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DEPARTMENT OF JUSTICE
CIVIL DIVISION
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BATON ROUGE
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July 27, 2023
OPINION 23-0012

Hon. Betty Alford-Olive
Mayor

Mr. J. Rodney Pierre
City Attorney

City of Bastrop
P.O. Box 431
Bastrop, LA 71221

71-1 MUNICIPALITIES – Special Charter

La. R.S. 42:11, *et seq.*

While it may be advisable that an agenda item contain notice of executive session, such a specific designation is not required by law. A majority of the City Council is necessary to provide advice and consent to confirm the Mayor's appointment of a City Attorney, and the Mayor does not have the authority to appoint an "interim" City Attorney without the advice and consent of a majority of the City Council. The Charter appears to allow a situation in which a City Attorney performs civil duties for Bastrop, while the City Prosecutor performs criminal duties.

Dear Mayor Alford-Olive and Mr. Pierre:

You each ask our office for an opinion regarding several issues concerning the appointment of attorneys for the City of Bastrop ("Bastrop"). In particular, you ask questions concerning the meetings of the Bastrop City Council ("Council"), attorney appointments, and attorney duties.¹

1. Does the Open Meetings Law require the Council to state on the agenda that the Council intends to go into executive session?

As a public body, the Council is subject to the Open Meetings Law, La. R.S. 42:11, *et seq.* Public bodies must give written notice of their regular meetings. La. R.S. 42:19(A)(1)(a). The notice must include the agenda, date, time, and place of the meeting. La. R.S. 42:19(A)(1)(a)(ii)(aa). The agenda "shall not be changed less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting." "Each item on the agenda shall be listed separately and described with reasonable specificity." La. R.S. 42:19(A)(1)(a)(ii)(bb). The Open Meetings Law allows a public body to amend the agenda, pursuant to La. R.S. 42:19(A)(1)(cc), which states, "[u]pon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda." "

Louisiana Revised Statute 42:17 restricts the reasons for which a public body may enter executive session. A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:19, of two-

¹ While the Charter refers to the "board of aldermen," the City of Bastrop has chosen to call its board of aldermen the "City Council" and its members "city councilmen."

thirds of its constituent members present.” La. R.S. 42:16. No final or binding action may be taken during an executive session. La. R.S. 42:16.

According to the Mayor’s request, the Council went into executive session to discuss personnel issues related to the appointment of the position of City Attorney. We note that La. R.S. 42:17(A)(1) is relevant to your request and states:

A public body may hold an executive session pursuant to R.S. 42:16 for one or more of the following reasons:

Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time contained in the notice of the meeting at which such executive session is to take place and that such person may require that such discussion be held at an open meeting.

Therefore, if the Council wishes to discuss the character, professional competence, or physical or mental health of a person in executive session, the person who is the subject of such executive session must be notified at least twenty-four hours in advance of the meeting, and the person has the option to require the discussion be held in an open meeting. Generally, the law does not require that the agenda item state that the public body will go into executive session, but the vote of each member on the question of holding such an executive session and the reason for holding such an executive session must be recorded and entered into the minutes of the meeting. La. R.S. 42:16.²

2. May the Mayor appoint an interim City Attorney, pending approval of the City Council?

Information provided to our office indicates that Bastrop has traditionally had two attorneys: one that handles primarily civil matters (City Attorney) and one that handles criminal prosecutions (City Prosecutor). The Mayor’s request indicates that the previous City Attorney resigned on September 2021. To date, the vacant position of City Attorney has not been filled. The Mayor made an appointment of an interim City Attorney on January 12, 2023. Both the Mayor and the Council ask if the Mayor can make such an interim appointment to the position of City Attorney.

Before answering this question, we note that this office has issued two previous opinions to the City of Bastrop regarding the appointment of a City Attorney. In La. Atty. Gen. Op. No. 17-0139, a city attorney was recommended by the Mayor, but the Council did not approve the Mayor’s recommendation. The Mayor asked if he could continue to engage the City Attorney against the will of the Council. This office concluded that without the consent of the Council, the Mayor’s appointment of a City Attorney was not valid and the

² Notice of Executive Session is required in some circumstances. See La. R.S. 42:19 (A)(1)(b)(iii).

person could not act as the City Attorney. Again, in La. Atty. Gen. Op. No. 18-0138, this office was asked about the position of the City Attorney. In that opinion, this office was asked what should happen when the Council rejects the Mayor's reappointment of a City Attorney. This office responded that La. R.S. 42:2 provides that a public officer shall continue to discharge the duties of his office until his successor is inducted into office. However, whether the City Attorney was a public officer or a subordinate municipal employee was a question of fact. We then stated that "if the Mayor's appointee to the position city attorney is not approved by the Board of Aldermen, then the Mayor should appoint another candidate(s) to the position for confirmation. This process should continue until a candidate appointed by the Mayor is confirmed by the Board of Aldermen."

With this background, we now address your question of whether the Mayor can appoint an interim City Attorney. As explained below, this office unequivocally rejects the proposition that the Mayor can appoint an interim City Attorney when the Council has not approved the Mayor's appointment.

The City of Bastrop is governed by a legislative charter ("Charter"). The appointment of attorneys is governed by Section 15 of the Bastrop Charter, which provides that, "[t]he mayor *with the advice and consent of the board of aldermen* may annually appoint an attorney at law or attorneys at law for the municipality, prescribe his or their duties and fix the form and extent of his or their compensation."

As the Charter provides that an attorney may only be appointed with the advice and consent of the Council, the Council's approval is necessary. Without that the consent of the Council, the Mayor's appointment is invalid.³ The Mayor may not circumvent the requirement of advice and consent of the Council by appointing an interim City Attorney. Therefore, no interim appointment to the position of City Attorney may be made.⁴

3. May the City Prosecutor of Bastrop perform civil duties on behalf of Bastrop, pursuant to the Bastrop Charter?

Following the resignation of the City Attorney in September 2021, the City Prosecutor began performing the civil duties traditionally performed by the City Attorney. You state that the Council's meeting minutes restrict the City Prosecutor to criminal duties.

Section 15 of the Bastrop Charter, provides that, "[t]he mayor with the advice and consent of the board of aldermen may annually appoint an attorney at law or attorneys at law for the municipality, *prescribe his or their duties* and fix the form and extent of his or their compensation."⁵ The Charter is silent as to attorney positions such as a City Attorney or

³ See La. Atty. Gen. Op. No. 17-0139, addressed a former mayor of Bastrop.

⁴ On limited occasions, our office has opined that a mayor can retain special counsel if there is a conflict of interest for the City Attorney to represent or advise both the city council and mayor in a particular matter. This opinion does not address this scenario, as the facts provided to our office do not indicate a conflict of interest between the Mayor and Council, but rather, a disagreement as to who should serve as the attorney for the City of Bastrop. See La. Atty. Gen. Op. Nos. 17-0139 and 00-189.

⁵ Emphasis added.

City Prosecutor. The Charter simply allows the Mayor, with the advice and consent of the Council, to annually appoint attorneys for Bastrop and to provide for their duties. The Charter appears to allow a scenario like the one the Mayor has suggested, in which the Mayor has limited the City Attorney to civil duties and the City Prosecutor to criminal duties, with the advice and consent of the Council.

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,

JEFF LANDRY
ATTORNEY GENERAL

BY:


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JL: JMW