



Office of the Mayor
A.J. Holloway

MEMORANDUM

DATE: Feb. 27, 2009

FROM: Mayor A.J. Holloway 

TO: City Councilmembers

RE: Veto of resolution regarding shade structure at Beck Park

I hereby veto Resolution 90-09, concerning the installation of a shade structure at John Henry Beck Park.

I take this action for two reasons:

- The submitted quote – more than \$100,000 -- is exorbitant in a park where visitorship is so low. Additionally, we already have four shade structures in Beck Park -- including a gazebo, two pavilions and a covered spectator area immediately adjacent to the play equipment -- as well as a collection of full-grown and newly planted shade trees.
- In the current budget, there exists a nearly \$1 million line item labeled "Ward 2 Projects." According to the state Attorney General, under the mayor-council form of government council does not have the authority to allocate money to "unspecified streets and capital projects in each ward."

The purpose of the budget is to identify specific projects that will benefit the public and allocate funds for those specific projects accordingly, not to create discretionary accounts for individual council members. The Attorney General says that is improper; I say it's unfair to the taxpayers, and I question its legality.

With those thoughts and the Attorney General's opinion in mind, this improper Ward 2 Projects account should be abolished, and the funding should be for a project that will provide a much greater benefit.

As you are aware, the city has plans to borrow \$880,000 to provide our match for a \$2 million grant for continuing water and sewer work in Woolmarket. Bids for this project are due in March. Using this money for this purpose – instead of borrowing -- would have far greater benefit than to provide more shade in a park that has minimal use.

I am sending a duplicate original of this veto message to Lucy Brashier, Clerk of the City Council, for inclusion in the minutes.

140 Lameuse St.
P.O. Box 429
Biloxi, MS 39533
228-435-6254
Fax: 228-435-6129

Attachments: 1. Resolution 90-09, concerning the installation of a shade structure at John Henry Beck Park.
2. Pages 95 and 96 of State Statute
3. Proposed resolution to abolish improper Ward 2 Projects fund and transfer funds to Woolmarket water and sewer improvements.

Visit online at
biloxi.ms.us

cc: Lucy Brashier, Clerk of City Council

RESOLUTION NO. 90-09

RESOLUTION DIRECTING MAYOR A.J. HOLLOWAY TO PROCEED WITH THE BID
PROCESS FOR EQUIPMENT FOR JOHN HENRY BECK PARK

WHEREAS, John Henry Beck Park is located in East Biloxi at 671 Division for the citizenry to enjoy; and

WHEREAS, after Hurricane Katrina, a new playground structure and a number of other enhancements such as picnic tables, and benches were made to John Henry Beck Park by numerous volunteers; and

WHEREAS, in August of 2008, bids were received for a shade structure but, to date, none have been awarded.

WHEREAS, funding has been allocated in the 2008-09 Fiscal Year Ending Budget for improvements to John Henry Beck Park.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI THAT:

SECTION ONE: The statements, findings and conclusions contained in the preamble are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The Mayor is hereby directed to bring the bid for a shade structure and any other necessary equipment for John Henry Beck Park before the City Council for their approval.

The foregoing Resolution having first been reduced to writing, was read by the Clerk and moved by Councilmember Harrison seconded by Councilmember Lawrence and was adopted by the following vote:

Res. No. 90-09

YEAS: Lawrence Wall NAYS: None
 Stallworth Gemmill
 Harrison Fayard
 Fitzpatrick

The President then declared the Resolution adopted this the 17th day of February, 2009.



ATTEST:

APPROVED:

Karen Brasher
CLERK OF THE COUNCIL

F. J. Hallman
PRESIDENT OF THE COUNCIL

Submitted to and approved by the Mayor, this the _____ day of February, 2009.

APPROVED:

MAYOR

§ 21-8-13. General powers and duties of council.

(1) The council shall appoint a clerk of the council and deputy clerks, as necessary, who shall compile the minutes and records of its proceedings, its ordinances and resolutions as this chapter requires, and perform such duties as may be required by law.

(2) At the end of each fiscal year, the council shall cause a full and complete examination of all the books, accounts and vouchers of the municipality to be made by a competent, independent accountant or accountants who shall be appointed by the council, and the report of said examination shall be typed or printed in pamphlet form. The council shall make available a copy of said pamphlet to all persons who shall apply therefor at the office of the municipal clerk and shall cause three (3) of the printed copies of said pamphlet for each fiscal year to be substantially bound in three (3) volumes which shall be kept and preserved as a record of the clerk's office. Said pamphlets shall be published as now provided by law.

(3) If, at the beginning of the first term of office of the first city council elected by any municipality under the provisions of this chapter, the appropriations for the expenditures for the municipal government for the current fiscal year shall have been made, the council shall have power by ordinance, to revise, repeal or change said appropriations and to make additional appropriations.

(4) The council, in addition to such other powers and duties as may be conferred upon it by this chapter or otherwise by general law, may require any municipal officer, in its discretion, to prepare and submit sworn statements regarding his official duties, and otherwise to investigate the conduct of any department, office or agency of the municipal government.

SOURCES: Laws, 1973, ch. 328, § 7; Laws, 1976, ch. 355, § 6; Laws, 1987, ch. 509, § 2; Laws, 1991, ch. 394, § 1; Laws, 1991, ch. 552, § 1, eff from and after July 1, 1991.

Cross References — Limits of the definition of "ordinance" with respect to council's investigative function under this section, see § 21-8-47.

Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

Advisory park and recreation commission for certain mayor-council municipalities, see § 21-37-33.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 21-8-13(4), city council may require any municipal officer, which would include city clerk, to investigate conduct of any department, office or agency of municipal government. Hewes, Apr. 7, 1993, A.G. Op. #93-0131.

Employment of internal auditor does not meet Miss. Code Section 21-8-13(2) requirement for examination of books, ac-

counts and vouchers by independent accountant. Hewes, Apr. 7, 1993, A.G. Op. #93-0131.

Council in mayor/council municipality did not have authority to direct mayor to allocate \$100,000 to unspecified streets and capital projects in each ward or to direct mayor to allocate \$200,000 for improvements to city buildings and recre-

ational facilities; council could revise budget to increase appropriations for specific projects but council must make appropriations and cannot delegate that authority to mayor. Cochran, March 9, 1994, A.G. Op. #94-0048.

There is no authority for the city council to appoint or employ a council attorney or attorneys to advise or render legal assistance to the city council. Stokes, March 5, 1999, A.G. Op. #99-0063.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 151-154.

CJS. 62 C.J.S., Municipal Corporations §§ 113-115.

§ 21-8-15. Mayor to exercise executive power.

The executive power of the municipality shall be exercised by the mayor.

SOURCES: Laws, 1973, ch. 328, § 8, eff from and after January 1, 1974.

Cross References — Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

JUDICIAL DECISIONS

1. In general.

Ordinances requiring city council approval for mayor's appointment of city attorney, municipal judges, and prosecutors are consistent with statutory requirement that executive authority be vested with mayor in mayor-council form of government. Jordan v. Smith, 669 So. 2d 752 (Miss. 1996).

"Claims docket" method of handling municipal expenditures-appropriate department must bring properly docketed claim, before council for approval-is statutorily required although facially incompatible with statutory mayor-council form of government. Jordan v. Smith, 669 So. 2d 752 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

In certain circumstances, such as a vacancy, the mayor may designate an individual to perform the core duties of department director on a temporary basis to ensure that the functions of that department are maintained in the interest of the health and welfare of the citizens; however, as there is no distinction in the

statutes between temporary and permanent directors, all appointments to the position of department director whether interim or permanent must receive council approval pursuant to Section 21-8-23(2). Doty, Feb. 4, 2000, A.G. Op. #2000-0014.

§ 21-8-17. General powers and duties of mayor; approval of ordinances.

(1) The mayor shall enforce the charter and ordinances of the municipality and all general laws applicable thereto. He shall annually report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make such recommendations for action by the council as he may deem in the

RESOLUTION NO. _____

RESOLUTION AMENDING THE MUNICIPAL BUDGET TO COMPLY WITH
ATTORNEY GENERAL'S OPINION AND TO PROVIDE MATCHING FUNDS FOR
WOOLMARKET WATER & SEWER WORK

WHEREAS, on March 9, 1994, the state Attorney General said a City Council in a mayor-council form of government did not have the authority to allocate funds to unspecified streets and capital projects by ward; and

WHEREAS, on Sept. 19, 2008, the Biloxi City Council approved a budget that included a "Ward 2 Projects" line item, which originally set aside \$1,000,000 for unspecified capital projects in Ward 2; and

WHEREAS, in March 2009, the City of Biloxi will accept bids for Woolmarket water and sewer work; and

WHEREAS, the Biloxi City Council and Mayor have on numerous occasions expressed the need and desire to move forward on continuing water and sewer improvements in the Woolmarket community; and

WHEREAS, the city had planned to borrow money to help provide \$880,000 in matching funds required for a \$2,000,000 grant from the Environmental Protection Agency to continue water and sewer work in Woolmarket; and

WHEREAS, it is in the best interest to use funds on hand for the Woolmarket water and sewer work instead of borrowing money.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT:

SECTION ONE: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified and incorporated herein.

SECTION TWO: In order to be in compliance with the state Attorney General's opinion and to make the best of available funds, the 2008-2009 Municipal Budget is hereby amended to abolish Project No. 895, "Ward 2 Projects," and funding for said "project" be transferred to Project No. 841, Woolmarket Water & Sewer.