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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
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November 7, 2013
OPINION 13-0194

9 – CIVIL SERVICE COMMISSION

La. Const. Art. X, § 4

Ms. Jacquelyn Brechtel Clarkson
Council President
New Orleans City Council
City Hall, Suite 2W50
1300 Perdido Street
New Orleans, LA 70112

The New Orleans City Council may consider two names submitted for filling a vacancy on the Civil Service Commission by the president of Loyola University, despite the fact that the law requires three names be submitted. Further, if the third name is submitted beyond the deadline established by La.Const. art. X, § 4, yet prior to the Council making a decision, the Council may consider the third nominee. Finally, since the Council has three names submitted by the president of Loyola University in its possession prior to its deadline for naming an individual to fill the vacancy, even if one name was submitted late, it is the opinion of this office that the Council may not select someone not on the list.

Dear Ms. Clarkson:

Our office received your request for an opinion submitted on behalf of the New Orleans City Council ("Council") relating to an appointment to the Civil Service Commission of the City of New Orleans. Your request states that on September 15, 2013, the appointee for Loyola University on the Civil Service Commission officially resigned. In accordance with Article X, Section 4 of the Louisiana Constitution, the president of Loyola University had thirty days to submit three nominations for filling the vacancy. On October 14, 2013, you received a letter from the president of Loyola University providing two nominees for the vacancy. After you submitted your opinion request, you forwarded a subsequent correspondence to this office from the president of Loyola University, dated October 28, 2013, wherein he provided the Council with a third nominee to consider for the vacancy.¹

In light of the above, you have requested an opinion from this office on the following questions: (1) whether the Council is permitted to consider only the two names submitted by Loyola University; (2) whether the Council may consider the third nominee despite the fact such name was submitted beyond the deadline established by the Louisiana Constitution; and (3) whether the Council may select someone not on the list submitted by Loyola University.

¹ The President of Loyola University serves on the Civil Service Commission himself as the appointee for Tulane University. His letters to the Council indicate that since he serves on the Civil Service Commission, in order to avoid any perception of a conflict of interest in the nomination process, he requested the presidents of Tulane, Xavier, and Dillard to provide him with nominees to submit to the Council on behalf of Loyola University. The letters indicate that the first two names were provided by Tulane and Dillard University, and the third name was provided in the second letter from Xavier University.

With respect to filling a vacancy on the Civil Service Commission, Article X, Section 4 of the Louisiana Constitution provides, in pertinent part:

Section 4.(A) Creation; Membership; Domicile. A city civil service commission shall exist in each city having a population exceeding four hundred thousand. The domicile of each commission shall be in the city it serves. Each commission shall be composed of five members, who are electors of the city, three of whom shall constitute a quorum. The members shall serve overlapping terms of six years as hereinafter provided.

(B) New Orleans; Nomination and Appointment. In New Orleans, the presidents of Dillard University, Loyola University, Tulane University of Louisiana, and Xavier University, after giving consideration to representation of all groups, each shall nominate three persons. In addition, the employees in the classified service of the city of New Orleans shall nominate three persons in the classified service of the city of New Orleans by means of an election called for that purpose. The municipal governing authority shall appoint one member of the commission from the three persons nominated by each nominating authority.

...

(D) Vacancies. A vacancy shall be filled by appointment in accordance with the procedure for the original appointment and from the same source. Within thirty days after a vacancy occurs, in a seat held by a university nominee, the university president concerned shall submit the required nominations. Within sixty days after this amendment is ratified by the electors of the state of Louisiana, and when a vacancy occurs in a seat held by a nominee nominated by employees in the classified service, there shall be held an election at which the employees in the classified service shall nominate three persons in accordance with this Section. Within thirty days thereafter, the municipal governing authority shall make the appointment. If the municipal governing authority fails to make the appointment within the thirty days, the nominee whose name is first on the list of nominees automatically shall become a member of the commission. If one of the nominating authorities fails to submit nominees in the time required, or if one of the named institutions ceases to exist, the municipal governing authority shall make the appointment.

As the above makes clear, when there is a vacancy, it shall be filled by appointment in accordance with the procedure for the original appointment and from the same source. As previously stated, the member that resigned was Loyola University's appointee, thus, the president for Loyola University is required to submit the required nominations within thirty days. Then, the governing authority, which is the Council in this scenario, has

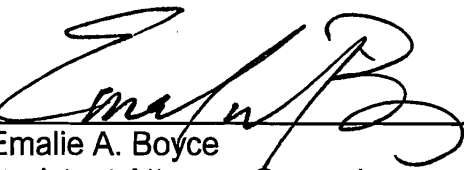
thirty days to make the appointment. If a nominating authority fails to submit nominees in the time required, the municipal governing authority has a duty to make the appointment.

Your first question asks whether the Council is permitted to consider only the two names submitted by Loyola University. Despite the fact that the language indicates that the university president shall appoint three members, and that shall connotes a mandatory, rather than permissive term,² there does not appear to be any prohibition from the Council considering the two names submitted. Your second question asks whether the Council may consider the third nominee, despite the fact such name was submitted beyond the deadline established by La.Const. art. X, § 4. Again, there appears to be no prohibition from the Council considering the third nominee submitted, despite the fact that it was submitted beyond the deadline. Your last question asks whether the Council may select someone that was not on the list submitted by Loyola University. Recognizing that we were unable to find any Louisiana case law or opinions addressing the scenario presented, we consider that the Council received three names from Loyola University prior to the date in which the Council was required to make a determination as to who should fill the vacant seat, even if the third name was received past the time specified by the Constitution. Therefore, since the Council has three names submitted by the president of Loyola University in its possession prior to its deadline for naming an individual to fill the vacancy, it is the opinion of this office that the Council may not select someone not on the list, but should rather choose from the three names submitted for consideration.

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,

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ATTORNEY GENERAL

BY: 
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² See La. R.S. 1:3.