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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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JUN 18 2013
OPINION 13-0055

71-1—MUNICIPALITIES—Special Charters

R.S. 32:301; R.S. 33:404; R.S. 33:481

The Town of Coushatta's special legislative charter is silent as to the appointment process of the Town's Police Chief, Clerk, and Attorney. Therefore, La. R.S. 33:404(A)(3) controls this appointment process whereby the Mayor for the Town of Coushatta shall appoint the Town's Chief of Police, Clerk, and Attorney, subject to the Council's approval. In the event of a tie, the Mayor's recommendation shall prevail.

Honorable Johnny Cox
Mayor, Town of Coushatta
1425 E. Carroll Street
Coushatta, Louisiana 71079

Dear Mayor Cox:

You submitted an opinion request regarding the appointment authority of the Mayor and the Council for the Town of Coushatta ("Town"). According to your request, it has been the accepted practice in the Town for the Mayor to appoint the Town's Chief of Police, Clerk and Attorney, subject to the Council's approval. This practice is reflected in several Town Council Meeting minutes you supplied to our Office.¹ You would like confirmation that this practice is permissible under the Town's special legislative charter. Thus, your inquiry is whether it is lawful under the Town's special legislative charter for the Mayor to appoint the Town's Chief of Police, Clerk, and Attorney, subject to the Council's approval?

The Town's special legislative charter sets forth the duties of the Mayor and several members of the council (i.e., secretary, treasurer, marshal). For instance, Section 7 of the Town's Charter sets forth powers for the Mayor and Council, including the ability to organize the police in such a manner that is "not inconsistent with the laws of the state and of the United States."²

¹ Town Council Meeting Minutes from January 12, 2010, January 11, 2011, and January 10, 2012 supplied to this Office with your request show that your predecessor, Mayor Byrd, made recommendations to appoint certain individuals to the position of the Town's Chief of Police, Clerk, and Attorney. The recommendations appear to have been subject to the Council's approval.

² Town of Coushatta Special Legislative Charter, Sec. 7 "Mayor and councilmen-Additional powers," p. C-3. (Acts 1872, 2nd Session, Number 24)

Section 9 of the Town's Charter delineates the Mayor's additional powers and duties as follows:

The mayor of the town of Coushatta shall be ex officio justice of the peace within the limits of the town, and as such shall have power to suppress all riots, unlawful assemblies, affrays and tumults, all breaches of the peace committed within the limits of the town; to that end he shall appoint, from time to time, by and with the advice and consent of the council, such a number of policemen as he may think proper, and the policemen so appointed shall be subject to his control in the discharge of their duties; he shall have power to hear charges against offenders, to issue warrants and summonses, to examine the informant, accused and witnesses, in the same manner as a committing magistrate may do; to grant bail for appearance; to commit for trial [sic]; to bind over to keep the peace, and generally to do all acts for the preservation of the peace in the town which a committing magistrate can or may do; he shall try and punish all offenses against the town of Coushatta, according to the laws and ordinances of the town; and for that purpose he shall hold his court at least once in each week, or more often if necessary; and for all such services he shall be entitled to charge and receive the same fees as are allowed by law to justices of the peace. The mayor shall preside over all meetings of the council but shall have a casting vote only.

Town of Coushatta Special Legislative Charter, Sec.9 "Mayor--Powers and Duties," p. C-4. The Town's Charter, however, is devoid of any specific language regarding the appointment of the Town's Police Chief, Clerk, or Attorney.

However, according to La. R.S. 33:481, when the provisions of a municipal special legislative charter are silent on a particular matter, then the provisions of the Lawrason Act, La. R.S. 33:321, *et seq.*, shall govern.³ In the event of a conflict between the special legislative charter and the provisions of the Lawrason Act, the charter shall govern.

³ La. R.S. 33:481 was enacted by Act 52 § 1 of the 2010 Louisiana Legislative Session, and provides the following:

§ 481. Municipalities governed by a special legislative charter; silent charter

Notwithstanding any other provision of law to the contrary, in any municipality governed by a special legislative charter, if the provisions of the special legislative charter are silent on a particular matter, then the provisions of Part I of Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950 shall govern. If a conflict exists between the provisions of the special legislative charter and the provisions of Part I of Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950, then the provisions of the special legislative charter shall govern.

La. R.S. 33:404 sets forth the duties of a mayor in a Lawrason Act municipality. Subsection (A)(3) explains that the mayor is responsible for "the appointment or removal of a nonelected chief of police, the municipal clerk, the municipal attorney . . . subject to the approval by the board of aldermen, except that in the case of a tie vote, the recommendation of the mayor shall prevail." La. R.S. 33:404(A)(3).

Based upon the Town's past practice of appointing the police chief, this Office will operate under the assumption that this is not an elected position.⁴

It is, therefore, this Office's opinion that inasmuch as the Town of Coushatta's special legislative charter is silent as to the appointment process of the Town's Police Chief, Clerk, and Attorney. La. R.S. 33:404(A)(3) controls this appointment process whereby the Mayor shall appoint the Town's Chief of Police, Clerk, and Attorney, subject to the Council's approval. In the event of a tie, then the Mayor's recommendation shall prevail.

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,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:


KATHERINE K. GREEN
Assistant Attorney General

JDC:KG:jv

⁴ The minutes from the Town Council Meetings of January 12, 2010, January 11, 2011, and January 10, 2012 reflect that the recent practice has been for the Mayor to recommend a Chief of Police who was then approved by the Council. This lends support to this Office's assumption that the police chief is a non-elected position in the Town.