

OFFICE OF THE ATTORNEY GENERAL



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Civil Service System - Employees,
Employers, Employment - Boards of
Directors - Mayors - Conflicts of
Interest - Pay and Allowances

1. City of Jasper is to pay the expenses of civil service board as set out in Act No. 113 (1965) and Act No. 90-432.
2. Pay records of city employees should be released to the civil service board.
3. Secretary to the mayor cannot serve as clerk of civil service board.
4. Discussion of hiring of part-time or seasonal employees by the City of Jasper.

Dear Mr. Thomas:

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

QUESTION 1

Must the City of Jasper pay all expenses incurred by the Civil Service Board pursuant

to Act No. 113 (1965), including the expenses above and beyond the usual monthly expenses for supplies, attorney's fees and other such matters?

FACTS, LAW AND ANALYSIS

The Civil Service System of the City of Jasper was established by Act No. 113, Acts of Alabama 1965, First Special Session, p. 162. The Civil Service Board of the City of Jasper was also created by Act No. 113.

Section 16 of Act No. 113 (1965) states:

"Section 16. The expenses of the Board arising under the provisions hereof shall be paid from funds of the city. The city governing body shall provide the Board an office in the city hall, which shall be suitably equipped and furnished for the needs of the Board, and telephone service, postage, office supplies, and stationery; also, secretarial and clerical help as deemed necessary by the Board."

Section 6 of Act No. 113 (1965), as amended by Act No. 90-432, Acts of Alabama 1990, p. 596, reads:

"Section 6. The members of the board shall each be entitled to two hundred seventy-five dollars (\$275.00) pay per month. The board shall have the power to appoint clerical assistants and engage legal counsel of its own choice, who shall be paid by the city. The clerk of the civil service board shall be paid a minimum of \$375.00 per month and legal counsel of the board shall be paid a minimum of \$425.00 per month. The pay of members of the board shall also be paid by the city. This amendment shall supersede all previous amendments concerning board members' pay."

According to these provisions, the City of Jasper is to pay the expenses of the city civil service board as set out under the provisions of Act No. 113, including those listed in Section 16 and Section 6, as amended. If a particular expense

is incurred by the civil service board which is not among those included in Sections 6 and 16 of Act No. 113, then a determination must be made as to whether such is a legitimate expense to be paid by the city under Act No. 113.

CONCLUSION

The City of Jasper is to pay the expenses of the city civil service board as set out under the provisions of Act No. 113 and Act No. 90-432.

QUESTION 2

As part of the Board's duty to establish a pay plan, must the City of Jasper provide individual pay records for each employee in order for the Board to establish the appropriate pay plan?

FACTS, LAW AND ANALYSIS

This office has concluded that the names, titles and salaries of public employees are matters of public record, and are to be disclosed to the public upon reasonable request. Opinions to Mr. Cartledge W. Blackwell, Dallas County Commission, dated October 31, 1985, A.G. No. 86-00038, and to Honorable Alvin Holmes, Member, House of Representatives, Montgomery, dated January 13, 1988, A.G. No. 88-00117.

Therefore, if the pay records of city employees are public records, the City of Jasper should release this information to the civil service board, in order that the board may establish an appropriate pay plan for the employees.

CONCLUSION

The City of Jasper should release pay records of city employees to the city civil service board.

QUESTION 3

Is there a conflict of interest if the secretary to the Mayor of the City of Jasper

serves as the clerk for the civil service board?

FACTS, LAW AND ANALYSIS

Code of Alabama 1975, § 11-43-12 prohibits a municipal officer or employee from being directly or indirectly interested in any contract, work, or business, the price or cost of which is paid from the municipal treasury. This office has determined that § 11-43-12 prohibits an officer or employee from holding any other salaried position with the town. Quarterly Reports of the Attorney General, Vol. 53, p. 67.

Under Act No. 113 (1965) and Act No. 90-432, the expenses of the civil service board, including the salary of the clerk, are paid from city funds. Thus, the secretary to the Mayor is prohibited from serving as clerk of the city civil service board.

CONCLUSION

The secretary to the Mayor of the City of Jasper cannot serve as clerk of the city service board.

QUESTIONS 4 and 5

How should the term "common laborer," as used in Act No. 113 (1965), be defined?

Can the city hire seasonal or part-time persons who are not common laborers without hiring from a register of all persons eligible and available for appointment to those positions?

FACTS, LAW AND ANALYSIS

Section 11 of Act No. 113 (1965) states in pertinent part:

"The Board shall make and keep a register of all persons eligible and available for appointment to each class of position in the service of the city, ranked according to ability; it is provided,

however, that no examination shall be given and no register kept for positions to be filled by persons designated by the board as common laborers."

Generally, a "common laborer" is one who performs any kind of unskilled labor necessitating no special trade, skill or previous training. 8 Words and Phrases.

Section 4 of Act No. 113 (1965) states:

"All employees of the city shall be governed by civil service rules and regulations prescribed in or promulgated pursuant to this Act, administered by a civil service board, the creation of which is provided for in section 5 hereof."

"Employee" is defined in Section 1 of Act No. 113 (1965) as:

". . . any person, including firemen and policemen and employees of the street department, not excepted by Section 3 of this Act who is regularly employed in the service of the City of Jasper . . ."

Section 3 lists certain persons excepted from the provisions of Act No. 113 (1965), including elective officers, members of appointed boards, employees of the city board of education, certain persons, such as attorneys hired in their professional capacities, independent contractors, federally approved employees and employees of boards created by the city governing body.

Note that under the definition of "employee" in Section 1, an employee is one who is "regularly employed" with the City of Jasper. (Emphasis added.)

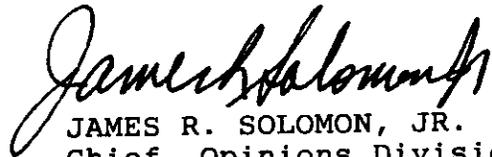
There is no specific provision for part-time or seasonal employees to be hired by the city without hiring from a register. However, such persons may be hired as common laborers and paid as such. Furthermore, Section 9 empowers the civil service board to make rules and regulations regarding employees. Thus, the board may adopt rules and regulations regarding seasonal or part-time employees.

CONCLUSION

Generally, "common laborer," as used in Act No. 113 (1965) is one who performs unskilled labor. Part-time or seasonal employees may be hired by the city as "common laborers." The civil service board may adopt rules and regulations regarding part-time or seasonal employees.

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

Sincerely,



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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