



2009-054

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

March 13, 2009

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Honorable Raymond Steele  
Mayor, City of Eutaw  
Post Office Box 431  
Eutaw, Alabama 35462

Mayors - City Councils - Attorneys -  
Appointments - Contracts - Greene County

The Mayor of the City of Eutaw is the  
appointing authority for the city attorney.

Dear Mayor Steele:

This opinion of the Attorney General is issued in response to your request on behalf of the Eutaw City Council.

QUESTION

Does the mayor have the authority to appoint the  
city attorney?

FACTS AND ANALYSIS

This Office has recognized that "[t]here is no general statutory provision for the appointment of a city attorney." Opinion to Honorable Ed Porter, Mayor, City of Bessemer, dated November 17, 1983, A.G. No. 84-00063 at 2. Issues regarding the appointing authority for the city attorney have been decided under section 11-43-81 of the Code of Alabama. Opinion to Honorable Robert L. Austin, President, Hoover City Council, dated June 22, 2004, A.G. No. 2004-163; *Porter* at 2. That section provides that the mayor "shall have the power to appoint all officers whose appointment is not *otherwise provided for by law.*" ALA. CODE § 11-43-81 (2008) (emphasis added).

The city council may provide otherwise by law, by personnel rule, or other ordinance making itself the appointing authority for all officers and employees. *Austin*. Therefore, the *Porter* opinion concluded that "the mayor has the power to appoint the city attorney unless there is a local ordinance

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which makes some other provision for the appointment of the city attorney." *Porter* at 2. The *Austin* opinion concluded that the Hoover City Council had so provided, giving the authority to initiate the appointment of the city attorney to the mayor, subject to the council's consent. *Austin* at 3.

This Office has addressed the appointment of the city attorney in a third opinion, which determined, without citation to any authority, that "[u]nder general municipal law," the city council is the appointing authority. Opinion to Honorable Louise C. Thompson, Acting Clerk-Treasurer, City of Hueytown, dated March 8, 1990, A.G. No. 90-00173 at 2. That opinion was modified by the *Austin* opinion, which stated that the *Thompson* opinion was "limited to the extent that the position was covered by other law." *Austin* at 2. Thus, the holding of the *Thompson* opinion that the council is the appointing authority applies only if the council has adopted an ordinance making it the appointing authority.

Your request states that City of Eutaw has no ordinance regarding the appointment of the city attorney. Accordingly, the mayor is the appointing authority.

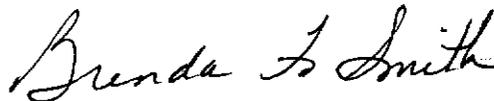
#### CONCLUSION

The Mayor of the City of Eutaw is the appointing authority for the city attorney.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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