

November 2, 2005
OPINION 05-0336

Honorable Gary J. Beard
State Representative
Post Office Box 86479
Baton Rouge, LA 70879

55-C Intoxicating Liquors – Power to control and validity of regulation
Because of the revision and amendment of code provisions by ordinance of the Metropolitan Council of East Baton Rouge Parish and the City of Baton Rouge, the Alcoholic Beverage Control Board now selects its chairman from among its membership. The director of the Alcoholic Beverage Control Office no longer is required to serve as chairman of the board. The parish attorney retains authority to appoint the director of the ABC Office, as the office is a division of the parish attorney's office.

Dear Mr. Beard:

You advise this office that a question has arisen concerning which governmental entity has the authority to appoint the director of the East Baton Rouge Parish Office of Alcoholic Beverage Control. At the outset, we note that the Office of Alcoholic Beverage Control is a division (hereafter "the ABC Office") of the parish attorney's office. This office functions as the licensing and enforcement arm of the parish with respect to the Wine, Beer and Liquor Ordinance 13126 governing East Baton Rouge Parish. The director of the ABC Office is appointed by the parish attorney.

The Alcoholic Beverage Control Board (hereafter "the ABC Board") is an administrative review board whose membership is appointed by the Metropolitan Council of the Parish of East Baton Rouge and the City of Baton Rouge. In the past, the individual serving as director of the ABC Office was required to serve as chairman of the ABC Board. The former language of Section 1:150(b) of the code of ordinances of the City of Baton Rouge and Parish of East Baton Rouge required "the chairman of the board shall be that person appointed by the parish attorney serving in the capacity as director of the alcoholic beverage control division, or his designee."

Ordinance 13266 adopted by the Metropolitan Council in May of 2005 amended the language of Section 1:150(b) to provide a different procedure for the selection of the chairman of the ABC Board. The former language of Section 1:150(b) was stricken and Section 1:150(a) was amended to provide as follows:

Sec. 1:150. Created; members; officers.

- (a) There is hereby created an alcoholic beverage control board for the city-parish, such board to be composed of nine(9) members to be designated by the metropolitan council.

The Board, at its first meeting following the effective date of this amendment shall elect one of its members to be chairman for the

remainder of the year. The chairman so elected shall be eligible for re-election. Thereafter, at its first meeting in January of each year the Board shall elect a Chairman for a term of one (1) year who shall also be eligible for re-election. (Emphasis added).

Both your questions essentially raise one issue: does the amendment to Section 1:150 remove the parish attorney's authority to appoint the director of the ABC Office? Our response is "no". The parish attorney retains the authority to appoint the director; the ABC Office remains a division within the parish attorney's office. The parish attorney is mandated by Section 11.01 of the code of ordinances to "appoint and remove all employees of his office" and this authority remains unchanged concerning the position of director of the ABC Office.

The amendment to Section 1:150 by Ordinance 13266 empowers the ABC Board to select its chairman and removes the former requirement that the individual serving as director of the ABC Office also serve as chairman of the ABC Board. However, the ABC Board has no authority to appoint the director of the ABC Office, as again, that authority remains with the parish attorney.

We hope the foregoing is helpful to you. Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL