



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

June 27, 2013
OPINION 13-0036

71-1-1 MUNICIPAL FIRE AND POLICE CIVIL SERVICE

La. R.S. 33:2471
La. R.S. 33:2476

La. R.S. 33:2495.2

Robert S. Lawrence
Interim State Examiner
8550 United Plaza Blvd., Suite 901
Baton Rouge, LA 70804

The New Iberia Municipal Fire and Police Civil Service Board will remain a five member board despite the abolishment of the municipal police department. The governing body will not be able to make the appointment from the police department as set forth in La. R.S. 33:2476 (3); therefore, the position that can only be filled from the ranks of the police department will be vacant. Although the board will contain a vacancy, the definition of a quorum does not change.

Dear Mr. Lawrence:

I received your request for an opinion with regard to La. R.S. 33:2495.2 and its application to the New Iberia Municipal Fire and Police Civil Service Board. Your opinion request relays that the sole remaining employee of the City of New Iberia Police Department is now no longer employed by the Department. Since the New Iberia Police Department no longer has any employees, effective, December 6, 2012, the New Iberia Municipal Fire and Police Civil Service Board abolished the only remaining class in the classified police civil service.¹

In light of the fact that New Iberia no longer has a regularly paid police department, you ask the following questions:

- 1) Are the two appointments made by the executive head of a four-year institution, contained in La. R.S. 33:2476 (C)(2)(a) ("college list appointments") reduced to one, thus rendering the board a three member board?
- 2) If the college list appointments must be reduced, should the current college list appointees remain on the board through the end of their term? If not, who determines which of the two members must step down?
- 3) If all members must remain on the board through July 26, 2013, what will constitute a quorum of the current board in light of the abolishment of the police department?

¹ The opinion request submitted to our office neither asks nor contains facts sufficient for us to determine whether the abolishment of this class was in accordance with Louisiana Law. See La. Const. art. XIV, §15.1; La. Atty. Gen. Op. No. 01-27; and *Odom v. City of Minden*, 300 So.2d 462 (La.1974).

Louisiana Revised Statutes 33:2471, *et seq.* govern Fire and Police Civil Service Law for Municipalities with populations between 13,000 and 250,000.² La. R.S. 33:2471 provides:

This Part applies to any municipality which operates a regularly paid fire and police department and which has a population of not less than thirteen thousand nor more than two hundred fifty thousand according to the latest regular federal census for which the official figures have been made public.

[Emphasis added.]

Generally, the provisions of La. R.S. 33:2471 are not applicable when a municipality does not have both a regularly paid fire and police department.³ However, La. R.S. 33:2495.2, effective January 1, 2008, provides:

If the city of New Iberia which has a municipal fire and police civil service system in existence on January 1, 2008, ceases to operate either its fire department or its police department, the civil service system shall continue in full force and effect for the remaining department as provided by law.

The use of the word continuation and the statute's location in Part II of Chapter 5 indicates that the phrase *civil service system* refers to the municipal fire and police civil service system in place at the time La. R.S. 33:2495.2 became effective.⁴ La. R.S. 33:2495.2 essentially created a special exception to the rule that the provisions of La. R.S. 33:2471, *et seq.* are only applicable to a "municipality which operates a regularly paid fire and police department."⁵ Unfortunately, La. R.S. 33:2495.2 failed to provide for how the appointments to the New Iberia Municipal Fire and Police Civil Service Board would be made if one of the departments ceases to operate.

La. R.S. 33:2476 governs the appointment process of municipal fire and police civil service boards. La. R.S. 33:2476(C) states:

The members of the board shall be appointed by the governing body as follows:

(1) One shall be appointed by the governing body upon its own nomination.

² The most recent United States Census reported the population of the City of New Iberia to be 30,617. U.S. Census Bureau. *New Iberia (city), Louisiana*, <http://quickfacts.census.gov/qfd/states/22/2254035.html> (last visited April 19, 2013).

³ *Heintz v. City of Gretna*, 96-555 (La.App. 5 Cir. 11/26/96), 683 So.2d 926, 928; La. R.S. 33:2471.

⁴ La. R.S. 33:2475.

⁵ La. R.S. 33:2471.

(2) Two members shall be appointed from a list of four nominees that shall be furnished...by the executive head of a legally chartered and established four-year institution of higher education....

(3) Two members shall be appointed who shall first be nominated and elected by and from the regularly employees of the fire and police departments as follows:

One member shall be elected and appointed from the fire department and one member shall be elected and appointed from the police department....

It should be noted at the outset that the provisions of La. R.S. 33:2471, *et seq.* were never meant to apply to a municipality which only has a municipal fire department, and the statutes were not drafted to deal with such a situation. This issue was addressed in *Heintz v. City of Gretna*, wherein the Fifth Circuit Court of Appeal held that operation of both a police and fire department is necessary before La. R.S. 33:2471, *et seq.* applies.⁶ La. R.S. 33:2476 (C)(3) requires that one member of the board be appointed who is nominated and elected by the regular employees of the police department. La. R.S. 33:2476 (E) provides that when there is a vacancy, "the governing body of the municipality shall appoint a successor in the same manner as the outgoing member was appointed" within ninety days of the vacancy. Because there is no municipal police department, the governing body will not be able to make this appointment and the position will remain vacant. However, the inability to fill the position does not convert the board to a three member board. As shown above, La. R.S. 33:2476 (A) requires that the board be composed of five members. As a result, in the present situation, the position reserved for a member elected from the municipal police department will simply be vacant.

Your opinion request indicates that you believe the two college list appointments are meant to correspond with the number of departments, and you ask whether the number of college list appointments should be reduced to one. As noted above, La. R.S. 33:2476 (A) was never meant to apply to a situation where the municipality does not operate both a regularly paid police and fire department.⁷ Because the language of the La. R.S. 33:2476 (C)(2) does not specifically require that one of the college list appointments be from the municipal police department, the number of college list members cannot be reduced. The governing body should continue to make the appointments in accordance with La. R.S. 33:2476 (C)(2).

Although the board will contain a vacant position, the quorum requirement will not change. La. R.S. 33:2476 (M) specifically sets forth the quorum requirement for the Municipal Fire and Police Civil Service Board and states: "[f]our members of the board shall constitute a quorum and the concurring votes of any three members comprising

⁶ *Heintz*, 683 So.2d at 928.

⁷ *Id.*

the quorum of the board shall be sufficient for the decision of all matters to be decided or transacted by it."

In conclusion, the New Iberia Municipal Fire and Police Civil Service Board will remain a five member board, but the governing body will not be able to make the appointment from the police department as set forth in La. R.S. 33:2476 (3); therefore, that position will be vacant.

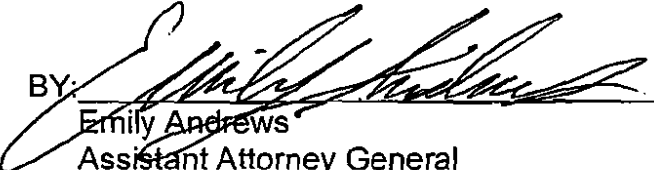
The special legislation enacted for the City of New Iberia allows its Fire and Police Civil Service Board to remain in existence, despite the elimination of the city police department. The legislation however, does not address how the appointment process contained in La. R.S. 33:2476 would function in the event that the city's fire or police department were to cease operation. In the absence of legislation which would specifically set forth a different appointment process for the New Iberia Municipal Fire and Police Civil Service Board, in the event of the elimination of one of the departments from which members are to be appointed, the position on the Board that must be filled from the roster of police employees must remain in existence, but vacant, even though the police department has been abolished. Absent remedial legislation, the New Iberia Municipal Fire and Police Civil Service Board must continue to abide by La. R.S. 33:2476.

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

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:


Emily Andrews

Assistant Attorney General

JDC: EGA