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DEPARTMENT OF JUSTICE
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April 8, 2013
OPINION 13-0003

71-1-B MUNICIPALITIES- HOME RULE CHARTER

Louis G. Gruntz, Jr.
Charter Advisory Board Chairman
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General Governmental Building, Suite 6600
Gretna, LA 70054

La.Const. art. VI, § 4	La.Const. art. X, § 16
La.Const. art. X, § 1	La. R.S. 1:3
La.Const. art. X, § 2	La. C.C. art. 11
La.Const. art. X, § 15	

The Louisiana Constitution does not forbid the inclusion of the secretarial and clerical staff of the Jefferson Parish President, Parish Council, or Parish Attorney in the Parish Civil Service. However, Section 23-21 of the Code of Ordinances excludes the Parish Attorney and his "legal assistants" from being part of the Jefferson Parish Civil Service. The term "legal assistants" includes the position of legal secretary but does not include the positions of Clerk III, Receptionist, or Typist Clerk I, II, III. The inclusion of any of the positions listed in La.Const. art. X, § 2 in a local civil service system would be inconsistent with the Louisiana Constitution.

Dear Mr. Gruntz:

You have indicated that Jefferson Parish is in the midst of conducting its decennial review of the Jefferson Parish Charter ("Charter") and have asked the following series of questions regarding the Jefferson Parish Classified Civil Service System ("Parish Civil Service").

1. Are the provisions of La.Const. art. X, particularly §15, applicable to the Parish Civil Service?
2. If La.Const. art. X is applicable to the Parish Civil Service, do the words "mayor," "city attorney" and "police jury" contained in La.Const. art. X, §2 (B)(10) encompass the corresponding positions in a parish home rule charter government, i.e. parish president, parish attorney, and parish council?
3. Is it constitutionally permissible for the secretarial and clerical staff of the Jefferson Parish President, the Parish Council, and the Parish Attorney to be in the Parish Civil Service?
4. Does the Charter terminology "legal assistants" encompass the secretarial and clerical staff of the Parish Attorney thereby excluding them from the Parish Civil Service?
5. Would inclusion of the Parish Attorney's secretarial and clerical staff in the Parish Civil Service violate State Bar Articles of Incorporation, Article XVI, Rules of

Professional Conduct, Rule 5.3 by impeding the authority of the Parish Attorney to ensure that the conduct of such non-lawyer employees is compatible with the professional obligations of the Parish Attorney?

We received additional correspondence from the Department of the Parish Attorney on January 31, 2013, which sought to provide clarification to your opinion request and stated that the Parish was seeking guidance as to the proper status, classified or unclassified, of the secretarial and clerical employees of the Parish Attorney. At our request, the Parish Attorney's office sent the job descriptions for the positions¹ of the clerical staff in the Parish Attorney's office. The Parish Attorney further indicated that current civil service employees will retain their status and all the rights and benefits they currently enjoy; only on a prospective basis will newly hired employees be unclassified.

Jefferson Parish operates pursuant to a Home Rule Charter plan of government which was adopted on November 5, 1957. The Parish Civil Service provisions are found in Chapter 23, Article II of the Jefferson Parish Code of Ordinances. Section 23-21 of Article II establishes the Parish Civil Service "for all offices, positions of trust or employment in the parish service, except those specifically exempted or excluded under the provisions of Section 4.03 (A) of the Charter, Article X, Section 2, and Section 15 of the Constitution of the State of Louisiana of 1974." Louisiana Constitution art. VI, § 4 provides in pertinent part that a home rule charter which existed prior to the constitution shall:

remain in effect and may be amended, modified, or repealed as provided therein. Except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted. If its charter permits, each of them also shall have the right to powers and functions granted to other local governmental subdivisions.

Therefore, to the extent that the Charter and Parish Civil Service provisions are consistent with the constitution, they remain in effect pursuant to La.Const. art VI, § 4.

You first ask whether La.Const. art. X, applies to the Parish Civil Service. Part 1 of La.Const. art. X, provides for the establishment of a state and city civil service system to be applicable to the employees of the state (but not local government subdivisions) and to employees of cities and populations of over four hundred thousand.² Parishes with populations over ten thousand but less than four hundred thousand may elect to be governed by Part 1 of La.Const. art. X by a majority vote.

¹ We received job descriptions for the following positions: Receptionist, Typist Clerk I, Typist Clerk II, Typist Clerk III, Clerk III, and Secretary.

² *West v. Allen*, 382 So.2d 924 (La.1980).

Louisiana Constitution Article X governs state and city civil service as those terms are defined by La.Const. art. X, § 1. The Parish Civil Service was established by the Charter and does not meet the definitions of either “State Civil Service” or “City Civil Service” set forth in La.Const. art. X, § 1, nor does Jefferson Parish qualify as a parish that may elect to be governed by Part 1 of La.Const. art. X since the Parish population exceeds 400,000.³ Thus, the articles governing these civil service systems are not applicable to the Parish Civil Service.

In your next question you ask whether the language contained in La.Const. art. X, § 15 which states, “[n]othing in this Part shall permit inclusion in the local civil service of officials and employees listed in Section 2 of this Article” is applicable to the Parish Civil Service. At the outset, we note that La.Const. art. X, § 15 is applicable under Jefferson Parish, Code of Ordinances, Section 23-21 which adopts the exclusions and exemptions contained in the provisions of La.Const. art. X, § 2 and § 15. However, in an attempt to further answer your question, the prohibition contained in La.Const. art. X, § 15 regarding the inclusion of officials and employees listed in La.Const. art. X, § 2 is applicable to a local or parish civil service system regardless of whether the civil service system is established by a Home Rule Charter which existed or was adopted when the 1974 Louisiana constitution was adopted. To allow inclusion of the positions listed in La.Const. art. X, § 2 in a local or parish civil service system would be inconsistent with the Louisiana constitution.

In *West v. Allen*⁴, plaintiffs, Jefferson Parish firemen, brought suit seeking to compel the Jefferson Parish Council to comply with La.Const. art. X, § 16, which established a separate system for classified fire and police civil service system. Jefferson Parish argued that La.Const. art. X, § 16 was not applicable because the Parish Civil Service was authorized by its Home Rule Charter which was continued in effect by La.Const. art. VI, § 4.

The Louisiana Supreme Court rejected the Parish’s argument and found that, although the Parish Civil Service was continued in effect by La.Const. art. VI, § 4, the inclusion of Jefferson Parish firemen in the Parish Civil Service was inconsistent with La.Const. art. X, § 16. Similarly, the inclusion of the positions listed in La.Const. art. X, § 2 in a local or parish civil service system would be inconsistent with the specific prohibition set forth in La.Const. art. X, § 15.

Next, you ask if the references to “mayor,” “city attorney” and “police jury” encompass corresponding positions in a parish home rule charter. The constitution is subject to the same rules of interpretation as other laws and written instruments. “When a constitutional provision is clear and unambiguous, and its application does not lead to absurd consequences, it must be applied as written without further interpretation in

³ According the 2010 census the population of Jefferson Parish was 432,552.
<http://www.census.gov/2010census/popmap/ipmtxt.php?fl=22>. Last accessed March 6, 2013.

⁴ *West*, 382 So.2d 924 at 926.

search of its intent.”⁵ Accordingly, the terms used in La.Const. art. X, § 2 do not apply to corresponding parish positions, and the constitution does not forbid the inclusion of the secretarial and clerical staff of the Parish President, Parish Council, or Parish Attorney in the Parish Civil Service.

You also seek a determination as to whether secretarial and clerical employees of the Parish Attorney are excluded from the Parish Civil Service by the Charter.

Section 23-21 of the Code of Ordinances exempts from the Parish Civil Service the offices excluded under the provisions of Section 4.03 (A). Section 4.03 (A) excludes from its provisions regarding appointment, promotion, and dismissal the Parish Attorney and his “legal assistants”.

Jefferson Parish has previously determined that the term “legal assistant” encompasses paralegals and investigators.⁶ You now ask whether the term also includes the secretarial and clerical staff of the Parish Attorney. The rules of statutory construction provide that “[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the language.”⁷ “The words of a law must be given their generally prevailing meaning.”⁸

Blacks Law Dictionary (“Blacks”) defines the term “Legal Assistant” as: 1. Paralegal. 2. A Legal Secretary.⁹ The words “Paralegal” and “Legal Secretary” are defined by Blacks as follows:

Paralegal, A person who has some education in law and assists a lawyer in duties related to the practice of law but who is not a licensed attorney.
— Also termed legal assistant; legal analyst.¹⁰

Legal secretary, An employee in a law office whose responsibilities include typing legal documents and correspondence, keeping records and files, and performing other duties supportive of the employer's law practice. Legal secretaries are usually more highly skilled, and therefore more highly compensated, than secretaries in general business.¹¹

The common usage of the term “legal assistants” encompasses legal secretaries thereby excluding them from the Parish Civil Service per Section 4.03 (A) of the Charter. As to the remaining clerical staff we have reviewed the job descriptions of Clerk III, Receptionist, Typist Clerk I, Typist Clerk II, and Typist Clerk III and do not find

⁵ *Succession of Lauga*, 624 So.2d 1156, 1165. (La.1993).

⁶ See July 22, 1988 opinion from the Parish Attorney.

⁷ La. R.S. 1:3.

⁸ La. C.C. Art. 11.

⁹ Black's Law Dictionary (9th ed. 2009) p. 979.

¹⁰ *Id.* at 1220.

¹¹ *Id.* at 979.

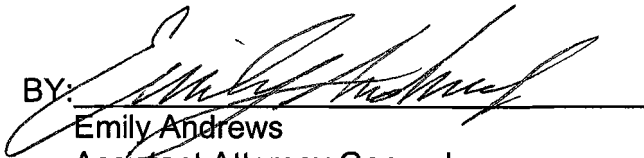
that these positions require any special legal skills, legal duties, or education in the area of law. Thus, we find the term "legal assistants" does not include the positions of Clerk III, Receptionist, Typist Clerk I, Typist Clerk II, and Typist Clerk III as those positions are currently described, and they are not excluded from the Parish Civil Service by Section 4.03 (A).

Finally, you ask whether the inclusion of the Parish Attorney's secretarial and clerical staff in the Parish Civil Service violates the State Bar Articles of Incorporation, Article XVI, Rules of Professional Conduct, Rule 5.3. We are unable to contemplate whether such an action would be a violation of these Rules. The Rules of Professional Conduct are within the jurisdiction of the Louisiana Supreme Court, and the Louisiana Attorney Disciplinary Board is the appropriate body to provide rulings on issues regarding ethical conduct of attorneys. The Board may be contacted at 2800 Veterans Memorial Boulevard, Suite 310, Metairie, Louisiana 70002 or 1-800-489-8411.

We hope that this opinion has addressed the questions you have raised regarding the Parish Civil Service. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY: 

Emily Andrews
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JDC: EGA