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DEPARTMENT OF JUSTICE
CIVIL DIVISION
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January 26, 2023

OPINION 22-0027A

Ms. Christina Carroll
Executive Counsel
Civil Service Commission
City of New Orleans
1340 Poydras St., Suite 900
New Orleans, LA 70112

71-1-B MUNICIPALITIES – Home Rule Charter

The retention pay plan approved by the New Orleans Civil Service Commission on March 11, 2022, and subsequently adopted by the New Orleans City Council on July 21, 2022, takes effect one year from the Council's adoption of the plan, or July 21, 2023.

Dear Ms. Carroll:

The Civil Service Commission for the City of New Orleans (the "Commission"), has requested a follow-up opinion concerning the proposed retention pay plan for the City of New Orleans (the "City"). This office previously issued La. Atty. Gen. Op. No. 22-0027 which states that the City may institute a retention pay program as long as it has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the retention pay. The Commission now asks for an opinion regarding the timing of the implementation of such retention pay plan.

The Commission is constitutionally vested with the power to adopt rules for compensation and disbursements to employees and to adopt a uniform pay and classification plan.¹ On March 11, 2022, the Commission approved an amendment to the City's pay plan to provide for the proposed retention pay plan. Thereafter, on July 21, 2022, the City Council voted to approve the plan. The language in the pay plan received by our office, states that the pay plan is to go into effect "one year after the passage of this amendment to the pay plan."² Thus, you ask whether the City may institute the pay plan on March 11, 2023, or whether it must wait until July 21, 2023, for the pay plan to go into effect.

We note that in contrast to La. Atty. Gen. Op. No. 22-0027, this opinion request involves the interpretation of the City's home rule charter (the "Charter") and the timing of the adoption of the proposed retention pay plan. Specifically, you want to know whether the approval of the pay plan by the Commission is considered the passage of the pay plan or rather, is the adoption of the plan by the City Council considered the passage of the plan?

¹ La. Const. art. X, § 10; Home Rule Charter of the City of New Orleans Article VIII. Section 8-103 (2)(b) and (i).

² See Attachments to the Letter from the New Orleans City Council to the New Orleans Civil Service Commission, dated August 5, 2022.

Turning to the City's Charter, it appears the City Council has the sole authority to actually amend the City's pay plan. Article VIII of the Charter states that:

Employees in the classified service may be compensated only in accordance with a **pay plan recommended by the Commission and adopted by the council.**³

Here, it seems relatively straightforward that the amendment to the City's pay plan occurs upon adoption by the City Council. Thus, the "passage of the amendment to the pay plan" occurred when the City Council adopted the plan. The City Council adopted the retention pay plan on July 21, 2022. Therefore, the retention pay plan, by its own terms, shall be effective on July 21, 2023 (i.e., one year from adoption by the City Council).

Lastly, we point out that it is the specific terms of the retention pay plan that provide for the effectiveness one year after adoption. As such, the Commission and City Council are free to amend the date by which the pay plan takes effect in accordance with Article VIII, Section 8-103 (2)(b) and Section 8-110 of the Charter. Any subsequent recommendation and adoption should consider the factors previously identified in La. Atty. Gen. Op. No. 22-0027.⁴

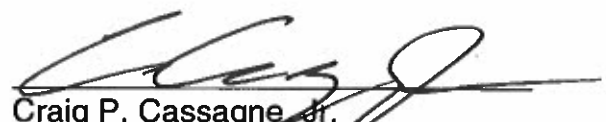
Considering the foregoing, it is the opinion of this office that the retention pay plan approved by the New Orleans Civil Service Commission on March 11, 2022, and subsequently adopted by the New Orleans City Council on July 21, 2022, takes effect one year from the Council's adoption of the plan, or July 21, 2023.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY:


Craig P. Cassagne Jr.
Assistant Attorney General

JL/CPC

³ See City of New Orleans Home Rule Charter, Article VIII, Sec. 8-110 (emphasis added).

⁴ "The City of New Orleans may institute a retention pay program as long as it has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the retention pay." La. Atty. Gen. Op. No. 22-0027.