Opinion No. 2011-142

February 6, 2012

The Honorable Uvalde Lindsey
State Representative
2257 East Gentle Oaks Lane
Fayetteville, Arkansas 72703-6142

Dear Representative Lindsey:

You have requested my opinion concerning the ability of a municipality to reappoint individuals who had previously served the statutory limit of four years on a regional solid waste management board. You present the following specific questions and background information:

Question 1:

Two former appointed members of the Boston Mountain Regional Solid Waste Management Board, serving under the authority of A.C.A. § 8-6-703, had exceeded the terms of an appointed member, which is, by statute, two, 2-year terms or a total of four years.

Both members were continuing service on the Board at the pleasure of their cities, but have since resigned from the RSWMD Board when the Arkansas Department of Environmental Quality (ADEQ) pointed out that they had exceeded their term limitation under the statute.

Both members have issued letters of resignation to the RSWMD. The Mayors of both cities have asked if they can, with City Council approval, reappoint these same individuals to serve again.

Question 2:

If they can be reappointed with City Council approval, is there any waiting time between their official resignations and their reappointments?

In presenting these questions, you state: "The statute is not clear if there can be multiple terms on the Board – only that appointed members cannot serve beyond a 4-year term (the length of office for most mayors)."

RESPONSE

Arkansas Code Annotated § 8-6-703 expressly provides that each appointed member of a regional solid waste management board is "eligible for a maximum of two (2) terms or four (4) years total."[1] In my opinion, this 2-term limitation prevents the reappointment of the former members described under Question 1 above, given that they reportedly have already served more than two terms.

I recently summarized the relevant provisions of A.C.A. § 8-6-703[2] as follows:

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[1] A.C.A. § 8-6-703(c)(3)(B) (Supp. 2011).

[2] The statute provides in pertinent part:

> (b)(1) Each regional solid waste management board shall be composed of representatives of the counties within the district and representatives of all first class cities, of all cities with a population over two thousand (2,000) according to the latest federal decennial census, and of the largest city of each county within the district.
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> (2) The county judge of each county within the district and the mayor of each city entitled to a representative in the district shall serve on the board, unless the county judge or mayor elects instead to appoint a member as follows:
>
> (A) The county judge, with confirmation by the quorum court of each county within the district, shall appoint one (1) member to the board; and
>
> (B) The mayor, with confirmation by the governing body of each city entitled to a representative in the district, shall appoint one (1) member.
>
> (c)(1) Each board shall have a minimum of five (5) members.
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> (2) If the number of members serving under subsection (b) of this section is less than five (5), additional members necessary to make the total number equal five (5) shall be appointed by mutual agreement of the other board members and shall represent the general public within the district.

> In my opinion, this statute is clear in its terms, providing the following conditions. First, the county judge and the mayors of the cities described in subsection (b)(1) of the statute will serve on the board, unless any of them chooses to appoint a representative approved by the governing body. Second, if the officials qualified to serve do not number five or more, the qualified officials or their appointed representatives will appoint additional members to equal five. Third – and crucial to your question – any appointed member, whether appointed as a substitute for a public official or as an additional member to reach the required number of five, is eligible to serve "for a maximum of two (2) terms or four (4) years total."[3]

I thus concluded in this opinion that all appointees, including members who are appointed as substitutes for a county judge or mayor, are ineligible to serve longer than a maximum of two terms, or four years total.[4] Although I did not explicitly address your suggestion that an appointed member might be eligible to serve multiple terms, I believe any such suggestion must be rejected based on the plain language of Section 8-6-703. As I stated in the above-cited opinion, "A.C.A. § 8-6-703 is unequivocal in limiting the terms of appointed members to four years."[5] Contrary to what you may have in mind, there is no suggestion that the term limitation only applies to the time served under a particular appointment. You have noted that the limitation of 4-years is "the length of office for most mayors," which I take to suggest that the term limitation is somehow tied to the appointing official's term of office. But this fails to recognize that the county judge may also

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> (3)(A)(i) Appointed regional board members shall serve for staggered terms of two (2) years.
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> (ii) Provided, however, that all members appointed pursuant to subsection (b) of this section shall serve at the pleasure of the appointing body.
>
> (B) Each appointed board member shall be eligible for a maximum of two (2) terms or four (4) years total.

[3] Op. Att'y Gen. 2010-122. As I explained in this opinion, there are no term limits for public officials, i.e., county judges or mayors, who serve on a regional solid waste management board pursuant to Section 8-6-703. *Id*. at 7.

[4] *Id*. at 2, 5.

[5] *Id*. at 2.

choose to appoint a board member in his or her stead,[6] and a county judge serves a 2-year term.[7] I believe this belies the notion that the term limitation is tied to the term of the official making the appointment.

It is my opinion that the statute instead imposes an overall term limitation of "(2) terms or four (4) years total." In response to your particular question, therefore, it is my opinion that the former members you have described are ineligible for reappointment, given that they have already served more than two terms. A response to your second question is unnecessary in light of this response.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

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[6] A.C.A. § 8-6-703(b)(2)(A).

[7] Ark. Const. art. 7, § 29.