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DEPARTMENT OF JUSTICE
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MAR 27 2013
OPINION 13-0009

Tom Thompson, Chairman
Lincoln Parish Fire District 1
Board of Commissioners
4786 Highway 167
Dubach, LA 71235

47-A-1—FIRE PROTECTION DISTRICTS

71—MUNICIPALITIES

77—OFFICERS—Local & Municipal, Selection; Qualifications & Tenure;
Vacancies

La. R.S. 33:321; La. R.S. 33:381; La. R.S. 33:386; La. R.S. 40:1491; La. R.S.
40:1491; La. R.S. 40:1492; La. R.S. 1498; La. R.S. 40:1499; La. R.S. 40:1500;
La. R.S. 40:1509; La. R.S. 42:64

Pursuant to La. R.S. 33:386, it is the opinion of this Office that the Mayor of Simsboro, subject to the approval of the Board of Aldermen, may appoint a Commissioner to serve on the Lincoln Parish Fire District No. 1 Board of Commissioners when a vacancy occurs. It is also this Office's opinion that pursuant to La. R.S. 42:64(A)(1), the Mayor of Simsboro may not simultaneously hold a position as Commissioner on the Lincoln Parish Fire District No. 1 Board of Commissioners.

Dear Chairman Thompson:

You submitted an opinion request regarding the validity of a commissioner's seat on the Lincoln Parish Fire District No. 1 Board of Commissioners.

According to your request, the Commissioner for the municipality of Simsboro vacated his seat on the Lincoln Parish Fire District No. 1 Board of Commissioners [hereinafter "Fire Protection District's Board of Commissioners"], leaving an unexpired term. Subsequently, the Mayor of Simsboro appointed himself to fill this vacancy. You further explain that the Board of Aldermen of Simsboro have not indicated nor provided any documentation showing that they appointed the Mayor of Simsboro to serve on the Fire Protection District's Board of Commissioners. Based on these facts, you have raised the following question:

When there is a vacancy on the Fire Protection District Board of Commissioners that leaves an unexpired term, who is responsible for filling the vacancy on the Board; specifically, would the Mayor or the Board of Aldermen of the respective municipality have this authority?

In order to determine who is ultimately responsible for appointment of a Commissioner in the event of a vacancy leaving an unexpired term on the Fire Protection District's Board of Commissioners, we begin our analysis by evaluating the applicable statutes, La. R.S. 40:1491, *et seq.*, that pertain to Fire Protection Districts.

The Fire Protection District's Board of Commissioners governs the Fire Protection District, which is a political subdivision and a creature of the police jury. La. R.S. 40:1491 and 1492; see also La. Atty. Gen. Op. 02-0017. Further, the fire protection district operates as its own public corporation that "shall have all of the powers of public corporations, including perpetual existence and the right and power to incur debt and contract obligations, to sue and be sued, and to have a corporate seal." La. R.S. 40:1500. Members serving on the Fire Protection District's Board of Commissioners shall adopt rules and procedures, and fix the time and place of regular monthly meetings. La. R.S. 40:1499. More generally, they may do all things necessary to carry out the purposes for which the district was created. La. R.S. 40:1499. See also, La. Atty. Gen. Op. 01-205. Members serving on the Fire Protection District's Board of Commissioners shall also be compensated from funds of the respective Fire Protection Districts at a rate set by statute. See, La. R.S. 40:1498. It should be noted, that in the past, this Office has also opined that a "fire protection district is a creature of the parish and not the municipality." La. Atty. Gen. Op. 02-0017.

Of those statutes that pertain to Fire Protection Districts, La. R.S. 40:1509 applies specifically to three parishes, including Lincoln Parish, regarding the appointment of Commissioners:

Notwithstanding any provision of law to the contrary, the board of commissioners of a fire protection district in the parishes of Avoyelles, **Lincoln**, St. John the Baptist, and Webster shall be comprised of at least one member from each ward located within the boundaries of each district. The respective parish governing authorities shall implement this Section by providing for appointment of members, including those from municipalities, in such manner, and by adding such members, as shall be necessary to implement these provisions.

(West 2013)(emphasis added).

According to the Lincoln Parish Police Jury,¹ the foregoing statutory provision has been implemented as follows: Lincoln Parish is comprised of twelve (12) districts and five (5) wards. The Fire Protection District's Board of Commissioners is comprised of seven (7) members. Of those members, each of the four (4) municipalities appoints a Commissioner. More specifically, the Town of Vienna and the Town of Simsboro shall each appoint one (1) member, both of whom shall serve as representatives of Ward Number 3; the Town of Dubach shall appoint one (1) member, who also serves as the representative for Ward Number 4; and the Town of Downsville shall appoint one (1) member, who serves as the representative for Ward Number 5. In addition, the Police Jury shall appoint three (3) members, of which, one (1) member must be appointed from

¹ Information supplied via telephone communication with Mr. Courtney Hall, Parish Administrator for Lincoln Parish Police Jury, on March 12, 2013.

Ward Number 1 and one (1) member must be appointed from Ward Number 2. The third appointment may be made from any of the five wards. The Lincoln Parish Police Jury defers to the individual municipalities to oversee the appointment procedure for their respective Commissioners.

Pursuant to your request, the Commissioner appointed to serve on the Fire Protection District's Board of Commissioners for the Town of Simsboro recently vacated his position, leaving an unexpired term to be filled. The Mayor of Simsboro has relied on the Lawrason Act, La. R.S. 33:321, *et seq.*, to support his position that he has the sole authority to appoint persons to fill such vacancies, and has, in fact, appointed himself to fill this vacant seat on the Fire Protection District's Board of Commissioners.

La. R.S. 33:386 pertains to the appointment of municipal officials within a Lawrason Act municipality, and states in pertinent part as follows:

- A. At the first regular meeting of the board of aldermen succeeding each regular municipal election, **the mayor subject to confirmation by the board of aldermen**, shall appoint a **clerk, tax collector**, except as provided in R.S. 33:381(D), and ***all other necessary officers whose election is not provided for in R.S. 33:381.*** In the event of a vacancy, the mayor, subject to confirmation by the board of aldermen, shall appoint a successor to any such office. In making or approving such appointments and in filling vacancies, the mayor and the board of aldermen shall give preference to residents of the municipality if all other considerations are equal.

* * * *

- C. The mayor, **subject to confirmation by the board of aldermen**, may appoint and fix compensation for an attorney at law for the municipality, whose duties in such capacity may include representation of all municipal officers as defined in R.S. 33:381(A) in actions against them in connection with and arising out of their functions as officers, and other duties prescribed by the mayor...

* * * *

(West 2013).

The position of Commissioner on the Fire Protection District's Board of Commissioners is not specifically provided for in La. R.S. 33:381, or elsewhere in the provisions of the Lawrason Act. Therefore, a Commissioner shall be appointed by the Mayor subject to confirmation by the Board of Aldermen. In this instance, where a seat was vacated

leaving an unexpired term, the Mayor must appoint a successor to fill the vacancy, subject to the approval of the Board of Aldermen.

Furthermore, our Office would direct your attention to La. R.S. 42:64 which establishes "incompatible offices." In particular, La. R.S. 42:64(A)(1) provides as follows:

- A. In addition to the prohibitions otherwise provided in this Part, no other offices or employments shall be held by the same person in combination if any of the following conditions are found to pertain and these prohibitions shall exist whether or not the person affected by the prohibition exercises power in conjunction with other officers:
 - (1) The incumbent of one of the offices, whether or not in conjunction with fellow officers, or employment has the power to appoint or remove the incumbent of the other, except that local governmental subdivisions may appoint members of the governing body to boards and commissions created by them and over which they exercise general powers as provided in Article VI, Section 15 of the Constitution of Louisiana. A board or commission so created may elect officers from its own membership, and if a joint commission of two parishes, except a joint commission that has as its function the operation and maintenance of a causeway and its related roadways, may also appoint a member of one of such parish's governing body to be its general superintendent.

* * * *

(West 2013).

Here, because the Mayor, in conjunction with the Board of Aldermen, has the authority to appoint the incumbent to the Board, a Board that was created by the Parish and not the municipality, the Mayor may not simultaneously serve on the Board.

Therefore, it is the opinion of this Office that the Mayor of Simsboro, subject to the approval of the Board of Aldermen, may appoint a Commissioner to serve on the Lincoln Parish Fire District No. 1 Board of Commissioners when a vacancy occurs. It is also this Office's opinion that pursuant to La. R.S. 42:64(A)(1), the Mayor of Simsboro may not simultaneously hold a position of Commissioner on the Lincoln Parish Fire District No. 1 Board of Commissioners.

We hope that this information sufficiently answers your inquiries. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

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By:


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JDC:KG:jv