

Opinion No. 2014-020

April 28, 2014

The Honorable Johnny Key
State Senator
Post Office Box 350
Mountain Home, Arkansas 72654

Dear Senator Key:

This is in response to your request for my opinion concerning a municipality in your district that reportedly has had continued problems with its recorder/treasurer. You state that according to a city council member, the recorder/treasurer does not submit regular financial reports or complete the reconciliation of bank statements, among other matters. You have asked the following questions in this regard on behalf of the city council:

1. Can the city council hire the former Recorder/Treasurer to bring the financial records of the municipality up to date and answer to the city council? If so, what is the procedure?
2. If not, are there any other avenues the city council can pursue in this situation beyond the removal for non-feasance process?

RESPONSE

A provision in the Arkansas Municipal Accounting Law¹ appears to be relevant to your first question. Pursuant to A.C.A. § 14-59-115, a municipality's governing body may either assign municipal accounting duties to another employee or contract for such services if the treasurer is not complying with the Accounting Law:

¹ A.C.A. §§ 14-59-101 – 118 (Repl. 1998 and Supp. 2013).

(a) Each municipal treasurer of this state or the designated representative that has been approved by the governing body shall submit a monthly financial report to the council or board of directors.

(b)(1) Municipal treasurers shall maintain the accounting records prescribed in this chapter.

(2)(A) *If the treasurer does not comply with the provisions of this chapter* or requests that specific duties be assigned to another employee or contracting entity, *the governing body of a municipality may assign specific duties outlined in this chapter to another employee, or it may contract for such services to be performed by a private, qualified person or entity.*

(B) The governing body of a municipality may not assign duties relating to the collecting or disbursing of funds to anyone other than an employee of the municipality.²

I of course cannot address the purely factual question whether the current recorder/treasurer is failing to comply with the Municipal Accounting Law. But if that is the case, then it seems the above-emphasized statute is authority for either assigning duties to another employee or contracting with a qualified person – including the former recorder/treasurer if he or she is in fact so qualified – to perform specific duties under this body of law.

As for the applicable procedure, it appears this is a matter to be determined by the city council. As the “governing body of [the] municipality,” the council is the body authorized by section 14-59-115 to take steps to address the matter of noncompliance with the Accounting Law. It reasonably follows that the council will determine the procedure for either assigning duties to another employee or contracting for services toward this end.

A response to your second question regarding other avenues of relief may be unnecessary in light of the above. I will nevertheless note that a failure to comply

² A.C.A. § 14-59-115 (Supp. 2013) (emphasis added).

with the Municipal Accounting Law is reviewable by the state Division of Legislative Audit and subject to investigation by the prosecuting attorney.³

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM:EAW/cyh

³ A.C.A. §§ 14-59-117 (Supp. 2013) 14-77-106 (Repl. 1998).