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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0046

90 – B – 4 – PUBLIC MEETINGS – State & Local Governing Bodies

La. R.S. 33:405
La. C.C.P. art. 3863

La. R.S. 14:134

Mr. Elijah Banks
Alderman, Town of Ferriday
727 Tennessee Avenue
Ferriday, LA 71334

The mayor of a Lawrason Act community may not refuse to hold a special meeting which has been called for by a majority of the board of aldermen. A mayor of a Lawrason Act municipality who fails to perform a ministerial duty required of him or her by law could subject himself to a mandamus action instituted by the board of aldermen.

Dear Alderman Banks:

Our office received your request for an opinion relating to the request of the Board of Aldermen for the Town of Ferriday ("Town") to call a special meeting. Enclosed with your opinion request, you included a copy of a letter from you dated October 10, 2012, submitted to the Mayor for the Town calling a special meeting pursuant to La. R.S. 33:405(C). This letter outlines two matters to be placed on the agenda for the proposed meeting, and is signed by four of the five members of the Board of Aldermen. You also included a letter from the Mayor dated October 10, 2012, which states that a special meeting will not be held, claiming that the matters proposed for the agenda do not "meet the requirements to call a special meeting" and further providing that holding a special a meeting would place an additional financial burden on the Town.

In light of the above, you have asked our office to provide an opinion on the following questions:

- (1) Does the mayor of a town governed by the Lawrason Act have the authority to refuse to hold a special meeting called by a majority of the members of the board of aldermen?
- (2) If the mayor lacks such authority, what remedy is available?

As an initial matter, we note that the Town is a Lawrason Act community, governed by the provisions of La. R.S. 33:321, *et seq.* La. R.S. 33:405 governs meetings of the board of aldermen, Subsection C specifically addresses special meetings, providing:

Special meetings of the mayor and board of aldermen may be called by the mayor or a majority of the members of the board. The board shall establish by ordinance how notice of special meetings shall be provided to

members of the board and the mayor. The notice for a special meeting shall specify the business to be considered at the special meeting. Public notice shall be given as provided in R.S. 42:19. Notwithstanding any other law to the contrary and pursuant to Act No. 131 of the 2008 Regular Session of the Legislature, an item which is not on the meeting agenda may be considered by the mayor and the board of alderman only after a unanimous vote of consent by the board and only after announcing the purpose of the item and allowing anyone in the audience to speak on the item.

Additionally, we note that the mayor presides at all meetings of the board of aldermen as indicated by La. R.S. 33:405(A).

In La. Atty. Gen. Op. No. 93-644, our office considered the authority of a mayor to resist calling a special meeting of the board of aldermen in the Town of Broussard, a Lawrason Act community. In this opinion, the mayor felt the business proposed to be handled at the special meetings could be handled at the regular meetings and that holding such meetings incurred needless expense for the municipality. Our office noted that a previous version of La. R.S. 33:405(C) provided that special meetings of the mayor and board of aldermen could be called "for the transaction of important business." However, Act 890 of the 1985 Louisiana Legislative Session removed this language, no longer specifying that the purpose of calling such a meeting must be to transact important business. Thus, La. Atty. Gen. Op. No. 93-644 concluded that the board of aldermen could call special meetings for whatever purposes it sees fit.

Reading the clear language of La. R.S. 33:405(C), which simply permits a special meeting to be called by the mayor or a majority of the board, and applying the conclusion and reasoning of the above cited opinion to the scenario you have presented, it is the opinion of this office that the mayor of a Lawrason Act community may not refuse to hold a special meeting which has been called for by a majority of the board of aldermen.¹

You have indicated that the Mayor refused to hold a special meeting called for by a majority of the board of aldermen and asked what the remedy is for such a refusal. The refusal to hold a special meeting called for by a majority of the board of aldermen is an allegation that the mayor has failed to fulfill his duties as a public official.

In the event the Mayor fails to perform a ministerial duty required of him or her by law, the Board of Aldermen may seek the remedy of a mandamus under La. C.C.P. art. 3863, providing that "a writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law..." It is well established that the extraordinary remedy of a writ of mandamus is only appropriate to compel a public

¹ As your opinion request does not raise any concerns regarding notice, this opinion presumes compliance with the notice provisions of La. R.S. 42:19 as well as compliance with any notice requirements established by ordinance for calling a special meeting.

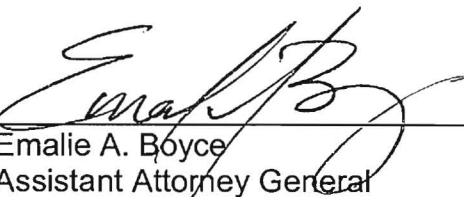
officer to perform an action "in which no element of discretion is left to the public officer."
Felix v. St. Paul Fire and Marine Ins. Co., 477 So.2d 676, 682 (La.1985).

As this office does not operate as a fact finder, it would not be appropriate for this office to make a factual determination relative to the Mayor's conduct; rather, we simply point out that the remedy of mandamus is available to the Town regarding a mayor who fails to perform a non-discretionary ministerial duty of his office.

We hope that this opinion has adequately addressed the legal issues you have raised. 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: 
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cc: Honorable Gene Allen, Mayor, Town of Ferriday