

Jeffrey J. Turnage, Esq.

Office of the Attorney General November 30, 2015

Term

2015 WL 9264852 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

*1 Opinion No. 2015-00424

*1 November 30, 2015

Re: Effect of voluntary Resignation

*1 Jeffrey J. Turnage, Esq.

*1 Attorney

*1 City of Columbus

*1 Post Office Box 1366

*1 Columbus, Mississippi 39703-1366

Dear Mr. Turnage:

*1 Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

*1 You inquire as to the effect of a voluntary **resignation** of a municipal employee. Specifically, you ask the following:

*1 I am writing to request an official opinion from your office regarding the City of Columbus, Mississippi ("City"), for which I am General Counsel. The questions relate to the effect of a voluntary **resignation**. We ask that you treat these requests as urgent. Here are my questions.

*1 1. If an employee of the City tenders an unconditional written **resignation** effective immediately, must it be accepted by the Mayor and City Council before it becomes effective?

*1 2. If an employee of the City tenders an unconditional written **resignation** effective on a date certain, may the Mayor and City Council meet after the effective date and lawfully reject or refuse the **resignation**?

*1 3. If an employee of the City tenders an unconditional written **resignation** effective on a date certain, may the Mayor and City Council meet after the effective date and lawfully vote to reject the **resignation** and terminate? If not, what is the effect of such votes?

*1 4. If an employee of the City tenders a written **resignation** with a future effective date or other conditions, must it be accepted by the Mayor and City Council before it becomes effective? May the employee withdraw it before the effective date if not yet accepted by the Mayor and Council?

*1 5. Would the answers to any of the above questions hinge on whether or not the employee is a covered employee under Civil Service?

*1 Should you need any additional information to respond to this inquiry, we would certainly appreciate a return phone call or follow up so that we can hopefully assist in providing whatever information is lacking or to clarify the questions propounded.

Response

*1 We preface our response by stating this office is not authorized to address actions that have already been taken by the municipality, pursuant to Mississippi Code Annotated Section 7-5-25. An opinion from this office can neither validate nor invalidate any such past actions. Therefore, to the extent that your request deals with past action, we must decline to respond with an official opinion of this office. In that instance, we make, by way of information only, the following general comments for your future guidance.

*1 1) Acceptance by municipal governing authorities of the **resignation** of a municipal employee is not required in order for the employee's **resignation** to become effective.

*1 2) The **resignation** of a municipal employee becomes effective upon the date stated in the written **resignation** correspondence. Any rejection or refusal to accept the **resignation** by the municipal governing authorities, after the **resignation** has become effective, would have no effect.

*2 3) The **resignation** of a municipal employee becomes effective upon the date stated in the written **resignation** correspondence. Any vote to reject the **resignation**, followed by a vote to terminate the employee, by the municipal governing authorities, after the **resignation** has become effective, would have no effect. Upon the effective date of the **resignation**, the municipal employee's employment with the municipality was automatically terminated and he was no longer employed by the municipality. Thus, in this instance, a vote to terminate would result in an ineffective vote.

*2 4) Acceptance by municipal governing authorities of the **resignation** of a municipal employee is not required in order for the employee's **resignation** to become effective, regardless as to whether the **resignation** is effective immediately or effective on a date in the future. A municipal employee may withdraw his **resignation** prior to the effective date stated in the written **resignation** correspondence.

*2 5) We are not aware of any statutory provisions, including those statutes affording civil service coverage to municipal employees, that address employee **resignations** and withdrawals of such **resignations**. We are not privy to, and in no way intend to opine on, the effect that the civil service rules and regulations adopted by the municipality may have on the **resignations** of its employees.

Applicable Law and Discussion

*2 With respect to the **resignation** of public officers and employees, there are no statutory provisions that address **resignations** and withdrawal of **resignations** of such officers and employees. We have previously opined that the **resignation** of a municipal officer does not need to be accepted by the governing authorities to become effective. MS AG Op., Hudson (January 21, 2005). Thus, the effective date of a **resignation** by a public officer or employee is not altered by the acceptance of such **resignation**, or lack

thereof, by the governing authorities. Such **resignation** becomes effective upon the date specified in the **resignation**, and the employee may withdraw his **resignation** up until the stated effective date. MS AG Op., Jones (November 7, 2003); MS AG Op., Strachan (October 24, 2003); MS AG Op., Mims (September 22, 2006).

*2 If our office may be of further assistance, please advise.

Sincerely,

*2 Jim Hood

*2 Attorney General

*2 By: Leigh Triche Janous

*2 Special Assistant Attorney General

2015 WL 9264852 (Miss.A.G.)