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71 MUNICIPALITIES
77 OFFICERS- Local & Municipal

La. R.S. 33:362

La. R.S. 33:406

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

The Mayor may not veto the Board of Aldermen's motion to accept a timely submitted proposal for operation and maintenance of the Town's water system. The fact that the Board of Alderman's vote to accept a proposal was 3 in favor and 2 opposed is not a sufficient reason for the Mayor to refuse to sign a contract subsequently submitted to him for execution.

Dear Alderman Banks:

Our office received your request for an opinion on whether it is permissible for the Mayor of Ferriday ("Mayor") to veto a motion passed by the Board of Aldermen. You have also asked whether the Mayor can refuse to sign a contract for ongoing operation and maintenance of the Town of Ferriday's water system on the basis that the board vote to accept the technical and price proposal was 3 in favor and 2 opposed. Your opinion request relays the following facts. The Town of Ferriday ("Town") accepted sealed technical and price proposals for full service operation and maintenance services and ongoing responsibility of the Town's water system. In the terms and conditions setting forth the proposal requirements, the Town reserved the right to "accept or reject, all, or any part of the proposals received as a result of this request."¹ Two proposals were submitted; the first was submitted timely and the second was turned in after the deadline. The Mayor opened the two proposals on the evening of April 9, 2013, and presented them to the Board of Aldermen. The Board of Aldermen declined the late proposal and agreed to take the remaining proposal under advisement. On April 15, 2013, a motion was made to accept the remaining, timely made, proposal and the motion carried. The final vote was 3 in favor of accepting the proposal and 2 opposed. Subsequently, the Mayor announced he would veto the Board of Aldermen's motion to accept this proposal.

The Town is a Lawrason Act municipality which is governed by a Mayor-Board of Aldermen form of government. The legislative powers of the municipality are vested in and exercised by the Board of Aldermen, and the Mayor is the chief executive officer of the municipality.² The Mayor-Board of Aldermen system form of government allows for

¹ Town of Ferriday, Request for Proposal for Water Operations and Maintenance (O&M) Services, p. 1.

² See La. R.S. 33:362 and La. Atty. Gen. Op. No. 07-0018.

a system of checks and balances to ensure that neither the Mayor nor the Board of Aldermen exceeds its authority or acts unilaterally.³

The question of whether the Mayor of a Lawrason Act municipality has authority to veto a motion⁴ passed by the Board of Aldermen has been addressed by Attorney General Opinions 92-163, 80-1240, and 1942-44. Our office has previously found that "the veto power of the mayor extends only to laws, by-laws and ordinances passed by majority vote of the Board of Aldermen, and that it does not apply to action taken by the Board of Aldermen on a simple motion."⁵ Accordingly, the Mayor had no authority to veto the Board of Aldermen's motion to accept the timely submitted proposal for operation and maintenance of the Town's water system.

Next, you ask whether the Mayor can refuse to sign a contract for ongoing operation and maintenance of the Town of Ferriday's water system on the basis that the Board of Aldermen's vote to accept the technical and price proposal was 3 in favor and 2 opposed.⁶ Louisiana Revised Statute 33:406 (2) provides any "[a]ct of the board which is not law shall be by resolution. A resolution shall be approved by an affirmative vote of a majority of the members of the board present at a meeting. No resolution shall require the signature or other action of the mayor to become effective." A majority of the Board of Aldermen voted to accept the technical and price proposal which is sufficient under La. R.S. 33:406 (2). The fact that the Board of Aldermen's vote to accept a submitted proposal was 3 in favor and 2 opposed is not a sufficient reason for the Mayor to refuse to sign a contract.

In a follow-up phone call, you relayed the fact that the funds for operation and maintenance of the Town's water system have not yet been appropriated. Although the Mayor may not veto the Board of Aldermen's motion to accept the timely submitted proposal, the appropriation of funds for operation and maintenance of the Town's water system is subject to the procedure set forth in La. R.S. 33:406 (3) which states:

Any act of the board which would provide for the appropriation of funds, the incurrence of debt, or the issuance of bonds or other evidences of indebtedness shall be by ordinance. Notwithstanding the provisions of Paragraph (2) of this Subsection, the board may by resolution adopted by the affirmative vote of a majority of the members of the board require the expenditure of funds previously appropriated. Such resolution shall be presented to the mayor within three days after its adoption for his approval or disapproval in accordance with and subject to Subsection C of this Section.

³ See La. Atty. Gen. Op. Nos. 12-0154, 11-0084, and 07-0018.

⁴ Roberts Rules of Order, 10th Edition Section 4, p. 26 defines motion as "a formal proposal by a member, in a meeting, that the assembly take action."

⁵ La. Atty. Gen. Op. Nos. 92-163, 80-1240, and 1942-44, p. 924.

⁶ Although the Town has received a technical and price proposal from the company, the facts presented in your opinion request do not indicate that there is an actual contract which has been approved by the Board of Aldermen.

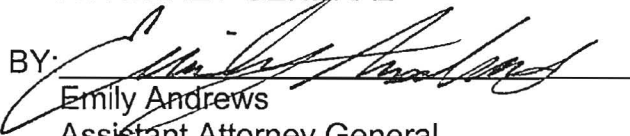
Louisiana Revised Statute 33:406 requires that the appropriation of funds be done by an ordinance. An ordinance is subject to the Mayor's veto as set forth in La. R.S. 33:406. Thus, although the Board of Aldermen's motion to accept the proposal for operation and maintenance of the Town's water system is not subject to veto, the Mayor does have veto power over the appropriation of funds for operation and maintenance of the Town's water system.

In conclusion, it is the opinion of our office that the Mayor of the Town of Ferriday may not veto a motion of the Board of Aldermen. Additionally, the fact that the Board of Aldermen's vote to accept the technical and price proposal was 3 in favor and 2 opposed is not a sufficient reason for the Mayor to refuse to sign a contract subsequently submitted to him for execution. 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:


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JDC: EGA