

## OFFICE OF THE ATTORNEY GENERAL



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Municipalities - Civil Service  
System - Employees, Employers,  
Employment - Political Activities

An increase or decrease in city  
departments is effective when  
approved by the Board. Employees  
must be in the classified or  
unclassified service; a classified  
employee elected to a county  
office does not hold two offices  
of profit.

Dear Mr. Hause:

The Attorney General is in receipt of your recent  
request for an opinion on behalf of the City of Dothan. The  
three questions posed in your request are as follows:

1. Does this provision [Civil Service Act of the City of Dothan, Section 3(10)] grant to the Personnel Board the authority to disapprove the recommendation of the governing body or to refuse to approve the recommendation of the governing body?
2. Under the Civil Service Act of the City of Dothan, does the city governing body have the authority to employ personnel who are neither in the classified service or not listed in the unclassified section?

3. Under Section 3, page 3 of said Act, would an employee in the classified section of the City of Dothan Civil Service Act who ran for and was elected to a county office be permitted to continue in his employment or would this violate Article XVII, Section 280, of the Constitution of Alabama of 1901?

The Civil Service Act of the City of Dothan (hereinafter referred to as the Act) specifically defines in §2 "department heads" of the city:

...to include city manager, the city clerk-treasurer, the city engineer, the city electrical superintendent, the fire chief, the police chief, the superintendent of recreation, the superintendent of sanitation, the superintendent of streets, the superintendent of water and heads of other such functional departments that may be established or created to provide service required in the efficient and effective administration and operation of the municipal government....

The next sentence of Section 2 states that any increase or decrease in the number of city departments shall be initiated by the city governing body and shall become effective when approved by the Personnel Board.

It is the opinion of the Attorney General that the answer to question number 1 above is "yes" in that any increase or decrease in departments by the city governing board is not effective until approved by the Personnel Board. The language of the statute is clear. An examination of the entire Act shows that the purpose of the Act was to create a system whereby employment and employees of the City of Dothan are regulated by a single comprehensive agency. In Section 33 of the Act we find that the orders of the Board may be enforced by mandamus, injunction, quo warranto or other appropriate proceedings in any court of competent jurisdiction. It is clear that the Act is not a toothless tiger and that the orders of the Board may be enforced in a court. Therefore, we do not believe that the language used in Section 2 of the Act that provides that an increase or decrease in the number of city departments becomes effective only when approved by the Board is merely superfluous language with no legal effect.

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Section 2 of the Act defines the classified service to include:

All offices, positions and employment in the City of Dothan as these offices, positions and employment now or may hereinafter exist, the holders of which are paid whether by salary, wages, or fees, in whole or in part from funds of the City, except those expressly placed in the 'Unclassified Service'....

Persons employed in the classified service are employed pursuant to some sort of competitive process. The unclassified service is defined by Section 3 of the Act. This section contains a extensive list of persons or classes of persons who are to be excluded from the classified service.

It is the opinion of the Attorney General that the Act makes provisions for two types of employees, i.e., those in the classified service and those in the unclassified service. The definition of unclassified service is extremely broad in that numerous persons can be employed by the city. The Act makes no provision for employees of the city other than those specified as being in the classified or unclassified service. For that reason it is the opinion of the Attorney General that the city may only employ persons who meet either the definition of a classified or unclassified employee.

A classified employee of the City of Dothan who ran for and was elected to a county office is permitted to continue in his city employment. This would not violate Article XVII, Section 280, of the Constitution of Alabama since a classified employee of the City of Dothan who is elected to a county office would not be holding two offices of profit under the state. In Alexander v. State ex rel Carver, 150 So.2d 204 (1963), the word "office" is defined as a position that vests an individual with a portion of the sovereign power of the state. No classified employee of the City of Dothan is vested with a portion of the sovereign power of the state and thus does not hold an office.

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We greatly appreciate the material you enclosed with your request for an opinion. This material was of great assistance to us. If we may be of further service to you please feel free to contact this office at any time.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General

By:



RICHARD N. MEADOWS  
Assistant Attorney General

CAG:RNM:mth