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October 10, 2003
OPINION 03-0349

Mr. Steven J. Dupuis
City-Parish Attorney
Lafayette Consolidated Government
P. O. Drawer
Lafayette, LA 70502-4425

71 Municipalities
77 Officers
R.S. 33:2476 (B)(c)(i); R.S. 33:2476(B)(1)(a); R.S.
33:2476(D); R.S. 33:2476
Municipality may not place term limitations upon appointees to
local civil service board.

Dear Mr. Dupuis:

In response to your recent inquiry, an assistant district attorney may not serve as a member of the Lafayette Municipal Fire and Police Civil Service Board. R.S. 33:2476(B)(c)(i) states:

(c)(i). No member of a board shall be a candidate for nomination or election to any public office or hold any other public office or position of public employment, except that of notary public, a military or naval official office, or that of a municipal fire or police department which is expressly required by the provisions of this Part.

An assistant district attorney holds public employment, and the language of R.S. 33:2476 (B)(c)(i) quoted above prohibits such individual from concurrently holding board membership.

In response to your second question regarding the legality of the municipality imposing term limits on board membership, note the eligibility requirements of R.S. 33:2476(B)(1)(a) provide as follows:

B. (1)(a) To be eligible for appointment or to serve as a member of a board, a person shall be a citizen of the United States of American, a resident of the municipality in which he is to serve for at least five years next preceding his appointment, and, at the time of his appointment, shall be a qualified voter of the municipality.

The term of office for all board members "shall be for a period of three years." See R.S. 33:2476(D). There are no statutory restrictions placed on the number of terms a board member may serve. It is our opinion that term limitations imposed by ordinance would

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conflict with R.S. 33:2476. We have previously made this determination in Attorney General Opinion 87-165, copy attached.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams

State of Louisiana

DEPARTMENT OF JUSTICE

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

Baton Rouge

70804

May 11, 1987

OPINION NUMBER 87-165

Rel. 5-18-87

Mr. Harry B. Garland
Attorney At Law
Post Office Box 61
Opelousas, Louisiana 70570

71..... Municipalities
77..... Officers
LSA-R.S. 40:1496, 42:3

Appointment of members of the Board
of Commissioners for Fire Protection
District No. 2 of St. Landry Parish.

Dear Mr. Garland:

You requested an opinion from this office concerning the appointment of members of the board of commissioners for Fire Protection District No. 2 of St. Landry Parish. You stated that the governing authority for the Town of Port Barre recently voted to limit the number of terms that appointees of the municipality could serve as members on the board and voted further to prohibit the reappointment of those presently serving as municipal appointees for the next four years. You also stated that the governing authority appointed two individuals to take office as board members at the expiration of the terms of those board members presently serving on the board. You asked for an opinion on the propriety and legality of the actions of the Board of Aldermen.

LSA-R.S. 40:1496 provides for appointment of members of the board of commissioners for Fire Protection Districts. It provides, in pertinent part, as follows:

A. The board of commissioners shall consist of five members.

B. In the case of a district comprising all or part of a single parish, members shall be appointed as follows:

* * * * *

(2) In the case where one municipality is included within the boundaries of a district lying within a single parish:

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(a) Two members shall be appointed by the parish governing authority.

(b) Two members shall be appointed by the governing authority of the municipality; and

(c) One shall be selected by the other four members and shall serve as chairman of the board.

* * * * *

D. Each member of the board shall be a resident property taxpayer of the district.

E. Two of the initial members of the board shall hold office until one year from the January first immediately succeeding their appointment and three members shall hold office until two years from the January first immediately succeeding their appointment the respective terms to be determined by lot. Thereafter, each member appointed shall serve for a term of two years. Members are eligible for reappointment. If a vacancy occurs, it shall be filled for the unexpired term by the body originally making the appointment so vacated.

The town of Port Barre is the only incorporated municipality in Fire Protection District No. 2 of St. Landry Parish and therefore has the power to appoint two individuals to serve on the board of commissioners for the fire protection district. Each member shall serve for a term of two years and is eligible for reappointment at the end of his term.

Qualification and eligibility of the appointed members has been outlined by the quoted provision. The only required qualification is that the board appointee be a resident property taxpayer of the district. There are no restrictions placed on eligibility for reappointment nor are there any restrictions placed on the number of terms a board member may serve.

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In accordance therewith, it is the opinion of this office that the governing authority for the Town of Barre cannot limit or restrict the number of terms an individual can be reappointed to serve as a member of the board of commissioners for the fire protection district. While as a practical matter, the board may refuse to reappoint members to successive terms when their terms expire, they cannot hold them ineligible to serve based on the number of terms they have already served on the board. Such an action would place a restriction on eligibility for reappointment of board members and therefore come into direct conflict with LSA-R.S. 40:1496, which places no restriction on eligibility for reappointment of board members.

LSA-R.S. 42:3 addresses the limitation of terms of employees elected by boards. It provides:

The term of office of all employees or officials elected by any state, district, parochial or municipal board shall not be for a longer period of time than the term of office of membership of the board electing them so that each respective board shall elect its own officers and employees. This Section does not apply to the officers or employees of any board governed by a civil service law of this state or of any parish or municipality thereof.

This provision basically prohibits the appointment by municipal boards of officers whose terms of office exceed the term of office of the board making the appointment; its stated purpose being that of allowing each appointing board the privilege of appointing its own officers and employees. Thus, in that the two year term of those board members appointed to take office in 1989 will probably exceed the term of the present board appointing them, the appointments are probably improper.

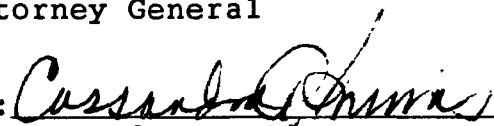
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It is hoped that this opinion has been of some assistance to you. If we may be of any further assistance, please feel free to contact us.

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

BY:


Cassandra A. Simms
Assistant Attorney General

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