



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

August 31, 2020

Carmen Brooks Drake, Esq.  
City Attorney, City of Port Gibson  
Post Office Box 448  
Natchez, Mississippi 39120

Re: Municipal Authority to Appoint Private Board Members

Dear Ms. Drake:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

### **Question Presented**

May the City of Port Gibson appoint members to a public/private board created pursuant to a Partnership Agreement and, if so, may a sitting alderman or the mayor be appointed to serve as a member on said board?

### **Background Facts**

In connection with its designation as a Qualified Opportunity Zone (“Zone”), created pursuant to the Tax Cuts and Jobs Act of 2017, the City of Port Gibson has entered into a Public-Private Partnership Agreement (“Agreement”) with an out-of-state corporation to produce liquified natural gas (“LNG”) in the Zone.

As set forth in your request, the Agreement states as follows:

The Zone will be governed by a separate board, sanctioned by [Port Gibson] to oversee the business interest of the Zone under the terms of this Agreement. The Board shall consist of five (5) members.

[Port Gibson] shall appoint two (2) members of the Board and HESCO shall appoint two (2) members of the Board. The members selected by HESCO and [Port Gibson] shall together appoint one (1) member of the Board.

### **Brief Response**

Pursuant to Mississippi Code Section 7-5-25, opinions of this office are limited to prospective questions of state law. As Port Gibson has already entered into the Agreement, this opinion can neither validate nor invalidate the past action of the city, nor may we interpret the provisions of the Agreement.

We offer no opinion on the Tax and Job Cuts Act of 2017, as the Office of the Attorney General cannot interpret federal law.

With respect to the applicability of state law, we offer the following general guidance:

1. Pursuant to its home rule authority, a board of aldermen may appoint an individual to serve as a board member of a private entity.
2. The separation of powers doctrine is not violated by a mayor or member of the board of aldermen serving in his or her capacity as an elected official while simultaneously serving as a board member of a private entity. However, we suggest you contact the Mississippi Ethics Commission to determine whether the Ethics in Government Laws are implicated by the activities mentioned in your request.

### **Applicable Law and Discussion**

Our office has previously opined that certain public boards have the authority to appoint individuals to serve as members of private boards. See MS AG Op., *Thompson* at \*1 (May 17, 2001) (finding a private, not-for-profit foundation did not lose its status as an independent nonprofit organization merely because its directors were appointed by the State Board of Education.); MS AG Op., *Brown* at \*1 (Sept. 21, 1989).

The municipal “home rule” statute provides, in relevant part:

In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances.

Miss. Code Ann. § 21-17-5. There is no statutory prohibition against a municipal board of aldermen appointing members of a private board. Thus, it is the opinion of this office that pursuant to home rule, a municipal board of aldermen has authority to appoint members to a private board.

Turning to your second question, the separation of powers doctrine prohibits an individual serving in one branch of government from exercising power in another branch of government. MISS. CONST. art. I §§ 1-2. The Mississippi Supreme Court has interpreted these constitutional

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provisions as precluding an individual from simultaneously exercising core powers, meaning those which relate to acts at the upper level of governmental affairs and have a substantial policy-making character, in two different branches of the government. *Dye v. State*, 507 So. 2d 332 (Miss. 1987).

We have previously opined that the separation of powers doctrine is not implicated by a public official simultaneously serving in an elected office and as a board member of a private entity. MS AG Op., *Bishop* at \*1 (Jan. 20, 1993) (“[I]t is our opinion that since the supervisor would be serving on the board of directors of a private non-profit organization, there can be no separation of powers problem.”). However, as your question raises possible ethical issues under Sections 25-4-101 *et seq.*, we refer you to the Mississippi Ethics Commission to determine whether the Ethics in Government Laws are implicated.

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/ Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General

OFFICIAL OPINION