suspension and discharge in the same manner as the commissioners.” Removal of a commission member is provided for in *Miss. Code Ann.* Section 21-31-5(2) and involves a “full hearing before the appointing power” and the right to an appeal and a jury trial in circuit court. Employees of the City of Hattiesburg (other than fire and police employees) are at-will employees, and if the commission secretary was a City employee rather than a member of the commission, the City employee would have significant employment rights enjoyed by no other City employee.

2. As to the “third person” on the board of examiners mentioned in Section 21-31-7, must this “third person” be a member of the Commission? If not, may the Commission appoint an employee of the City from a department other than the fire and/or police department, or, if the commission chooses, may it appoint as the “third person” someone who is neither a member of the Commission nor a City employee?

3. *Miss. Code Ann.* Section 21-31-13 provides that “The provisions of Section 21-31-1 through 21-31-27 shall include all full paid employees of the fire and/or police departments of each municipality coming within its purview”. Does “all full paid employees of the fire and/or police department” in that statute include not only full time paid sworn police officers and sworn firefighters but also administrative and clerical full time paid employees of those departments?

Response

The Civil Service Commission may appoint one of its members, a city employee or a

person who is not a city employee to serve as the secretary of the civil service commission. The "third member" of the board of examiners may be any individual that the commission chooses to appoint to the board of examiners. Pursuant to Section 21-31-13 of the Mississippi Code, civil service coverage is afforded to all "full paid" employees of the fire and police departments, including full paid administrative and clerical employees of the police and fire departments.

Applicable Law and Discussion

With regard to appointments made to the civil service commission, Section 21-31-7 of the Mississippi Code specifically provides the following:

Immediately after the appointment of the civil service commission, the commission shall organize by electing one (1) of its members chairman. The commission shall hold regular meetings at least once each month, and such additional meetings as may be required for the proper discharge of its duties.

The commission shall appoint a secretary and a board of examiners, which board shall consist of the fire chief (or a person designated by the fire chief from the fire department to serve in his absence), the police chief (or a person designated by the police chief from the police department to serve in his absence), and a third member to be named by the commission, all of whom shall serve without compensation. The secretary shall keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe. The members of the board and the secretary are subject to suspension and discharge in the same manner as the commissioners.

We have previously opined that a "civil service commission may appoint one of its members, a city employee or a person who is not a city employee to serve as the secretary of the civil service commission." MS AG Op., St. Pe' (April 22, 2011); MS AG Op., Vincent (March 8, 1996). As to the "third person" referenced in Section 21-31-7, the statutory provision contains no restrictions on the individual that may be appointed by the commission. The language simply states that a third member is "to be named by the commission,..." In our opinion, the third member of the board of examiners may be any individual the commission chooses to appoint to the board of examiners.

With respect to the scope of the coverage afforded in Sections 21-31-1 through 21-31-27, Section 21-31-13 expressly states the following:

The provisions of Sections 21-31-1 through 21-31-27 shall include **all full paid employees of the fire and/or police departments of each municipality coming within its purview**, including the chiefs of those departments. All appointments to and promotions in said departments

shall be made solely on merit, efficiency, and fitness, which may be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended, or discharged from any place, position or employment contrary to the provisions of Sections 21-31-1 through 21-31-27. The governing authorities of the municipality may, with the approval of the civil service commission, extend the benefits of Sections 21-31-1 through 21-31-27 to other full time employees of the municipality.

All incumbents and future appointees shall be subject to civil service, except, however, those appointees now and hereafter serving as extra members.

(Emphasis added.) It is clear, as evidenced by the broad nature of the language included in Section 21-31-13, that civil service coverage is afforded to all "full paid"¹ employees of the fire and police departments, including full paid administrative and clerical employees of the police and fire departments.


If we may be of further assistance, please advise.

OFFICIAL OPINION

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General

¹ We have previously opined that "the terms 'full paid employee' and 'full-time employee,' as contemplated in Section 21-31-13, were meant to be used interchangeably, absent any other explicit statutory indication." MS AG Op., Bruni (October 19, 2007).