

November 21, 2006
OPINION NO. 06-0037

Honorable Hazel D. Myers
Mayor, City of Scott
P. O. Box 517
Scott, Louisiana 70583

77 - OFFICERS - LOCAL & MUNICIPAL; SELECTION,
QUALIFICATIONS AND TENURE; VACANCIES

La. R.S. 33:384; La. R.S. 33:385(A), La. R.S. 18:581(1),
La. R.S. 33:385(B), La. R.S. 18:602

In a Lawrason Act municipality, a councilman (alderman) must be an elector of the municipality and must retain a residence within the particular district from which he is elected.

Dear Mayor Myers:

Your request for an Attorney General's opinion has been forwarded to me for research and reply. Specifically, you ask whether any action needs to be taken regarding a city councilman who still lives in the city but no longer lives in his district?

You also state that this councilman is in the process of having a house built which is out of the city limits.

In a Lawrason Act municipality, such as the City of Scott, a councilman (alderman) must be an elector of the municipality and must have been domiciled for at least the immediately preceding year in the municipality. Further, a councilman must retain a residence within the particular district from which he is elected in order to retain the qualifications of office. The statutes governing this matter are found within La. R.S. 33:384, and 33:385, providing:

§ 384. Qualifications of mayor

The mayor shall be an elector of the municipality who at the time of qualification as a candidate for the office of mayor shall have been domiciled and actually resided for at least the immediate preceding year in the municipality.

§ 385. Qualifications of alderman, vacancies, office holding; contracting

- A. The qualifications of the alderman shall be the same as are prescribed for the mayor, and in addition, those elected from wards must be residents of their respective wards.

Our office has consistently opined that in a Lawrason Act municipality an alderman must remain a resident of the district from which he is elected in order to retain the qualifications of office. (See Attorney General Opinions 92-350, 97-4 and 98-326 which have been attached for your review.)

If the determination is made by the Board of Aldermen that the alderman in question no longer meets the statutory residency requirements, the Board has cause to declare the position vacant. The alderman's position does not become vacant merely because the official has moved; the vacancy must be declared by the Board.

According to *La. R.S. 18:581 (1)*, a "vacancy" occurs in an elective office . . . when the person elected to or holding the office no longer meets the residence or domicile requirements of that office, any declaration of retention of domicile to the contrary notwithstanding.

Louisiana Revised Statute 33:385 (B) dictates that the provisions of La. R.S. 18:602 be followed where a vacancy in the office of councilman is declared. The Board must appoint a person to fill the vacancy who meets the qualifications of the office. The appointment must be made within ten days of the vacancy. If an appointment is not made by the Board, the governor is empowered to fill the vacancy. If the unexpired term exceeds one year, the board must issue a proclamation calling for a special election to fill the vacancy and replace the temporary appointee. This proclamation also must issue within ten days of the vacancy. Since there is less than one year left in the term, a special election is not held. Instead, the appointed councilman serves until the regular election is held, and a successor is elected and takes office.

We trust this sufficiently answers your questions. However, if you should need anything further do not hesitate to contact this office.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: _____
FRANCES J. PITMAN
ASSISTANT ATTORNEY GENERAL

CCF,Jr:FJP:sc

Attachments

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SYLLABUS

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Date Received:

Date Released: November 21, 2006

Frances J. Pitman

Assistant Attorney General