



LIZ MURRILL
ATTORNEY GENERAL

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

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OPINION 24-0017

Honorable Cary Mosby
Chief of Police
French Settlement Police Department
1605 LA HWY 16
French Settlement, LA 70733

71 – Municipalities

La. R.S. 33:341	La. R.S. 33:342
La. R.S. 33:385.1	La. R.S. 33:3351
La. R.S. 33:3381	La. R.S. 33:3401
La. R.S. 33:3421	La. R.S. 33:3551

French Settlement may remain classified as a village or become reclassified as a town. However, in either case, the council of French Settlement is required to adopt a resolution reflecting its choice and the mayor is required to transmit the resolution to the governor. Without the procedures for reclassification being undertaken and completed, the municipality will retain its preexisting classification. If a town elects to remain a village, the election of local officials remains unchanged regardless of population size. A municipality ordinances that are in furtherance of the expressed legislative will, but the municipality may not enact an ordinance that is contrary to expressed legislative will. However, if French Settlement would prefer that qualifications for chief of police be similar to that of a town, it may elect to become a town. The law does not provide consequences for not following reclassification procedures.

Dear Chief Mosby:

Our office received your request for an opinion regarding whether French Settlement is required to be reclassified as a town and afforded the legal effects regarding classification. Specifically, you posed six questions, which we will address in turn.

1. Is French Settlement required to reclassify as a town given that the municipality's population has risen above 1,000 residents according to the last two federal censuses?

French Settlement may retain its classification as a village or reclassify as a town. Louisiana Revised Statute 33:341 provides that municipalities having five thousand inhabitants or more are cities; municipalities having fewer than five thousand but more than one thousand inhabitants are towns; and municipalities having one thousand or fewer inhabitants are villages. Louisiana Revised Statute 33:342 provides the mandatory procedure for reclassification of municipalities upon changes in populations, as well as an exception for villages that have had a population growth of fewer than 200 persons since the previous federal census. Regardless of whether such a village decides to reclassify as a town or remain a village, there are mandatory procedures that the governing authority must take.

When reclassifying as a town, the board of aldermen shall adopt a resolution requesting the governor to change the classification of the municipality.¹ The mayor of the municipality shall transmit the resolution to the governor, who shall investigate the facts.² If the governor should find that reclassification is proper, he shall issue a proclamation correctly classifying the municipality, and such proclamation shall be transmitted to the mayor of the municipality.³ Upon receipt of a proclamation by the governor, the board of aldermen of the municipality shall adopt an ordinance changing the name of the municipality to reflect its new classification, and a copy of the proclamation and the ordinance shall be transmitted to the secretary of state for recordation.⁴

Nevertheless, the governing authority of a municipality may elect not to change its classification from a village to a town when a census shows that its population has increased by fewer than 200 persons since the last decennial census, even though the population increase would change the municipality's classification from village to town.⁵ If the governing authority, by resolution, elects to retain its classification and not change the classification as otherwise required, the mayor shall transmit a copy of the resolution to the governor and to the secretary of state for recordation.⁶

In 2000, the federal census reflected that French Settlement had a total population of 945. In the 2010 census, French Settlement had grown to a population of 1116. This reflected a population growth of fewer than 200 individuals. Pursuant to La. R.S. 33:342(A)(2), French Settlement had the ability to become a town or remain a village. Moreover, in the 2020 census, French Settlement's population was reflected as 1073, a population loss of 43 individuals. Therefore, French Settlement may remain classified as a village or become reclassified as a town. However, in either case, the council of French Settlement is required to adopt a resolution reflecting its choice, and the mayor is required to transmit the resolution to the governor and/or the secretary of state.

2. Even though no action was taken by the governing authority to reclassify as a town, did French Settlement become a town by default due to its population?

French Settlement did not become a town by default when the governing authority apparently took no action after the two previous federal censuses. In *Simar v. Town of Iota*, 149 La. 332, 89 So. 22 (1921), the Louisiana Supreme Court addressed what happens when reclassification procedures are not followed. At the time *Simar* was decided, the reclassification procedure required that the proclamation issued by the governor be published and recorded in the clerk's office. After finding that the proclamation had not been published and recorded, the Louisiana Supreme Court held that the proclamation had not gone into effect, the municipality retained its original classification, and the board of aldermen of the village retained their authority. *Simar*, 149

¹ La. R.S. 33:342(A)(1).

² La. R.S. 33:342(A)(1).

³ La. R.S. 33:342(B).

⁴ La. R.S. 33:342(C).

⁵ La. R.S. 33:342(A)(2).

⁶ *Id.*

La. at 334, 89 So. 22. While current law no longer requires the proclamation to be recorded in the clerk's office, there are still formalities that the municipality must take. Because the procedures for reclassification were not completed, French Settlement did not become a town by default when no action was taken by the board of aldermen and mayor.

3. If French Settlement has retained its status as a village, what legal effect does La. R.S. 33:342(A)(2) have on it?

Act 260 of the 2011 Regular Legislative Session added (A)(2) to La. R.S. 33:342. While (A)(2) does provide that laws applicable to municipalities based upon their population shall be applicable to a municipality that elects not to change its classification, this does not affect governmental structure of a village even though it has grown in population to the size of a town.

Statutory interpretation is required in order to determine what La. R.S. 33:342(A)(2) means.⁷ As expressed during the debate on the passage of the legislation, the intent of Act 260 was to retain the governmental structure of a village in spite of growing to the size of a town.⁸ In fact, it was expressed that the amendment was due to concerns from the Village of French Settlement, whose population had grown to the size of a town but did not have the funding to support the governmental structure required of a town.⁹ Therefore, allowing a municipality to retain its classification has a more substantive effect than simply what classification name the municipality has. Allowing a village to retain its classification as a village allows it to retain the governing structure of a village, along with the lower associated costs.

While a village may retain its governmental structure, there are some laws that are based upon population with which French Settlement must comply. Title 33 is replete with statutes that grant permissions or place obligations on municipalities when the population therein meets or exceeds a specified population.¹⁰ These laws apply to French Settlement based upon population rather than classification.

4. If French Settlement remains a village, does La. R.S. 33:342(A)(2) require it to abide by the laws based on its population regarding the election of persons to the governing authority of French Settlement? In other words, does French Settlement have to abide by the laws of a town regarding the qualifications of

⁷ The rules of statutory interpretation are well known. See, e.g., *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep't of Econ. Dev.*, 2010-0193 (La. 1/19/11), 56 So.3d 181, 187–88 (quoting *M.J. Farms, Ltd. v. Exxon Mobil Corp.* 2007–2371, p. 13 (La. 7/1/08), 998 So.2d 16, 27 (internal citations omitted)).

⁸ See https://senate.la.gov/s_video/videoarchive.asp?v=senate/2011/06/062011SCHAMB, accessed 3/15/2024; video of legislative debate in Louisiana Senate Chamber, 6/20/2011, time stamp 6:13:54 – 6:21:41.

⁹ See https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2011/May_2011/0525_11_MP, accessed 3/15/2024; video of legislative debate in House Committee on Municipal, Parochial and Cultural Affairs, time stamp 1:30:21–1:40:47,

¹⁰ A few examples of laws that would apply to French Settlement based on population regardless of how it is classified are: La. R.S. 33:3351, 3381, 3401, 3421, and 3551.

candidates for Chief of Police or the number of aldermen for the board of aldermen?

If French Settlement retains its status as a village, La. R.S. 33:342(A)(2) does not require it to abide by the laws regarding the election of persons to the governing authority of a town even though its population may have reached that of a town. If French Settlement elects to remain a village, the election of local officials remains unchanged. As discussed above, this is the intended effect of Act 260 of the 2011 Regular Legislative Session.

5. If French Settlement remains a village and La. R.S. 33:342(A)(2) does not require it to abide by the laws of a town regarding the election of persons to the governing authority, can it, by local ordinance or reclassification, abrogate the qualifications La. R.S. 33:385.1(B) establishes for persons who may become chief of police of a village?

If French Settlement remains a village, it cannot enact an ordinance that establishes qualifications for the position of chief of police that are contrary to La. R.S. 33:385.1.

Previously, La. R.S. 33:385.1(B) required that the police chief be a resident of the village. However, Act 212 of the 2022 Regular Legislative Session amended La. R.S. 33:385.1(B) to require that the police chief of a village must be a resident of the parish in which the village is located, thereby expanding the pool of eligible candidates for voters of the village to choose from. As expressed numerous times in the legislative process, this expansion was the intent of the legislature.¹¹

The Louisiana Supreme Court has previously held that a municipality cannot permit by ordinance what a statute forbids, or forbid what a statute expressly permits, but it may supplement a statute or cover any part of an authorized field of local legislation that is not covered by state legislation. *State ex rel. Sutton v. Caldwell*, 195 La. 507, 518–19; 197 So. 214, 217–18 (1940) (*citing Power v. Nordstrom*, 150 Minn. 228, 184 N.W. 967, 18 A.L.R. 733, 738). Louisiana Revised Statute 33:385.1(B) expressly allows that residents of the parish in which the village is located be eligible to qualify for the position of chief of police. French Settlement cannot enact a contrary ordinance that would restrict persons eligible to qualify for the position of chief of police to only persons who reside in the village.

¹¹ See https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2022/apr/0420_22_MP, video of legislative debate in House Committee on Municipal, Parochial and Cultural Affairs, 4/20/2022, accessed 3/18/2024, time stamp 1:58:18 – 1:59:35; See also https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2022/may/0502_22_Day27_2022RS, video of legislative debate in House Chamber, accessed 3/18/2024, time stamp 2:46:39 – 2:52:54; See also https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2022/05/051222LM, video of legislative debate in Senate Chamber, 5/23/2022, accessed 3/18/2024, time stamp 1:25:16 – 1:26:12; See also https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2022/05/052322SCHAMB, video of legislative debate in Senate Committee on Local and Municipal Affairs, 5/12/2022, accessed 3/18/2024, time stamp 15:21 – 19:13; and https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2022/05/052322SCHAMB, video of legislative debate in Senate Chamber, 5/23/2022, accessed 3/18/2024, time stamp 1:25:16 – 1:26:12.

If French Settlement were to reclassify as a town, La. R.S. 33:385.1(B) would no longer be applicable to it. Louisiana Revised Statute 33:385.1(A) provides that an elected chief of police of a municipality shall be an elector of the municipality. Therefore, as a town, the persons eligible to become chief of police would be limited to residents of French Settlement.

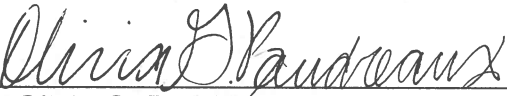
6. Are there any legal ramifications for a mayor of a municipality that did not follow the reclassification procedures required by La. R.S. 33:342?

The law does not provide legal ramifications for a mayor of a municipality that did not follow the reclassification procedures required by La. R.S. 33:342. Additionally, La. R.S. 33:342 provides that it is the *board of alderman* that must take the first step in reclassification procedures. The mayor cannot transmit a resolution that the board of alderman have not passed.

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

With best regards,

LIZ MURRILL
ATTORNEY GENERAL

BY: 
Olivia G. Boudreaux
Assistant Attorney General

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