

Opinion No. 2013-028

May 23, 2013

The Honorable James Ratliff
State Representative
Post Office Box 791
Imboden, Arkansas 72434-0791

Dear Representative Ratliff:

This is my opinion on your question concerning the City of Hardy advertising and promotion (“A&P”) commission.

By law, an A&P commission has two members who are also members of the municipal governing body; four members representing the tourism industry; and one at-large member.¹ An appointment to a tourism-industry or at-large position is for a four-year term.² A vacancy in one of those positions is “filled by appointment made by the remaining members of the commission, with the approval of the governing body of the city.”³

You state as background for your particular question:

In an examination of city minutes of the past 4 years, only one commissioner name appears to have been brought forward for approval, but the minutes of that meeting does not contain a record of motion, second, discussion, or vote showing approval.

¹ A.C.A. § 26-75-605(a) (Repl. 2008).

² *Id.*

³ A.C.A. § 26-75-605(d).

There [are] at least three other positions that names have been given (hearsay) as filling those terms, but no record of any kind shows in city minutes of the last four years.

Your question is:

If there is no record of candidates being brought forward for approval, by the commission, and no documentation in council minutes that approval was made with a motion, second, and vote by the council, can it be assumed that those positions are void and should be revisited to be filled with the proper processes?

Because your request is not explicit on the matter, I will assume that someone claims to occupy each of the five positions at issue, and that each claimant was validly appointed to a now-expired term.

RESPONSE

Under the facts given and assumed, it is my opinion that the five positions are vacant and subject to be filled, but that the individuals claiming the five positions are de facto officers who may continue to serve until replaced.

A regular term's expiration results in a vacancy to be filled in accordance with governing law.⁴

Prior opinions of this office are to the effect that an A&P commissioner whose term expires may continue to serve, as a de facto officer whose actions are valid and enforceable, until reappointed or replaced.⁵ The discussion in those opinions is sufficiently thorough, and governing law is sufficiently unchanged, that I will simply say now that I reaffirm my own conclusion and fully agree with my predecessor's.

⁴ *Id.*

⁵ Op. Att'y Gen. 2010-168, 99-024.

The Honorable James Ratliff
State Representative
Opinion No. 2013-028
Page 3

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh