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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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OCT 17 2013
OPINION 13-0145

Mr. Ronnie E. Murray
Town Marshal
Plain Dealing Police Department
P.O. Box 426
Plain Dealing, Louisiana 71064

92-A-2(j) RETIREMENT-Municipal Police Employees; Harbor
Police

La. R.S. 11:2211, *et seq.*

The elected Town Marshal for the Town of Plain Dealing should be treated as an elected chief of police for the purposes of determining membership eligibility in the Louisiana Municipal Police Employees' Retirement System.

Dear Marshal Murray:

Our office received your request for an opinion regarding whether the elected Town Marshal for the Town of Plain Dealing should be treated as an elected Chief of Police for the purposes of determining membership eligibility in the Louisiana Municipal Police Employees' Retirement System ("MPERS").

It is well established that in Lawrson Act Municipalities, "the marshal shall be the chief of police." See La. R.S. 33:423. However, this law is inapplicable to the Town of Plain Dealing, which operates under a Special Charter adopted on April 24, 1890.

In La. Atty. Gen. Op. No. 98-176, this office was asked whether the office of Town Marshal for the Town of Plain Dealing is the same as the office of Chief of Police. This office opined as follows:

[O]ur research indicates that the Town of Plain Dealing operates under a Special Charter of 1890 pursuant to the authority of Act 49 of 1882, "to prescribe the manner in which cities and towns may obtain charters or acts of incorporation." Under that Act, upon petition of a majority of property tax payers, there was an election for Mayor and Five Councilmen. The elected and commissioned mayor and council then prepared a charter for submission to the electors which, upon favorable vote, became the charter of the town. It is our understanding that Section 27 of the charter provides for a marshal to be elected every two years.

Accordingly, your Charter will govern the status, power and duties of the Marshal, and statutes, court decisions, and opinions of this office relative to a Lawrason Act Community are not controlling.

This office further opined that, "the position of the Marshal as Chief of Police could be clarified by amendment to the Charter" and that an amendment of the Charter shall comply with La. R.S. 33:1181. See La. Atty. Gen. Op. No. 98-176.

We note that the Town of Plain Dealing proposed an amendment to the Charter by Ordinance No. 1 of 1999 ("Ordinance No. 1"), which was adopted by a majority vote on June 8, 1999. Ordinance No. 1 affected Sections 3 through 31 of the Charter, relative to government of the town.

In La. Atty. Gen. Op. No. 99-203, this office was asked whether the proposed amendment to the Charter of the Town of Plain Dealing, Ordinance No. 1, was in compliance with R.S. 33:1181, and whether the amendment was consistent with the constitution and laws of the United States and the State of Louisiana. This office opined "that the Town of Plain Dealing has complied with the provisions of R.S. 33:1181 and that the proposed amendments [Ordinance No. 1 of 1999] to the special charter of the Town of Plain Dealing comply with the constitution and laws of the United States and the State of Louisiana, including the Lawrason Act." See La. Atty. Gen. Op. No. 99-203. Ordinance No. 1 was approved by Governor M.J. "Mike" Foster on August 9, 1999.

Ordinance No. 1 provides that the Town Marshal is an elected officer for the Town of Plain Dealing. See Section 3 (A)-(B). Ordinance No. 1 further states that the Town Marshal shall be the Chief of Police. See Section 9 (A).

Although the amount of your salary was not included in your opinion request, you indicated to this office that your salary is in excess of one hundred dollars per month.

We now turn to the law governing, MPERS. MPERS was created in 1973. See La. R.S. 11:2211, *et seq.* Membership in MPERS is limited to employees as defined by La. R.S. 11:2213. See La. R.S. 11:2214. The definition of the term "employee" includes any elected chief of police whose salary is at least one hundred dollars per month. See La. R.S. 11:2213(11)(a)(iv). As an elected chief of police with a salary in excess of one hundred dollars per month, you are considered an "employee" according to the provisions of La. R.S. 11:2213 and are eligible for membership in MPERS.

In conclusion, it is the opinion of this office that the elected Town Marshal for the Town of Plain Dealing should be treated as an elected Chief of Police for the purposes of determining membership eligibility in the Louisiana Municipal Police Employees' Retirement System.

We hope that this opinion adequately addresses 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,

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ATTORNEY GENERAL

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