

Internal Memorandum

Legal Department

TO: Joel Robideaux, City-Parish Mayor-President

CC: Paul Escott, City-Parish Attorney

FROM: Michael D. Hebert, Assistant City-Parish Attorney

SUBJECT: Temporary Appointment of Utilities Director and Communications System Director

DATE: October 28, 2018

The recent appointments of Lowell Duhon and Kayla Miles as the new interim directors of the Utilities Department and the Communications System Department, respectively, have been questioned as to whether those appointments comply with covenants in the outstanding utility and fiber bond ordinances of the City of Lafayette and whether these appointments required the approval of the consulting engineer for the Utilities System. You have requested that the Legal Department examine this question, and our opinion follows.

1. *Executive Summary*

- A. These appointments are to allow for the temporary performance of director duties until a new administration can make a permanent appointment.
- B. The Mayor-President's appointment of personnel to temporarily assume the duties of a vacant director position is permitted by the Charter.
- C. The appointment of personnel to temporarily assume the duties of the vacant positions of Director of Utilities or Director of Communications System does not require the approval of the Consulting Engineer of the Utilities System and does not violate relevant bond covenants.

2. *Discussion*

- A. *These appointments are to allow for the temporary performance of director duties until a new administration can make a permanent appointment.*

It has been clear from the outset that the most recent appointments to these positions, as well as the previous appointments to these positions, were never intended to be permanent appointments. The permanent positions of Director of Utilities and Director of the Communications System

Department remain vacant, and those positions are not protected by civil service. This typically means that a new Mayor-President will appoint his/her own choice to the position.

Under the current circumstances, in which one administration is about to come to an end and another administration is about to begin, it is logical that there would be no attempt to appoint a permanent director to either position. Indeed, it seems doubtful, if not impossible, that anyone would be interested in an appointment to an unclassified position that would likely last only a few months. Therefore, it is understandable that these appointments are only to provide for a temporary assumption of the duties of the vacant position of Director of Utilities and Director of Communications System until such time as a new administration can make permanent appointments.

This conclusion is further bolstered by the fact that the previous temporary assignments of classified civil service employees to assume the duties of Director of Utilities and Director of Communications System did not result in their loss of civil service status. Since director positions are not protected by civil service, this makes it all the more clear that the positions of Director of Utilities and Director of Communications System have remained vacant during the entire period that temporary appointments have been made.

B. The Mayor-President's appointment of personnel to temporarily assume the duties of a vacant director position is permitted by the Charter.

The Lafayette City-Parish Consolidated Government Home Rule Charter ("Charter") gives the Mayor-President broad power to appoint and remove directors and other employees of the City-Parish Government, in the following terms:

The Mayor-President shall be the chief executive officer of the City-Parish Government and shall exercise general executive and administrative authority over all departments, offices and agencies of the City-Parish Government, except as otherwise provided by this charter.

Charter, Section 3-01.

A. The Mayor-President as chief executive officer of the City-Parish Government shall have the following powers and duties:

....

(2) Appoint and suspend or remove for just cause all City-Parish Government employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by this charter or other personnel rules adopted pursuant to this charter. The Mayor-President may authorize any administrative officer who is subject to the President's direction and supervision to exercise these powers with respect to subordinates in the officer's department, office or agency.

(3) Direct and supervise the administration of all departments, offices and agencies of the City-Parish Government, except as otherwise provided by this charter.

Charter, Sections 3-09(A) (2), (3).

A. Except as otherwise provided by this charter, all departments, offices and agencies shall be under the direction and supervision of the President. The directors of all departments created by or under this charter shall be appointed by the Mayor-President and shall serve at the pleasure of the Mayor-President, except as otherwise provided by this charter.

Charter, Section 4-01(A).

Specifically with regard to the Director of Utilities only, Section 4-07(B) provides as follows:

The director of the utilities department shall be appointed by the Mayor-President, subject to approval by the authority [LPUA], in accordance with provisions included in current or future bond resolutions and covenants.

Charter, Section 4-07(B).

Clearly, the Mayor-President has very broad powers to appoint all employees of the City-Parish Government and to supervise all departments of the City-Parish Government. The only qualifications upon this authority are those stated in the Charter, and, with regard to the Director of Utilities, any limiting “provisions included in current or future bond resolutions or covenants.”

There is nothing in the Charter, or, after consultation with the Department of Civil Service, in the “personnel rules adopted pursuant to [the] Charter” (i.e., civil service rules), that limits the authority of the Mayor-President to make a temporary assignment of one or more employees of the City-Parish Government to perform the duties of a vacant director position. Further, as will be seen below, “current . . . bond resolutions and covenants” do not address the appointment of personnel to temporarily assume the duties of the vacant positions of Director of Utilities or Director of the Communications System.

C. The appointment of personnel to temporarily assume the duties of the vacant positions of Director of Utilities or Director of Communications System does not require the approval of the Consulting Engineer of the Utilities System and does not violate relevant bond covenants.

Ordinance No. O-122-2004, often referred to as the “General Utilities Bond Ordinance,” contains the following covenants that are relevant to this situation:

The Issuer hereby covenants to operate the Utilities System in a business like [sic] manner and, in consultation with the Consulting Engineers, to operate the Utilities System in such manner in order to insure the continued availability of Net Revenues

to pay all costs required by this Ordinance. The Issuer covenants to adequately maintain and improve the Utilities System and to employ the necessary staff and employees as required by industry practice and as necessary to properly operate and protect the Utilities System.

General Utilities Bond Ordinance, Section 7.1.

The Issuer shall retain a Consulting Engineer for the purpose of providing the Issuer immediate and continuous counsel and advise [sic] regarding the Utilities System. It shall be the further duty of the Consulting Engineer to advise the Issuer in its appointment of a Chief Operating Officer for the Utilities System [defined in Section 1.1 as the Director of Utilities] and the issuer agrees that it will not appoint anyone as Chief Operating Officer who has not been approved by the Consulting Engineer.

General Utilities Bond Ordinance, Section 8.1.


In contrast, the relevant provision of the ordinance under which the outstanding bonds for LUS Fiber were issued (Ordinance O-053-2006, Section 9.1) does not contain any requirement whatsoever that the “Chief Operating Officer” of the Communications System be approved by the consulting engineer for the Utilities System.

None of these covenants address the temporary assumption of the duties of a vacant director position, which, as shown above, is all that has occurred in this situation. Further, as to the Director of Communications System only, these covenants would not require under any circumstances that the Director of the Communications System be approved by the Consulting Engineer for the Utilities Department.

3. Conclusion

Considering these facts as a whole, it is clear that the temporary appointment of Lowell Duhon to assume the duties of the vacant Director of Utilities position, and the temporary appointment of Kayla Miles to assume the duties of the vacant Director of Communications System position, are within the authority of the Mayor-President, did not violate applicable bond covenants, and did not require the approval of the Consulting Engineer of the Utilities System.

If I can assist further on this issue, please let me know.



Michael D. Hebert
Assistant City-Parish Attorney