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Utility Boards – Conflicts of Interest – Boards of Directors – Removal from Office –Appointments – City Councils – Mobile County

A member of a city council may not vote for himself or herself to be appointed to a compensated position on a board or agency for which the city council is the appointing authority.

The city council for the City of Bayou La Batre has no authority to remove a sitting member of the Utilities Board for the City of Bayou La Batre.

Dear Mr. Wasden:

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

QUESTION 1

May a city council member vote for himself or herself to be appointed to a compensated position on a board or agency for which the city council is the appointing authority?

FACTS AND ANALYSIS

According to your request, the Utilities Board for the City of Bayou La Batre ("Board") is a public utility incorporated pursuant to sections 11-50-310 through 11-50-324 of the Code of Alabama. ALA. CODE § 11-50-310 to 11-50-324 (2008, Supp. 2013). Section 11-50-313 of the Code provides for the appointment of members of the Board by the governing body of the municipality, and municipal officers are eligible for appointment to the Board. Members of the Board are compensated at a rate of $400 per month.

Section 11-43-54 of the Code states as follows:

> ***No councilman shall be entitled to vote on any question in which h***e, his employer, or employee ***has a special financial interest at the time of voting or was so interested at the time of his election***. For violating this section or Section 11-43-53, a councilman may be removed.

ALA. CODE § 11-43-54 (2008) (emphasis added).

This Office has previously stated that section 11-43-54 of the Code prohibits a council member from voting on a matter in which he has a financial interest. Opinion to Honorable David A. McDowell, City Attorney, City of Prattville, dated November 19, 2001, A.G. No. 2002-065. Additionally, this Office has opined that there is no violation of section 11-43-54 of the Code if the council member abstains from voting on a matter in which he has a financial interest. *Id.* Because serving on a board or agency for additional compensation creates a financial interest, a member of a city council may not vote for himself or herself to serve on such a board.

CONCLUSION

A member of a city council may not vote for himself or herself to be appointed to a compensated position on a board or agency for which the city council is the appointing authority.

QUESTION 2

> May the city council rescind an appointment to the Board wherein a councilmember voted for their own appointment to the Board?

FACTS AND ANALYSIS

This Office has previously determined that a member of a utility board organized pursuant to section 11-50-310, *et seq.*, "can only be removed by a court of competent jurisdiction." Opinion to Honorable Rebecca Narmore, Attorney, Cherokee Waterworks and Gas Board, dated February 25, 2011, A.G. No. 2011-040, *quoting* opinion to Honorable Paul Barr, Chairman, Bear Creek Water Works, dated April 7, 1989, A.G. No. 89-00239. "The town council has no legal authority to remove a board member under any circumstances." *Barr* at 2; *but see*, opinion to Honorable Wilford Cagle, Mayor, Town of Parrish, dated October 15, 2001, A.G. No. 2002-023 (local constitutional amendment authorizes municipalities in Walker County to remove members of water board). This Office is not aware of any local law or constitutional amendment that allows the City of Bayou La Batre to remove a sitting member of the Board.

CONCLUSION

The city council for the City of Bayou La Batre has no authority to remove a sitting member of the Utilities Board for the City of Bayou La Batre.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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