

June 1, 2004
Opinion No. 04-0041

Dr. Richard Michel, Mayor
City of Marksville
742 N. Main Street
Marksville, LA 71351
and

Earl P. Lemoine, Chairperson
Marksville Civil Service Board
427 N. Washington Street
Marksville, LA 71351

61-C - LAWS - Special Legislation
71 - MUNICIPALITIES

Act 33 of 1975 Regular Session of Louisiana Legislature
Only the legislature may change a provision in a special act by amending legislation, but a municipality may adopt a home rule charter and thereby make inapplicable to that municipality a previous special act of the legislature relating only to that municipality. Several other general questions, mostly questions not involving legal interpretation, answered on the subject of municipal civil service boards.

Dear Mayor Michel and Chairperson Lemoine:

You have requested a legal opinion from our office regarding several questions you have concerning the Marksville Civil Service board. You verified for us that the city of Marksville has a population of less than 7,000 and operates under a special legislative charter that dates back to a time prior to the War Between the States. You also sent us a copy of Act 33 of the 1975 Regular Session of the Louisiana Legislature, which enactment was a special and local act establishing a civil service board for the city of Marksville.

The legislature may enact statutes providing for civil service boards for municipalities in Louisiana. Generally, it may do so by *general* law applying, more or less, to every municipality statewide which fits the objective criteria of applicability spelled out in the general statute or by *special* law applying only by name to the particular municipality in question, especially where the municipality does not have a "home rule charter." The legislature has indeed provided by general laws for civil service boards for municipalities, but by the very terms and provisions of these general laws, they do not apply to municipalities with less than 7,000 population. Our search for general laws which provide for civil service boards for municipalities with less than 7,000 population has rendered negative results. Hence, it appears that Act 33 of 1975, a copy of which you forwarded to us, is the extant special law enacted by the legislature providing for the civil service board for the city of Marksville. Because we have written opinions about them in the past [copies of two of these opinions are enclosed], we are aware that a couple of other municipalities, too, have special laws providing for their respective civil service boards.

Specifically, you first ask whether legislative approval is necessary to make changes to your board. If the change you desire to make is in conflict with a provision of the Act 33 of 1975, such as a nomination from the Junior Chamber of Commerce (which you say no

longer functions within the city of Marksville) of a person for appointment as a member of the board, then, ordinarily, you must go to the legislature to urge it to change the provision in Act 33 of 1975 to accomplish your end. Here, Section 3(C) of Act 33 of 1975 provides as follows:

“C. The members of the board shall be appointed during the sixty day period immediately following the effective date of this Act from that of twenty nominees which shall be furnished within thirty days after receiving such request from the Board of Aldermen of the town of Marksville, by the following civic clubs of the town of Marksville, each of which shall submit the names of four nominees, at least one of whom shall be a member of a minority group, (1) Chamber of Commerce, (2) Junior Chamber of Commerce, (3) Garden Club, (4) Lions Club, and (5) the American Legion.

“All subsequent appointments necessary for any reason shall be made from a list of five nominees, furnished by the above named civic clubs, one nominee to be nominated by each. In the event that a minority group is not adequately represented on the board, at least one of the five nominees shall be a member of a minority group.”

Because it no longer functions as a civic club of the city of Marksville, if you wish to delete the Junior Chamber of Commerce from Act 33 of 1975 or to substitute another civic club in its place, you will have to go to the legislature to attempt to persuade it to change this statutory law.

[It should be noted here that simply because we do not object or raise the issue, we are not confirming whether any provision quoted is constitutional or unconstitutional under the Louisiana Constitution of 1974. See, for example, *Louisiana Associated General Contractors v. State, Div. of Admin., Office of State Purchasing*, 95-2105 (La. 3/8/96), 669 So.2d 1185. But compare: *Cooper v. Orleans Parish School Bd.*, 1999-0050 (La.App. 4 Cir. 9/8/99) at p. 5 n.2, 742 So.2d 55, 59 n.2.]

In the meantime, until the legislature makes such changes in the law as the city needs, the city must perform its duties under the other provisions of Act 33 of 1975 as best it can, since the Junior Chamber of Commerce, a private organization, is no longer functioning and the particular provision of Act 33 of 1975 that assumes this civic club functions is impossible to comply with and since Act 33 of 1975 was enacted with a severability clause within its own Section 33. See also now La. R.S. 24:175.

Instead of going to the legislature to seek an amendment to a provision in Act 33 of 1975, an alternative solution for the city of Marksville is to adopt a “home rule charter” under La. Const. (1974) art. VI, §5. That constitutional provisions reads, in pertinent part,

“Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section....

“A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by *general* law or inconsistent with this constitution....” (Emphasis added.)

The home rule charter could provide that as long as the city of Marksville did not fall under any *general* law enacted by the legislature for the establishment and control of municipal civil service boards, the city’s governing body would have the power to establish and provide for a civil service board for the city of Marksville. The home rule charter would then supersede the *special* law embodied in Act 33 of 1975, and the city’s governing body would then be able to provide a more flexible local ordinance dealing with the matter.

Because the legislative charter establishing the city of Marksville was adopted prior to the War Between the States and, therefore, contains some provisions that are not only unconstitutional but also, according to the U.S. Supreme Court, are no longer even justiciable with respect to attempting to defend legally, the new home rule charter would have the coincidental advantage of updating and modernizing the city’s founding document. The commission appointed or elected to prepare the draft of the home rule charter for presentation to the people at a referendum could study several other city’s newer home rule charters to arrive at what would be the most workable provisions for the people of Marksville.

Secondly, you specifically ask whether the legislature has provided other laws dealing with municipal civil service boards. Yes, but the legislation is in the form of general laws dealing with municipalities having populations of 7,000 or greater or perhaps some of the legislation is in the form of special laws dealing with a few municipalities with less than 7,000 population. We do not generally maintain possession of such laws as such nor particularly maintain possession of special laws, nor is our office responsible for the maintenance of official copies of laws. You will have to ask the Secretary of State’s office for certified copies of the official laws; you might also ask the legislative staff office or the particular municipalities involved for whatever they possess. We will, however, send you, simply for your information, unofficial copies of the civil service board composition provisions of some of the general laws dealing with municipalities having populations of 7,000 or greater and of two special laws dealing with the parish of Rapides and the city of

St. Martinville.¹

Thirdly, you ask for copies of opinions that we may have written on civil service boards of municipalities having less than 7,000 population. We enclose Opinion No. 91-134 and Opinion 92-628.

Fourthly, you want to know if we know of any seminars or meetings of municipal civil service boards associations or groups that your civil service board members could attend to share information among other civil service board members from other municipalities and so on. No, we do not know of any. The attorney general writes his opinions on the law in order to give his legal advice and to render his legal interpretations to certain state officers and departments; that kind of non-legal information will have to be obtained from another source. You might try to contact Melinda B. Livingston, Office of State Examiner, Municipal Fire & Police Civil Service, 8550 United Plaza Boulevard, Suite 901, Baton Rouge, Louisiana 70809-2296, Telephone (225) 925-4400.

Finally, you ask to whom does the civil service board of the city of Marksville go for unbiased legal counsel without cost to the board, as the board does not feel comfortable contacting the City Attorney about matters where the city might be adverse to municipal employees. Unless you can obtain the donated services of a private attorney in your area

¹You may obtain the other sections of these laws at the legislature's official website, at URL: <http://www.legis.state.la.us/> If you look to the far left on this home page, you will see a listing of other links. The fourth one from the bottom up says, "Louisiana Laws." Please click on this hyperlink. From there you will be taken to a page that allows you to browse all laws from a table of contents, search for any particular law, or perform a text search into various groups of laws. If you select (click) the "table of contents" method, when the next page comes up, click on "Revised Statutes," then "Title 33," then start with Section 2391, which is the first section in "Chapter 5" of Title 33. All of Chapter 5 contains the various general laws on municipal civil service boards and civil service.

perhaps as *pro bono* work, the only alternative seems to be to hire a private attorney and put him on some kind of retainer. Thus, to obtain such legal advice will probably not be without cost. If there is more than one attorney in the City Attorney's Office, usually the courts will interpret the Rules of Professional Conduct to allow one attorney to be adverse to the other or to act independently of the other, so long as the particular client's matters are contained solely within the attorney assigned thereto and kept separate and apart from the other attorney.

Trusting that this opinion has adequately answered your request, we are

Yours very truly,

CHARLES C. FOTI, JR.
Attorney General

By
THOMAS S. HALLIGAN
Assistant Attorney General

Encl.

SYLLABUS
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Thomas S. Halligan
Assistant Attorney General