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State of Louisiana
DEPARTMENT OF JUSTICE
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BATON ROUGE
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OPINION 13-0151

71-1-B MUNICIPALITIES- Home Rule Charter

La. R.S. 1:3

La. C.C. art. 11

Mr. Thomas F. Daley
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Fortieth Judicial District
P.O. Box 399
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- The St. John the Baptist Parish President may hire an assistant as an employee of the Parish responsible to him alone outside of the requirements of the Parish Civil Service System when that employee is employed on a temporary basis.

Section 2-107 of the St. John the Baptist Code of Ordinances conflicts with the St. John the Baptist Home Rule Charter and should be considered invalid and without legal effect.

Dear Mr. Daley:

Our office received your request for an opinion on whether it is permissible for the President of St. John the Baptist Parish ("Parish President") to hire temporary or special employees who serve at his discretion and who are not civil service employees. You have also requested an opinion on whether Section 2-107 of the St. John the Baptist Code of Ordinances (Ordinance Section 2-107) conflicts with the St. John the Baptist Parish Home Rule Charter ("Charter").

Temporary or Special Employees

Your opinion request relays the fact that since 2004, three different Parish Presidents have employed special assistants who have been hired outside of civil service protocols and who have been treated as non-civil service employees. The special assistants are hired by the Parish President to serve at his discretion, and are not placed in the Parish Civil Service System because they are hired as temporary employees. You would like to know whether this practice is permissible, and, if so, how long the temporary employment can last.

St. John the Baptist Parish operates under a Home Rule Charter. Article III, Section B (3)(b)(i) of the Charter states:

(b) The Parish President shall have the following powers, duties, and responsibilities: (i) He shall appoint and remove, subject to the provisions of this Charter and any personnel rules adopted by the Council for employees of the Parish, his financial advisor, chief administrative assistant, and employees of the Parish responsible to him alone.

[Emphasis added].

Article III, Section C (5) of the Charter states:

All Parish employees shall be under a Civil Service System under the authority of the Parish, except the Chief Administrative Assistant, the Financial Advisor, the Secretary to the Council, and the Directors of the departments now in existence or those departments created in the future by the Parish Counsel but not limited to (a) Chief Administrative Assistant, (b) Financial Advisor, (c) Director of Public Works, (d) Director of Utilities (e) Director of Health and Human Resources, (f) Secretary to the Council, and (g) Director of Civil Defense.

Chapter 4 of the civil service rules for St. John the Baptist Parish excludes from the Parish's Civil Service System "[o]rganizations and their employees and other persons who are employed by the Parish on a temporary or contractual basis from the classified civil service."¹

The first part of your question is addressed in La. Atty. Gen. Op. No. 04-0069, which you attached to your opinion request. In La. Atty. Gen. Op. No. 04-0069, this office reviewed Article III, Section B (3)(b)(i) of the Charter, Article III, Section C (5) of the Charter, and Chapter 4 of the civil service rules and stated:

The language clearly provides that the parish president may hire certain employees, including employees, "responsible to him alone." The appointment of these employees, however, is subject to the provisions of the Charter and any personnel rules adopted by the Council for employees of St. John Parish as required in the Charter.

....

[E]mployees hired on a specifically temporary or contractual basis are excluded from the Parish's classified civil service system and therefore, also not subject to other requirements of the classified civil service system adopted by the Parish.

Considering the clear language of the Charter and the civil service rules of St. John the Baptist Parish, it is this office's opinion that the Parish President may appoint an assistant as an, "employee of the parish responsible to him alone," outside of the requirements of the classified civil service, because it is one of the excluded positions.

¹ Section 2-62 of the St. John the Baptist Code of Ordinances retains the Parish Civil Service Rules and states, "[t]he rules, regulations, classification plans and pay plans presently in effect for the employees of the parish will remain in effect until rules and regulations under this article have been promulgated."

Thus, pursuant to our prior opinion where we examined this question in light of the Parish Charter and Chapter 4 of the St. John the Baptist Parish Civil Service Rules, it is permissible for the Parish President to hire a temporary employee who is responsible to him alone outside of the Parish Civil Service System.

Next, you ask how long the temporary employee may be employed outside of the Parish Civil Service System. This question requires our office to interpret the meaning of the term "temporary employee" which is not defined, by the personnel rules passed by the Parish Council, ordinance, or the Charter.² The rules of statutory construction provide that "[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the language."³ "The words of a law must be given their generally prevailing meaning."⁴

Black's Law Dictionary defines the term "temporary" as: "[l]asting for a time only; existing or continuing for a limited (usu. short) time; transitory."⁵ No specific time is contemplated by the common definition of temporary and absent a statutory provision to the contrary, a temporary appointment does not ripen into a permanent appointment as a result of the passage of time.⁶ Absent the governing authority defining temporary employee, we cannot say that the special assistant position must be limited to six months or that a contract is required after six months.

Ordinance Section 2-107

Next you ask whether Ordinance Section 2-107 conflicts with Article III, Section B (3) and/or Article III, Section C (7)(a) of the Charter.

Article III, Section B (3) of the Charter provides:

3. Powers and Duties

a. Except as otherwise provided in this Charter, the Parish President shall be the chief executive officer of the Parish and shall be vested with the executive power of the Parish. He shall be responsible for carrying out the policies adopted by the Parish Council and for the administration, direction, and supervision of all Parish departments, officers, agencies and special districts.⁷

² If the Parish desires that the term "temporary employee" be further defined, the Parish Council may adopt personnel rules which delineate a specific time period for which a employee may be considered temporary. We note that Ordinance Section 2-62 (b) requires that "all rules and changes to civil service must be approved by the parish president and a majority vote of the council. "

³ La. R.S. 1:3.

⁴ La. C.C. Art. 11.

⁵ Black's Law Dictionary (9th ed. 2009) p. 1602.

⁶ 63 C.J.S. *Municipal Corporations* § 800 (2013); 67 C.J.S. *Officers* § 117 (2013).

⁷ Emphasis added.

b. The Parish President shall have the following powers, duties, and responsibilities:

(i) He shall appoint and remove, subject to the provisions of this Charter and any personnel rules adopted by the Council for employees of the Parish, his financial advisor, chief administrative assistant, and employees of the parish responsible to him alone.

In addition to the Charter provisions cited in your opinion request we note that Article III, Section C (1)(b) of the Charter sets forth that "each parish, department, or agency, except those excluded by this Charter, shall be administered by the Parish President."⁸

Article III, Section C (7)(a) further declares:

Except as specifically provided by this Charter, neither the Council nor any of its members shall in any manner [dictate] the appointment or removal of any parish administrative officer or employee whom the Parish President or any of his subordinates are empowered to appoint, but the Council may discuss with the President anything pertaining to the appointment and removal of such officers and employees.

Ordinance Section 2-107 states

Sec. 2-107. - Hiring.

(a) Each department head, or anyone functioning in that capacity, shall be solely responsible for the hiring and dismissal of employees within their department. Hiring employees is authorized only when it is within submitted budget requests through the ordinary budgetary process. Any hire or dismissal shall become effective two weeks after notification to the parish council by the department head of the individual selected for employment or subject for dismissal together with the prospective employee's or employee's salary and position, unless the council invalidates the hire or rejects the dismissal by a two-thirds vote of the entire council.

(b) It shall be unlawful for any candidate for a department head to have any communication with any member of the council or with the parish president regarding whom they might hire or fire if given the job as department head until said candidate is appointed department head.

Ordinance Section 2-107 which gives Parish department heads the sole authority to hire and dismiss employees within their department directly conflicts with the Parish

⁸ Emphasis added.

President's power to administer, direct, and supervise Parish departments.⁹ The Parish President, as administrator and supervisor of the departments has the authority, subject to the provisions of the Charter and personnel rules adopted by the Parish Council, to hire and dismiss employees.

Further, Municipal Code Section 2-107 attempts to give the Parish Council the ability to veto a hire or dismissal by two-thirds vote of the entire council. We can find no authority in the Charter which allows the Parish Council to interfere with the Parish President's administration of Parish departments by requiring Parish Council approval for the hiring or dismissal of department employees.

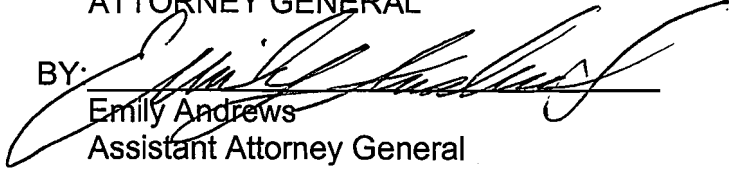
Therefore, we find Ordinance Section 2-107 conflicts with Article III, Section B 3(b), Section C (1)(b), and Section C (7)(a) of the Charter. Our office has consistently taken the position that when an ordinance violates or conflicts with the home rule charter, the ordinance must be stricken and declared invalid.¹⁰ Accordingly, it is our opinion that Municipal Code Section 2-107 is invalid and without legal effect.

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:



Emily Andrews
Assistant Attorney General

JDC: EGA

⁹ St. John the Baptist Parish Home Rule Charter, Article III, Section B (3).

¹⁰ La. Atty. Gen. Op. Nos. 13.0054, 12-0039, 93-749, and 86-0051.