

# OFFICE OF THE ATTORNEY GENERAL <sup>91-00182</sup>



JIMMY EVANS  
ATTORNEY GENERAL  
STATE OF ALABAMA

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 242-7300

Honorable Gregory L. Harris  
Attorney at Law  
2317 St. Stephens Road  
Mobile, AL 36617

Municipalities - Water and  
Sewer Boards - Residency  
Requirements - Boards of  
Directors

The City Council of Prichard can prescribe by ordinance residency requirements for the members of the Water Works and Sewer Board of the City of Prichard. Members of the Water Works and Sewer Board must reside in the city limits or the police jurisdiction during their tenure of office.

The City Council of the City of Prichard does not have authority to remove members of the Water Works and Sewer Board of that city. Such members can be removed only by a court of competent jurisdiction.

Dear Mr. Harris:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTIONS

1. Whether persons appointed by the City Council of the City of Prichard,

Alabama, to the Water Works and Sewer Board of the City of Prichard must be residents of the City of Prichard or its police jurisdiction at the time of the appointment and, if so, must they continue to so reside at all times during their tenure in office.

3. Whether the City Council of the City of Prichard has the power to prescribe by ordinance a residency requirement limiting those eligible for appointment to the Water Works and Sewer Board of the City of Prichard to citizens of the City of Prichard and those residing within its police jurisdiction and requiring that they shall reside in said City or within its police jurisdiction at all times during their tenure in office.

#### FACTS AND ANALYSIS

Because your first and third questions are related and because the answer of the first question is dependent on the answer to the third question, I will consider the two questions together.

It is stated in your request that the Water Works and Sewer Board of the City of Prichard is established pursuant to Code of Alabama 1975, § 11-50-230 through § 11-50-241. There are five members of the board who are appointed by the City Council of Prichard as provided at § 11-50-234.

The City Council in 1968 enacted an ordinance providing that any person living within the city limits of the City of Prichard or within its police jurisdiction shall be eligible to be appointed to any board or body whose members are appointed by the city council. The city council has been informed that a member of the Water Works and Sewer Board who was a resident of the City of Prichard when appointed to the board has moved away from the city but remains as a member of the board.

Section 11-50-232 provides for the contents of the certificates of incorporation of a water works and sewer board

established under § 11-50-230, et seq. It is stated in that provision:

"The certificate of incorporation may also contain any provisions not contrary to law which the incorporators may choose to insert for the regulation and conduct of the affairs of the corporation."

Section 11-50-232 further provides that the certificate of incorporation may not be amended unless the city council of the municipality so consents.

Considering these factors and the fact that the city council appoints the directors of a water works and sewer board, the city council may by ordinance determine who will and will not be eligible to serve on a water works and sewer board as long as there is no conflict with state law. I am not aware of any state law that would prevent a city council from prescribing, by ordinance, residency requirements for members of the water works and sewer board of that municipality.

In view of the fact that the City Council of Prichard may by ordinance require that members of the Water Works and Sewer Board reside in the city limits or its police jurisdiction, members of such board must be residents of the City of Prichard or its police jurisdiction and must continue to reside in the city limits at all times during their tenure of office. If a member moves out of the city limits or its police jurisdiction during his tenure in office, the position is vacated. Baker v. Conway, 214 Ala. 356, 108 So. 18 (1926). Opinion of the Attorney General to Honorable Sharon Bouillon, Town Clerk, Cowarts, dated March 2, 1987.

#### CONCLUSION

The City Council of Prichard can prescribe by ordinance residency requirements for the members of the Water Works and Sewer Board of the City of Prichard. Members of the Water Works and Sewer Board must reside within the city limits or its police jurisdiction at all times during their tenure in office.

#### QUESTION 2

Whether the City Council of the City of Prichard, the appointing authority to the

Water Works and Sewer Board of the City of Prichard, has the power to remove members of the Board or whether that power is vested in some other entity.

FACTS AND ANALYSIS

As previously stated, if a member of the Water Works and Sewer Board moves out of the city limits or its police jurisdiction during his tenure in office, the position is vacated. As to whether the City Council would have the authority to remove members of the board, it was concluded in an opinion of the Attorney General to Honorable Paul Barr, Chairman of the Bear Creek Water Works Board, dated April 7, 1989, that a city council has no legal authority to remove a member of an incorporated utility board. A member of such board, once appointed, can only be removed by a court of competent jurisdiction.

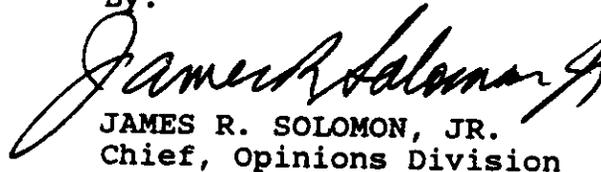
CONCLUSION

The City Council of the City of Prichard does not have authority to remove members of the Water Works and Sewer Board of that city. Such members can be removed only by a court of competent jurisdiction.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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