

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL



OPINIONS
DIVISION

August 5, 2016

The Honorable Andrew "FoFo" Gilich
Mayor, City of Biloxi
Post Office Box 429
Biloxi, Mississippi 39533

Re: Appointment of Former City Councilman as Chief Administrative Officer

Dear Mayor Gilich:

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

Background

Your letter states, in part:

The City has an opening for the position of Chief Administrative Officer ("CAO") This position is statutorily authorized under Miss. Code Ann. Section 21-8-25. The City of Biloxi maintains a mayor-council form of government and previously adopted an ordinance providing that the mayor shall appoint a chief administrative officer consistent with Section 21-8-25.

The Mayor wishes to appoint as CAO a current member of the Biloxi City Council who was not a member of the City Council when the position of Chief Administrative Officer was authorized by ordinance. The Council member would resign his seat on the City Council, and thereafter the Mayor would appoint him to the position of Chief Administrative Officer for the City without a contract of employment and without compensation of any kind. In effect, the Council member would serve as a volunteer. The Chief Administrative Officer's term is limited to the term of the Mayor, which ends July 3, 2017.

I requested an opinion of the Mississippi Ethics Commission regarding this situation on July 11, 2015 and received its opinion #16-044-E, which

states in part:

Therefore, the council member may resign and serve as CAO without compensation for one year without violating Section 109 or Section 25-4-105(2). Nevertheless, the city should consult with the Office of the Attorney General on whether the city can effectively employ a CAO without compensation.

Question Presented

Can I appoint the former council member to the position of CAO without compensation? There would be no contract of employment, but he would accept the duties of the office as a volunteer.

Response

We have previously opined that political subdivisions, including municipalities, may employ individuals without compensation. See MS AG Ops., Gamble (August 1, 1997); McCreary (July 29, 2005); and Stringer (January 3, 2003). We now opine that an individual may be employed as chief administrative officer pursuant to Section 21-8-25 with no compensation.

We do not address the legality or appropriateness of appointing a city council member to the position of chief administrative officer immediately following his departure from the city council, or within one year thereafter, in this opinion. You made our office aware of the Mississippi Ethics Commission's Opinion No. 16-044-E and its analysis of Section 109 of the Mississippi Constitution of 1890 and Section 25-4-105(2) of the Mississippi Code on an appointment being considered with no compensation and no expectation of future compensation. While we express no opinion in that regard, we do expect the requestor and the Mississippi Ethics Commission to revisit this issue in the event an appointment of the council member with compensation is considered during any subsequent term of office.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General