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DEPARTMENT OF JUSTICE

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January 12, 1999
OPINION 98-405

Mr. Thomas Waterman
Town of Springfield
195 East Pine Street
P. O. Box 245
Ponchatoula, LA 70454

55 INTOXICATING LIQUORS - LOCAL OPTION
R.S. 51:191; R.S. 51:193; R.S. 18:1299; R.S. 18:1299.1; R.S.
18:1300; R.S. 18:1299
Answers procedural inquiry regarding a proposed local option
election prohibiting the sale of alcoholic beverages within a
municipality on Sunday.

Dear Mr. Waterman:

Concerning your recent procedural inquiry regarding a proposed local option election to prohibit the sale of alcoholic beverages on Sunday within a municipality, note first that R.S. 51:191 is applicable and provides:

§ 191. Sunday closing law; local ordinances; election

Except as provided in R.S. 51:193, the governing authority of any parish or municipality may adopt ordinances regulating or prohibiting the opening of certain businesses and/or the sale of certain stock or articles of merchandise on Sunday, if approved by the voters at an election called as provided in Chapter 6-B of title 18 of the Louisiana Revised Statutes of 1950.

Procedures governing the election are set forth in Chapter 6-B of Title 18 of the Louisiana Revised Statutes, specifically, R.S. 18:1299, R.S. 18:1299.1, and R.S. 18:1300. 18:1299 provides:

The provisions of this Chapter provide the procedures to be used in elections, except those provided for in chapter 6-A of this Code, at which a proposition or question, authorized by the state constitution, by a statute of this state, or by a home rule charter, shall be submitted to the voters.

LSA-R.S. 18:1299.1 provides:

The preparation of the statement of any question or proposition to be submitted to the voters at an election shall be the responsibility of the governing authority or other entity calling the election or submitting the question or proposition and shall not exceed four hundred words in length.

LSA-R.S. 18:1300 provides in pertinent part as follows:

A. (1) When an election at which a proposition or question is to be submitted to the voters is held at the same time as an election for any public official, the election shall be held solely in compliance with the applicable provisions of Chapter 5 of this Title.

* * * * *

B. When an election at which a proposition or question is to be submitted to the voters is not held at the same time as the election of any public official, the election shall be held solely in compliance with and shall be subject to the applicable provisions of Chapter 6-A of this Title.

C. When an election is called under the provisions of this Chapter, written notice of the election shall be transmitted to the secretary of state, the commissioner of elections, and each clerk of court and registrar of voters in the area affected by the election. Such notice shall be received by the secretary of state on or before the forty-fifth day prior to the election. The secretary of state shall not include any proposition on any ballot of any election if such notice is not timely received by the secretary of state. Any elector who is eligible to vote in the election may apply for injunctive relief to prohibit the placing of a proposition on the ballot if notice is not timely received by the secretary of state. Venue for such application shall be in any parish in which the election is called, and the secretary of state shall be a proper party defendant.

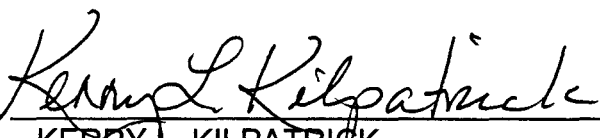
It is the responsibility of the local governing authority calling the election or submitting the proposition to prepare the proposition to be submitted to the voters at the election. The only restriction placed on the drafting of the proposition is that it not exceed four hundred words in length. If the election at which the proposition is to be submitted is held at the same time as an election for a public official, the election shall be held solely in compliance with the provisions of Chapter 5 of Title 18. If the election is not held at the same time as the election of any public official, the election shall be held solely in compliance with and subject to the provisions of Chapter 6-A of Title 18. When an election is called under 6-B Title 18, written notice of the election shall be transmitted to the secretary of state, commissioner of elections and each clerk of court and registrar of voters in the area affected by the election. This notice must be received by the Secretary of State at least 45 days before the election.

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Should you have further inquiries, please contact this office.

Very truly yours,

RICHARD P. IEYOUB
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BY: 
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JANUARY 13 1999

OPINION 98-506

Mayor Edward J. Price, III
City of Mandeville
3101 East Causeway Approach
Mandeville, LA 70448

Dear Mayor Price:

This office is in receipt of your request for an opinion of the Attorney General in regard to granting raises to city department heads, specifically the City Clerk. You indicate that the City Council approved a budget item increasing the amount of the salary of the City Clerk. However, as Mayor you have not recommended the raise of the City Clerk who you state "is a director appointed by the Mayor", and the City Charter at Section 4-01(D) provides, "The salaries of the directors of the departments appointed by the mayor shall be set by the mayor subject to the approval by the council by means of the budget". Accordingly, you ask the following:

If the City Council increases a budget item which allows for an increase in the salary of a Department Head, is it incumbent upon the mayor to grant such a salary increase?

It appears from the portion of the charter you have quoted that the City Council cannot increase the salary of the City Clerk by an increase as a budget item inasmuch as this would substitute the City Council with the power mandated by the Charter for the Mayor of setting the salaries of the directors of the departments rather than the Council only having the power of approval of the salary set by the Mayor by its inclusion in the budget. To increase the salary in the budget without a prior recommendation by the Mayor infringes upon his authority as set forth in the City Charter, and is invalid.

Of course, this conclusion is based upon your statement that the City Charter provides that the City Clerk is a department head appointed by the Mayor with approval by the council rather than in some other designation. This office noted that in the Minden charter the Mayor had the power to appoint all city employees other than the city clerk, city attorney and members of the city police department which was reserved to the Council, Atty. Gen. Op. No. 90-221, and the Charter for New Iberia stated "elective officers shall be the only officers of the city", and "all other persons in

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The City Charter grants the Mayor the authority to set the salary of department heads and cannot be simply by the council adopting a budget.

the service of the city, or any commission, or board thereof, are hereby declared to be employees." Atty. Gen. Op. No. 96-526. Thus, it can be seen that the status of personnel may vary by wording of the charter.

However, without having seen the charter, we make our observations on the basis that the city clerk, as a department head, has his salary set by the mayor subject to approval of the council, and not simply by adoption of a budget by the council.

We hope this sufficiently answers your inquiry, but if we can be of further assistance, do not hesitate to contact us.

Sincerely yours,

RICHARD P. IEYOUNG
Attorney General

By: Barbara B. Rutledge
BARBARA B. RUTLEDGE
Assistant Attorney General

BBR