



LIZ MURRILL
ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

June 6, 2024
OPINION 24-0006

Honorable Torrick Friels
Councilman, District 3
City of Marksville
601 Tina St.
Marksville, LA 71351

71-1 Municipalities – Special Charters

La. R.S. 33:404(A)(3)

La. R.S. 33:481

The decision by the Mayor to promote a patrol officer of the Marksville Police Department to a vacant position in the detective division was valid under the Mayor's authority to "appoint" police personnel. The Board of Aldermen or the Council consisting of both the Board of Aldermen and the Mayor has no authority to hire or assign such personnel.

Dear Councilman Friels,

This office received your request for an Attorney General's Opinion regarding the validity of a promotion of a police officer from a position in the patrol division of the Marksville Police Department to a vacant position in the detective division. According to your request, the issue was presented to the entire council. Three aldermen voted against the promotion, while two aldermen and the Mayor voted in favor of it. The Mayor then contended that his recommendation should control in accordance with the second sentence of La. R.S. 33:404(A)(3), essentially casting both the tying and the tie-breaking votes.

You raised several questions concerning the Mayor's actions. Specifically, you asked:

- (1) whether the detective position can be considered a "department head" within the meaning of La. R.S. 33:404(A)(3);
- (2) whether the Mayor's vote is valid when no tie existed until he included his vote;
- (3) if the Mayor's vote is valid in this case, how is the tie broken, or is the motion dead; and
- (4) what action legally needs to be taken?

For the following reasons, we find the promotion was improperly presented to the entire council; thus, the promotion may stand, but not for the reasons relied on by the Mayor.

(1) Whether the detective position can be considered a "department head"?

The request provides little to no information on the nature of the detective position. A department head ordinarily is a supervisor of others. The job of detective in a police department ordinarily does not require one to supervise others or to perform administrative duties related to the running of an entire department. A detective could be

a department head, but absent other information, it is the opinion of our office that these are different positions with different duties.

(2) Whether the Mayor's vote was valid when no tie existed until he voted?

The Mayor has dual roles in the City of Marksville (the City). Per the City Charter (the Charter), the Mayor sits with the Aldermen as a member of the Board that governs the City. But he also has additional authority and duties, as explained further below.

The City of Marksville (the City) is governed by a special legislative charter, originally adopted in 1843 and amended at various times. Section one of the 1855 amendment to the Charter provides, in pertinent part:

Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the Fourth section of the Act entitled "[A]n Act to incorporate the town of Marksville, in the Parish of Avoyelles," be and the same is hereby amended and re-enacted so as to read thus: That the said Mayor and Aldermen shall constitute a Board for the government of said town, and they shall have and possess the following powers, to-wit: ... FIFTH, they shall have power to appoint a Treasurer, Secretary and Collector, and such other officers as may be necessary for the administration of said town of Marksville, and to require such bond and security for the faithful performance of their duties as the said Mayor and Aldermen by their by-laws may prescribe

In interpreting this Charter, the Second Circuit Court of Appeal found that the legislature intended to, and did, vest the Mayor of the City with the authority to sit as a voting member of the governing board of the City. *Strawitz v. Town of Marksville*, 77 So.2d 597, 601-02 (La. App. 2 Cir. 1955). However, the court concluded that there was nothing in the Charter that authorized the Mayor to cast the additional and deciding vote in the event of a tie because that power must be specifically and directly set forth in order to be effective.¹ *Id.* at 602. In making these determinations, the court stated that it "must look exclusively to the provisions of whatever legislative enactment created the Town of Marksville." *Id.* at 601. Because the Charter does not grant the Mayor any tie-breaking power, it is the opinion of this office that the Mayor has no tie breaking authority when he sits as a member of the Board.

(3) If the Mayor's vote is valid, how is the tie broken or is the Motion dead?

The request assumes the motion to approve the promotion was properly placed before the Board. As discussed below, it is unclear whether it was. However, as previously stated, the Mayor has the same vote as any other member of the Board. Therefore the

¹ Having found that no specific provision authorized the Mayor to provide the tie breaking vote, the court determined that, because the vote failed to receive a majority, it was properly rejected. *Id.*

Mayor's vote is a valid vote, but it counts no differently than any other member of the Board.

The Mayor's argument that La. R.S. 33:404(A)(3) grants him authority to "break the tie" is incorrect. However, the Mayor is correct that the statute grants him authority to appoint certain personnel. The passage of La. R.S. 33:481 in 2010 and the silence of the Charter on this issue require us to look to the Lawrason Act to determine who among the City's leadership has the authority to hire police personnel in a municipality like the City with an appointed chief of police.

La. R.S. 33:404(A)(3) provides that the Mayor has the following powers, duties, and responsibilities:

Subject to applicable state law, ordinances, and civil service rules and regulations, **to appoint and remove municipal employees**, other than the employees of a police department with an elected chief of police. However, appointment or removal of a nonelected chief of police, the municipal clerk, the municipal attorney, or any department head shall be subject to approval by the board of aldermen, except that in the case of a tie vote, the recommendation of the mayor shall prevail. Furthermore, selection or removal of any person engaged by a municipality to conduct an examination, review, compilation, or audit of its books and accounts pursuant to R.S. 24:513 shall be subject to approval by the board of aldermen of that municipality.

The power to "appoint" police department employees in a Lawrason Act municipality with an appointed chief of police is vested with the Mayor, pursuant to the first sentence of La. R.S. 33:404(A)(3). This power is not restricted by statute to the initial hiring and may reasonably be interpreted as including the power to appoint an existing officer to a new position, *i.e.*, detective. While this is characterized as a "promotion" for that officer, it would be illogical to read the statute as permitting the Mayor only to "appoint" someone who had never before been hired at all but not "appoint" someone from within the ranks of the police department. Thus, the promotion of the officer was an appointment decision which belongs to the Mayor.²

(4) What further action needs to be taken?

Because we find the Mayor has the power to "appoint" the officer to the position of detective, we find no further action needs to be taken.

² We further note that there is nothing in the facts presented in the opinion request that indicates that a police detective is an officer of the City such that his hiring would go before the entire council, as required by the Charter. Moreover, there is nothing that would indicate that this detective position was a "department head" within the meaning of the second sentence of La. R.S. 33:404(A)(3) such that the hiring decision of the Mayor would need to be approved by the Board of Aldermen.

Conclusion

Accordingly, this office is of the opinion that the decision by the Mayor to promote an officer of the Police Department from a patrol position to a vacant detective position was valid as an "appointment" pursuant to La. R.S. 33:404(A)(3), but not due to his "breaking the tie" because he has no express tie-breaking power. The Board vote, therefore, was unnecessary in the first instance and no further action is necessary.

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

With best regards,

LIZ MURRILL
ATTORNEY GENERAL

BY: 
Chimène St. Amant
Assistant Attorney General

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