

City of Hattiesburg, MS

*200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401*



Meeting Agenda - Final

Monday, June 1, 2015

4:00 PM

Council Chambers

City Council - Agenda Review

[2015-1999](#) Submission, Joseph Rawson

Attachments: [Submission, Joseph Rawson](#)



City of Hattiesburg, MS

200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401

Master

File Number: 2015-1999

File ID: 2015-1999

Type: Regular Agenda Item

Status: Agenda Ready

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In Control: City Council

File Created: 07/04/2015

Brief Title: Submission, Joseph Rawson

Final Action:

Minute Book Number: MB2015-165

Title:

Submission, Joseph Rawson

Notes:

Sponsors:

Enactment Date:

Attachments: Submission, Joseph Rawson

Enactment Number:

Contact:

Meeting Date: 06/01/2015

Drafter: Debbie Bernardo

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council - Agenda Review	06/01/2015					

Text of Legislative File 2015-1999

Title

Submission, Joseph Rawson

Summary

Submission, Joseph Rawson

Budget Information

Expenditure Type

Purchasing Item

Publication Information

FILED

NOV 06 2014

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL and
KIM BRADLEY

[Signature]
FORREST COUNTY CIRCUIT CLERK
PLAINTIFFS

VS.

CAUSE NO. CI14-0212

JOHNNY L. DUPREE, in his official
capacity as Mayor of the City of Hattiesburg

DEFENDANT

COMPLAINT

COME NOW Plaintiffs, Carter Carroll and Kim Bradley, and file this Complaint for an order of mandamus against Johnny L. DuPree, in his official capacity as Mayor of the City of Hattiesburg. For cause thereof, Plaintiffs would show unto the Court the following:

I. INTRODUCTION

1. Plaintiffs bring this civil action for an order of mandamus pursuant to Miss. Code Ann. § 11-41-1 *et seq.* to compel Defendant to comply with well-established Mississippi law concerning the submission of the mayor's nominees for department directors to the Hattiesburg City Council for approval. This action is necessitated because of Defendant's refusal to comply with his duties of office, as specifically mandated by Miss. Code Ann. § 21-8-23(2).

II. VENUE AND JURISDICTION

2. This court has personal jurisdiction of the parties.
3. This court has jurisdiction of the subject matter herein.
4. Venue is proper in this Court.

III. PARTIES

5. Plaintiff, Carter Carroll, is an adult resident citizen of the City of Hattiesburg, Forrest County, Mississippi. Plaintiff Carroll is a duly elected and serving member of the Hattiesburg City Council for Ward 3.
6. Plaintiff, Kim Bradley, is an adult resident citizen of the City of Hattiesburg, Forrest County, Mississippi. Plaintiff Bradley is a duly elected and serving member of the Hattiesburg City Council for Ward 1.
7. Mayor Johnny DuPree is the currently serving mayor of the City of Hattiesburg, and can be served with process at his office in City Hall at 200 Forrest Street, Hattiesburg, MS 39401. Defendant is sued herein in his official capacity as Mayor of Hattiesburg.

IV. FACTS

8. The City of Hattiesburg is a municipal corporation which has adopted the "mayor/council" form of government as provided for and governed by Miss. Code Ann. § 21-8-1 *et seq.* The City Council is composed of five members, with each councilperson representing a separate geographically defined ward.
9. Plaintiffs are suing in their individual capacities and as members of the City Council of the City of Hattiesburg. As public officials of the City of Hattiesburg, and as private citizens in a matter affecting the public interest, they seek the performance of a duty resulting from an office where there is not a plain, adequate, and speedy remedy in the ordinary course of law. Plaintiffs further have standing to bring this action, in that they have a separate interest (as duly elected members of the City Council) in excess of the general public. *DuPree v. Carroll*, 967 So.2d 27, 30 (Miss. 2007).

10. The Constitution of the State of Mississippi and state law require the City Council to exercise legislative power. Likewise, the Constitution of the State of Mississippi and state law require the Mayor to exercise the power of the executive branch. The Constitution of the State of Mississippi and state law forbid any branch of state government from exercising any power properly belonging to the other branch.
11. Miss. Code Ann. § 21-8-23 states as follows: "Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor." Thus, Defendant is required by law to appoint a director to head each department of the city, and submit those appointments to the council for confirmation. This process – that is, confirmation by the legislative branch of an executive's appointment – is an important feature of the separation of powers mandated by our Constitution.
12. The Mayor and the members of the City Council commenced a four-year term of office on July 1, 2013.
13. To date, the Mayor has failed and refused to submit the majority of his department directors to the City Council for confirmation. Specifically, of the 17 department director positions, only 5 have been duly submitted and confirmed by the City Council. Those positions remaining for confirmation are:
 - (a) Municipal Prosecutor;
 - (b) Municipal Prosecutor, Post 2;
 - (c) Public Defender;

- (d) City Attorney;
- (e) Municipal Court Clerk;
- (f) Municipal Court Judge;
- (g) Both Municipal Court Judges *Pro Tem*;
- (h) Director of Urban Development;
- (i) Director of Parks and Recreation;
- (j) Police Chief; and,
- (k) City Clerk.

14. This is not the first time that this issue has existed, nor is it the first time that this issue has been before this Court. Following his re-election in 2005, Defendant refused to comply with state law and submit all of his department directors for confirmation by the City Council. Defendant and Plaintiff Carroll (in his capacity as then-president of the City Council) each separately requested an opinion from the Mississippi Attorney General to determine the propriety of Defendant's actions in refusing to bring his appointments before the City Council. Replying to each request separately, the Attorney General opined that:

- (a) The department directors are appointed for a term commensurate with the term of the mayor;¹
- (b) At the beginning of a new term, vacancies exist in the positions of department directors;² and,
- (c) The mayor is required by law to submit his appointees to the City Council for approval, even if the appointees are the same individuals who served as department directors during the prior term.³

¹ 2006 Miss. AG LEXIS 24, *2 (February 24, 2006) (Exhibit A).

² 2006 Miss. AG LEXIS 26, *3 (February 24, 2006) (Exhibit B).

³ *Id.* at *5.

15. Despite the clear direction from the Attorney General's office in February of 2006, Defendant persisted in his refusal to submit his appointments to the City Council for approval. Therefore, Plaintiffs⁴ were required to file suit for a writ of mandamus against Defendant.⁵ After months of litigation, the trial judge found in favor of Plaintiffs and ordered "that the Petition for Writ of Mandamus ... be granted in that the Defendant, Johnny L. DuPree, in his official capacity as Mayor of the City of Hattiesburg, Mississippi, is ordered to appoint and submit his directors to the council for confirmation."⁶ Defendant appealed the order, and in due course, the Mississippi Supreme Court affirmed the actions of the trial court, ordering that "the judgment of the Forrest County Circuit Court issuing an order of mandamus to compel the Mayor of Hattiesburg to resubmit directors to the city council is affirmed. The mayor shall forthwith submit department heads for approval by the council."⁷ Eventually, Defendant complied with the weight of authority and submitted department directors for confirmation.
16. Since the 2013 election, Plaintiffs have made multiple inquiries of the Defendant as to when he would comply with the clear mandate of the law and submit his department heads to the city council for confirmation. Those inquiries have been unavailing. Defendant's unwillingness to comply with his duties under state law is especially puzzling, given the outcome of the prior litigation and the unequivocal order from the highest court in this state.

⁴ Along with a third member of the City Council, C. E. Bailey. Mr. Bailey is no longer serving on the City Council.

⁵ See the copy of the Complaint in *Carter Carroll, et al v. Johnny L. DuPree*, cause no. CI06-0132 in the Circuit Court of Forrest County, Mississippi (Exhibit C).

⁶ A copy of the Order dated September 29, 2006, is attached as Exhibit D.

⁷ *DuPree v. Carroll*, 967 So.2d 27, 31-2 (Miss. 2007) (Exhibit E).

17. The Mayor's lack of diligence in submitting nominees for these vital city positions require a conclusion that the Mayor has no intention of voluntarily performing his duties as required by state law. Thus, until such time as the Mayor fulfills his lawful obligation and duty to allow the City Council to consider his appointments, Plaintiffs are unable to perform their statutory duties as council members with respect to these positions.
18. Because Plaintiffs have the requisite standing,⁸ and there is no other legal remedy available,⁹ an order of mandamus is the appropriate remedy.

WHEREFORE, Plaintiffs pray that process will issue for Defendant according to law, and that upon a final hearing, the Court will enter an order pursuant to Miss. Code Ann. § 11-41-1 for Defendant to immediately comply with Miss. Code Ann. § 21-8-23(2), requiring Defendant to forthwith submit the names of all proposed directors of the following departments of the City of Hattiesburg to the City Council for its consideration: Municipal Prosecutor; Municipal Prosecutor, Post 2; Public Defender; City Attorney; Municipal Court Clerk; Municipal Court Judge; both Municipal Court Judges Pro Tem; Director of Urban Development; Director of Parks and Recreation; Police Chief; and, City Clerk. Plaintiffs further pray for an award of all costs of court accruing in this cause, and for such other and further relief as to which they may be entitled.

Respectfully submitted, this the 6th day of November, 2014.

**CARTER CARROLL and
KIM BRADLEY**

By: _____

ROBERT D. GHOLSON
Attorneys for Plaintiffs

⁸ *Id.* at 30.

⁹ *Id.*

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Attorneys for Plaintiffs

2006 Miss. AG LEXIS 24

Office of the Attorney General of the State of Mississippi

February 24, 2006

Reporter

2006 Miss. AG LEXIS 24

2006-0013; 144-A

February 24, 2006

Core Terms

appointee, city council, confirm, department director, reasonable time, prior term, nominee, qualification, re-elected, successor, mayor's, wait

Syllabus

[*1]

Municipalities

Re: Appointment of Department Directors

Request By: Carter Carroll, President
Hattiesburg City Council
Post Office Box 1898
Hattiesburg, Mississippi 39403-0013

Opinion By: JIM HOOD, ATTORNEY GENERAL; Heather P. Wagner, Assistant Attorney General

Opinion

Attorney General Jim Hood has received your request for an official opinion and has assigned it to me for research and response. Your letter reads as follows:

Members of the Hattiesburg City Council have waited more than six months now for the opportunity to consider Mayor Johnny Dupree's nominees for department heads and other city appointees. Since his re-election, Mayor Dupree has provided various reasons for refusing to submit a full list of nominees for Council approval. Most recently, newspaper reports quote him as stating that he is not required by law to present his nominees in a timely fashion and that, in fact, the law allows him to wait until his last day in office to provide a list of names for ratification.

The Council remains united in insisting that the Mayor's list of appointments be voted on in its entirety, and on more than one occasion has refused to consider partial lists he has submitted.

I am writing on behalf of the [*2] Hattiesburg City Council to ask you to render an opinion as to whether the Mayor is correct in his reading of the law. We also are seeking your advice as to any additional options the Council may entertain regarding these appointments.

* * * *



2006 Miss. AG LEXIS 24, *4

Miss. Code Ann. Section 21-8-23(2) provides as follows:

Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

The Attorney General has, on numerous occasions, opined that this provision clearly provides that department directors are appointed for a term commensurate with the term of the mayor. MS AG Op., Doty (February 18, 2000); MS AG Op., McLemore (January 25, 2002). Section 21-8-23 requires a mayor who is re-elected to office to submit his appointees to the city council for confirmation, even if the appointees are the same individuals who served as department directors during the prior term. MS AG Op., Lawrence (March [*3] 9, 1994); MS AG Op., Doty (February 18, 2000); MS AG Op., Bailey, (February 2, 2004). A city council's decision not to confirm a mayoral appointee is not subject to the mayor's power to veto. MS AG Op., Jones (February 28, 1990); MS AG Op., McLemore (January 25, 2002); MS AG Op., Bailey (February 2, 2004). Section 21-8-23 specifically provides that department directors from a prior term continue to hold over until such time as a successor is duly appointed. We are of the opinion that payment of salaries of individuals who have not yet been appointed but are lawfully holding over from the prior term is a lawful expenditure.

While Section 21-8-23 does not state the time frame in which the appointments should be submitted to the council for confirmation, it is the opinion of this office that the intent of this provision of law is that a mayor shall make such appointments within a reasonable time after taking office, so as to afford the city council the opportunity to review the qualifications of the appointees and determine whether such appointees should be confirmed.

Section 21-8-23 does not provide specific relief for situations in which a mayor does not, for whatever reason, make [*4] the required appointments within a reasonable time. What constitutes a reasonable time is a factual question which cannot be determined by way of an Attorney General's opinion, which opinions must be limited to questions of law. Miss. Code Ann. Section 7-5-25. If the governing authorities cannot resolve the question, then resort may be had to a court of competent jurisdiction. See Section 11-41-1 of the Miss. Code.

If our office may be of further assistance, please advise.

2006 Miss. AG LEXIS 26

Office of the Attorney General of the State of Mississippi

February 24, 2006

Reporter

2006 Miss. AG LEXIS 26

2006-0058; 149

February 24, 2006

Core Terms

appoint, department director, confirm, hold-over, successor, term of office, year term, re-elected, expire

Syllabus

[*1]

Municipal Officers

Re: Miss. Code Ann. Section 21-8-23: Appointment of Department Directors

Request By: Mayor Johnny L. DuPree

City of Hattiesburg

Post Office Box 1898

Hattiesburg, Mississippi 39402-1898

Opinion By: JIM HOOD, ATTORNEY GENERAL; Heather P. Wagner, Assistant Attorney General

Opinion

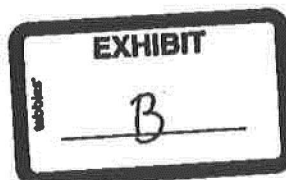
Attorney General Jim Hood has received your request for an official opinion and has assigned it to me for research and response. Your letter reads as follows:

The city of Hattiesburg operates under the Mayor-Council form of government. MS Code Ann. Section 21-8-23(2) states "Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office the mayor appointing him, and until the appointment and qualification of his successor."

I am aware that opinions have been issued stating that a mayor "should" bring back directors who have already been confirmed by the council. However, the language "**and until the appointment and qualification of his successor**" seems to [*2] indicate otherwise. [emphasis in original]

I was first elected Mayor of Hattiesburg and took office in July, 2001. At that time, I presented department directors to the city council for confirmation. I was re-elected to a second term and took office in July, 2005. I do not wish to appoint a "successor" to any of the department director positions which are currently held by the directors that were approved in July, 2001. I would appreciate your opinion as to whether or not there is a legal requirement that I reappoint these directors.

* * * *



2006 Miss. AG LEXIS 26, *4

We point out that the language emphasized in your request is but one part of a sentence, and must be read in context. The full sentence provides as follows:

Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

We must read this sentence in its entirety in order to determine its meaning and legislative intent. The Attorney General has opined that the first phrase of this sentence clearly provides that department directors are appointed for a term commensurate and coterminous with the term of the appointing mayor. MS AG Op., Doty (February 18, 2000); [*3] MS AG Op., McLemore (January 25, 2002). The effect of this language is, therefore, to create a limited term of office for department directors serving in a mayor/council form of municipal government. A mayor is elected and serves a term of four (4) years pursuant to Miss. Code Ann. Section 21-8-7(2), and must be re-elected upon the expiration of the four (4) year term. Each time a mayor is re-elected, it represents the beginning of a new four (4) year term of office. The term of service of the department directors appointed by that individual expire at the end of the appointing mayor's four (4) year term. At the beginning of a new term, whether an incumbent mayor is re-elected or a new mayor is elected, it is the opinion of this office that vacancies exist in the positions of department directors. Miss. Code Ann. Section 25-1-7 provides that where an elected or appointed official holds over beyond the expiration of his or her term, a vacancy exists and it should be filled in the manner prescribed by law. Although department directors are not "public officers" per se, (see MS AG Op., Kohnke [February [*4] 24, 2006]), the language in this statute is useful for purposes of general guidance.

As you noted in your letter, department directors are given specific authority to hold-over after the expiration of their term pursuant to Section 21-8-23(2). The effect of this language is that, unless they have been specifically terminated, at the beginning of a new four (4) year term, the prior department directors may "hold-over" in the capacity of department director, but only until such time as the mayor makes an appointment for the current term. The mayor may choose to appoint the same individual as served in the prior term. Department directors may receive full salary and benefits during the time they serve in a hold-over capacity. Unfortunately, the statute does not place a time limit on how long a department director may serve in a hold-over capacity or specify a time within which department heads must be submitted for confirmation. See MS AG Op., Lawrence (March 9, 1994); MS AG Op., Doty (February 18, 2000); MS AG Op., Bailey, (February 2, 2004).

Section 21-8-23(2) requires that appointees be "confirmed by an affirmative vote of a majority of the council present and voting at any such meeting." [*5] When the law does not specify a time for action, a reasonable time must be implied. Therefore each new council must, within a reasonable amount of time after the beginning of a new term, be given the opportunity to confirm or reject appointees for the new term.

Therefore, it is and remains the opinion of this office that Section 21-8-23 establishes a term for department directors, and upon the expiration of that term, a vacancy exists in the position, which must be filled as provided by law. In a mayor/council form of municipal government, a mayor, including one who is re-elected to a new four (4) year term of office, must submit his appointees to director positions to the city council for confirmation, even if the appointees are the same individuals who served as department directors during the prior term. This appointment should be made within a reasonable time after the beginning of the new term. Until such time as the appointments are made, authority exists for the directors serving during the prior term to serve in a hold-over capacity.

In responding to this request, our office reviewed various statutes pertaining to directors of state agencies and the Governor's authority with [*6] regard to making appointments to these positions. None contain identical language as found in Section 21-8-23(2) regarding the mayor's authority to make appointments. Section 43-13-107, establishing the position of the director of the Division of Medicaid, most closely mirrors the appointment language of 21-8-23(2), by providing that the director is appointed by the Governor with the advice and consent of the Senate, and that

the term of office of the executive director . . . shall be concurrent with the term . . . of the Governor appointing The incumbent executive director . . . shall serve until the the appointment and qualification of [a] successor.

2006 Miss. AG LEXIS 26, *6

In contrast is that language contained in Section 43-1-2, establishing the position of Director of the Mississippi Department of Human Services, which provides that the appointment is made by the Governor with the advice and consent of the Senate, that the director serves at the will and pleasure of the Governor and until his successor is appointed and qualified, with no limitation creating a term of service for the position of Director of Human Services. It is the opinion of this office that by using language which directs [*7] that a term of office shall be concurrent with the term of the appointing authority, or requires that service in a position shall be "during the term of office" of the appointing authority, as is found in Section 21-8-23(2), it was the intent of the Legislature to limit the time a person may serve in an office, after which time the position is vacant, subject to permissive hold-over language until an appointment is made to fill the vacancy.

If our office may be of further assistance, please advise.

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL, C. E. BAILEY,
AND KIM BRADLEY,

FILED

PLAINTIFFS)

VERUS

MAY 30 2006

) CASE

) NUMBER

JOHNNY L. DUPREE, In His Official Capacity as Mayor of the City of
Hattiesburg, Mississippi,

For E. L. Adams
COUNTY CIRCUIT CLERK

DEFENDANT)

CD06-0132

COMPLAINT

COME NOW Carter Carroll, C. E. Bailey, and Kim Bradley, and, for cause of action against Johnny L. DuPree, in his official capacity as Mayor of the City of Hattiesburg, Mississippi, would respectfully show unto the Court the following, to-wit:

I.

That Carter Carroll is an adult resident citizen of Ward 3, Hattiesburg, Forrest County, Mississippi; and he is the duly elected councilman for Ward 3 of the City of Hattiesburg, Mississippi.

II.

That C. E. Bailey is an adult resident citizen of Ward 4, Hattiesburg, Forrest County, Mississippi; and he is the duly elected councilman for Ward 4 of the City of Hattiesburg, Mississippi.

III.

That Kim Bradley is an adult resident citizen of Ward 1, Hattiesburg, Forrest County, Mississippi; and he is the duly elected councilman for Ward 1 of the City of Hattiesburg, Mississippi.

IV.

That Johnny L. DuPree is an adult resident citizen of the City of Hattiesburg, Forrest County, Mississippi; and he is the duly elected mayor of the City of Hattiesburg, Mississippi, and is sued in his official capacity as mayor of said municipality.

EXHIBIT

C

V.

That the City of Hattiesburg, Mississippi, is a municipal corporation which has adopted as its governing form the "mayor/council" form of government as provided for and governed by Section 21-8-1, *et seq.*, of the Mississippi Code of 1972, as amended.

VI.

That the Council of the City of Hattiesburg, Mississippi, is composed of five members, with each councilman representing a separate geographically defined ward.

VII.

That plaintiffs herein are suing in their capacity as members of the City Council of the City of Hattiesburg, Mississippi, and as constituting a majority of said Council. As public officials of the City of Hattiesburg, Mississippi, and as private citizens in a matter affecting the public interest, they seek the performance of a duty resulting from an office where there is not a plain, adequate, and speedy remedy in the ordinary course of law; and they have standing to bring this action.

VIII.

That the Constitution of the State of Mississippi and state law require the City Council to exercise legislative power.

IX.

That the Constitution of the State of Mississippi and state law require the Mayor to exercise executive power.

X.

That the Constitution of the State of Mississippi expressly forbids any branch of state government from exercising any power properly belonging to the other branch.

XI.

That defendant is required by Section 21-8-23 of the Mississippi Code of 1972, as amended, to appoint a director to head each department of the city, which appointment must be confirmed by an affirmative vote of a majority of the council present and voting at the council meeting at which the appointment is considered by the council.

XII.

That the council and its members are required to consider each appointment submitted by the mayor and to exercise their responsibilities thereto pursuant to the Constitution of the State of Mississippi.

XIII.

That the Mayor and Councilmen commenced a four-year term of office on July 1, 2005.

XIV.

That plaintiff Carroll, acting as president of the Council, and the Mayor each requested opinion from the Attorney General of the State of Mississippi concerning the Mayor's obligation to submit department directors to the Council. In each case, the Office of the Attorney General advised that the Mayor had an obligation to submit each director for consideration by the Council, and the Council had an obligation to consider each appointment. Copy of the opinion requested by plaintiff Carroll is attached hereto as Exhibit "A," and copy of the opinion requested by the defendant is attached hereto as Exhibit "B," each being made a part hereof by reference.

XV.

That the Mayor has steadfastly refused to submit departmental directors of the City Council as required by state law.

XVI.

That the failure to act by the Mayor prevents plaintiffs herein from exercising their constitutional and statutory duties to consider and act upon the appointment of said department directors by the Mayor.

XVII.

That the City Council considered the failure of the Mayor to act at its May 2, 2006, Council meeting and has determined by resolution adopted by a majority of the Council that more than a reasonable amount of time has expired since the Mayor has taken office for him to perform his legal requirement of submitting departmental directors to the City Council. A copy of said resolution adopted by the City Council is attached hereto as Exhibit "C" and made a part hereof.

XVIII.

That the defendant has indicated that he will not submit departmental directors for consideration by plaintiffs and the remainder of the City Council until such time as he is assured that a majority of the Council will vote to confirm his appointments and has also indicated that he is not required to submit said appointments for Council consideration until near the end of his four-year term of office.

XIX.

That the position taken by the Mayor and the lack of diligence in submitting at least two proposed departmental directors to the Council require conclusion that the Mayor has no intention of voluntarily performing his duties required by State law.

XX.

That, until such time as the Mayor fulfills his lawful obligation to allow the plaintiffs and the remainder of the Council to consider his appointments, plaintiffs herein are unable to perform their legal obligation to consider said appointments.

XXI.

WHEREFORE, plaintiffs file this their complaint and pray that process issue for the defendant and that upon final hearing hereof the following relief be granted to them:

A. An order be entered pursuant to Section 11-41-1 of the Mississippi Code of 1972, as amended, requiring the Mayor to submit the names of all proposed directors of departments of the City of Hattiesburg, Mississippi, to the City Council for its consideration.

B. An order be entered declaring that a reasonable amount of time has expired between the Mayor's commencing his term of office and submitting directors of departments for consideration by the City Council within a specific time period.

C. Issue a declaratory judgment that a reasonable amount of time has passed since the Mayor commenced office and that he should submit his directors of departments of the City of Hattiesburg to the City Council for action, or declare that vacancies exist in said departments and that the department directors are improperly holding over.

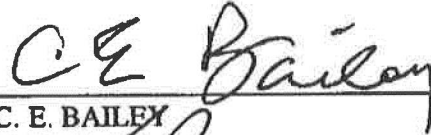
D. That an injunction be granted requiring the Mayor to submit all department directors to the City Council for its consideration within a specified time which plaintiffs believe should not exceed thirty (30) days.

WHEREFORE, plaintiffs file this their complaint and pray that process issue for Johnny L. DuPree in his official capacity as Mayor of the City of Hattiesburg, Mississippi, and that the plaintiffs be granted the relief requested.

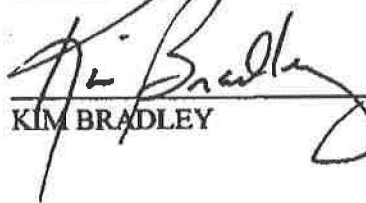
Respectfully submitted,



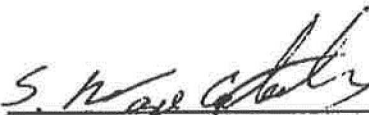
CARTER CARROLL



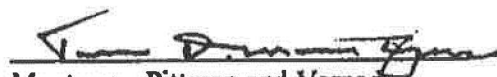
C. E. BAILEY



KIM BRADLEY



S. Wayne Easterling
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Montague, Pittman and Varnado
Attorneys at Law
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STATE OF MISSISSIPPI



JIM HODD
ATTORNEY GENERAL

OPINIONS
DIVISION

February 24, 2006

Carter Carroll, President
Hattiesburg City Council
Post Office Box 1898
Hattiesburg, Mississippi 39403-0013

Re: Appointment of Department Directors

Dear Mr. Carroll:

Attorney General Jim Hodd has received your request for an official opinion and has assigned it to me for research and response. Your letter reads as follows:

Members of the Hattiesburg City Council have waited more than six months now for the opportunity to consider Mayor Johnny Dupree's nominees for department heads and other city appointees. Since his re-election, Mayor Dupree has provided various reasons for refusing to submit a full list of nominees for Council approval. Most recently, newspaper reports quote him as stating that he is not required by law to present his nominees in a timely fashion and that, in fact, the law allows him to wait until his last day in office to provide a list of names for ratification.

The Council remains united in insisting that the Mayor's list of appointments be voted on in its entirety, and on more than one occasion has refused to consider partial lists he has submitted.

I am writing on behalf of the Hattiesburg City Council to ask you to render an opinion as to whether the Mayor is correct in his reading of the law. We also are seeking your advice as to any additional options the Council may entertain regarding these appointments.

460 HIGH STREET • POST OFFICE BOX 226 • JACKSON, MISSISSIPPI 39205-0226
TELEPHONE (601) 359-3340 • FACSIMILE (601) 359-2286

EXHIBIT "A"

Carter Carroll, President
February 24, 2006
Page 2

Miss. Code Ann. Section 21-8-23(2) provides as follows:

Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

The Attorney General has, on numerous occasions, opined that this provision clearly provides that department directors are appointed for a term commensurate with the term of the mayor. MS AG Op., Doty (February 18, 2000); MS AG Op., McLemore (January 25, 2002). Section 21-8-23 requires a mayor who is re-elected to office to submit his appointees to the city council for confirmation, even if the appointees are the same individuals who served as department directors during the prior term. MS AG Op., Lawrence (March 9, 1994); MS AG Op., Doty (February 18, 2000); MS AG Op., Bailey (February 2, 2004). A city council's decision not to confirm a mayoral appointee is not subject to the mayor's power to veto. MS AG Op., Jones (February 28, 1990); MS AG Op., McLemore (January 25, 2002); MS AG Op., Bailey (February 2, 2004). Section 21-8-23 specifically provides that department directors from a prior term continue to hold over until such time as a successor is duly appointed. We are of the opinion that payment of salaries of individuals who have not yet been appointed but are lawfully holding over from the prior term is a lawful expenditure.

While Section 21-8-23 does not state the time frame in which the appointments should be submitted to the council for confirmation, it is the opinion of this office that the intent of this provision of law is that a mayor shall make such appointments within a reasonable time after taking office, so as to afford the city council the opportunity to review the qualifications of the appointees and determine whether such appointees should be confirmed.

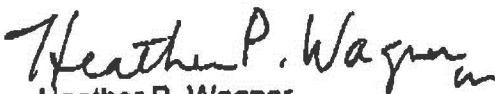
Section 21-8-23 does not provide specific relief for situations in which a mayor does not, for whatever reason, make the required appointments within a reasonable time. What constitutes a reasonable time is a factual question which cannot be determined by way of an Attorney General's opinion, which opinions must be limited to questions of law. Miss. Code Ann. Section 7-5-25. If the governing authorities cannot resolve the question, then resort may be had to a court of competent jurisdiction. See Section 11-41-1 of the Miss. Code.

Carter Carroll, President
February 24, 2008
Page 3

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 
Heather P. Wagner
Assistant Attorney General

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

February 24, 2006

Mayor Johnny L. DuPre
City of Hattiesburg
Post Office Box 1898
Hattiesburg, Mississippi 39402-1898

Re: Miss. Code Ann. Section 21-8-23: Appointment of Department Directors

Dear Mayor DuPre:

Attorney General Jim Hood has received your request for an official opinion and has assigned it to me for research and response. Your letter reads as follows:

The city of Hattiesburg operates under the Mayor-Council form of government. MS Code Ann. Section 21-8-23(2) states "Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office the mayor appointing him, and until the appointment and qualification of his successor."

I am aware that opinions have been issued stating that a mayor "should" bring back directors who have already been confirmed by the council. However, the language "and until the appointment and qualification of his successor" seems to indicate otherwise. [emphasis in original]

I was first elected Mayor of Hattiesburg and took office in July, 2001. At that time, I presented department directors to the city council for confirmation. I was re-elected to a second term and took office in July, 2005. I do not wish to appoint a "successor" to any of the department director positions which are currently held by the directors that were approved in July, 2001. I would appreciate your opinion as to whether or not there is a legal requirement that I reappoint these directors.

430 HIGH STREET • POST OFFICE BOX 380 • JACKSON, MISSISSIPPI 39208-0380
TELEPHONE (601) 560-2880 • FACSIMILE (601) 560-2284

EXHIBIT "B"

Mayor Johnny L. DuPree
February 24, 2006
Page 2

We point out that the language emphasized in your request is but one part of a sentence, and must be read in context. The full sentence provides as follows:

Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

We must read this sentence in its entirety in order to determine its meaning and legislative intent. The Attorney General has opined that the first phrase of this sentence clearly provides that department directors are appointed for a term commensurate and coterminous with the term of the appointing mayor. MS AG Op., Doty (February 18, 2000); MS AG Op., McLemore (January 25, 2002). The effect of this language is, therefore, to create a limited term of office for department directors serving in a mayor/council form of municipal government. A mayor is elected and serves a term of four (4) years pursuant to Miss. Code Ann. Section 21-8-7(2), and must be re-elected upon the expiration of the four (4) year term. Each time a mayor is re-elected, it represents the beginning of a new four (4) year term of office. The term of service of the department directors appointed by that individual expire at the end of the appointing mayor's four (4) year term. At the beginning of a new term, whether an incumbent mayor is re-elected or a new mayor is elected, it is the opinion of this office that vacancies exist in the positions of department directors. Miss. Code Ann. Section 23-1-7 provides that where an elected or appointed official holds over beyond the expiration of his or her term, a vacancy exists and it should be filled in the manner prescribed by law. Although department directors are not "public officers" per se, (see MS AG Op., Kohnke [February 24, 2006]), the language in this statute is useful for purposes of general guidance.

As you noted in your letter, department directors are given specific authority to hold-over after the expiration of their term pursuant to Section 21-8-23(2). The effect of this language is that, unless they have been specifically terminated, at the beginning of a new four (4) year term, the prior department directors may "hold-over" in the capacity of department director, but only until such time as the mayor makes an appointment for the current term. The mayor may choose to appoint the same individual as served in the prior term. Department directors may receive full salary and benefits during the time they serve in a hold-over capacity. Unfortunately, the statute does not place a time limit on how long a department director may serve in a hold-over capacity or specify a time within which department heads must be submitted for confirmation. See MS AG Op., Lawrence (March 9, 1994); MS AG Op., Doty (February 18, 2000); MS AG Op., Bailey, (February 2, 2004).

Mayor Johnny L. DuPree
February 24, 2006
Page 3

Section 21-8-23(2) requires that appointees be "confirmed by an affirmative vote of a majority of the council present and voting at any such meeting." When the law does not specify a time for action, a reasonable time must be implied. Therefore each new council must, within a reasonable amount of time after the beginning of a new term, be given the opportunity to confirm or reject appointees for the new term.

Therefore, it is and remains the opinion of this office that Section 21-8-23 establishes a term for department directors, and upon the expiration of that term, a vacancy exists in the position, which must be filled as provided by law. In a mayor/council form of municipal government, a mayor, including one who is re-elected to a new four (4) year term of office, must submit his appointees to director positions to the city council for confirmation, even if the appointees are the same individuals who served as department directors during the prior term. This appointment should be made within a reasonable time after the beginning of the new term. Until such time as the appointments are made, authority exists for the directors serving during the prior term to serve in a hold-over capacity.

In responding to this request, our office reviewed various statutes pertaining to directors of state agencies and the Governor's authority with regard to making appointments to these positions. None contain identical language as found in Section 21-8-23(2) regarding the mayor's authority to make appointments. Section 43-13-107, establishing the position of the director of the Division of Medicaid, most closely mirrors the appointment language of 21-8-23(2), by providing that the director is appointed by the Governor with the advice and consent of the Senate, and that

(1) the term of office of the executive director . . . shall be concurrent with the term . . . of the Governor appointing The incumbent executive director . . . shall serve until the the appointment and qualification of [a] successor.

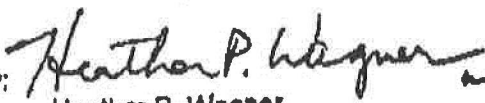
In contrast is that language contained in Section 43-1-2, establishing the position of Director of the Mississippi Department of Human Services, which provides that the appointment is made by the Governor with the advice and consent of the Senate, that the director serves at the will and pleasure of the Governor and until his successor is appointed and qualified, with no limitation creating a term of service for the position of Director of Human Services. It is the opinion of this office that by using language which directs that a term of office shall be concurrent with the term of the appointing authority, or requires that service in a position shall be "during the term of office" of the appointing authority, as is found in Section 21-8-23(2), it was the intent of the Legislature to limit the time a person may serve in an office, after which time the position is vacant subject to permissive hold-over language until an appointment is made to fill the vacancy.

Mayor Johnny L. DuPre
February 24, 2008
Page 4

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 
Heather P. Wagner
Assistant Attorney General

OFFICIAL OPINION

RESOLUTION

WHEREAS, the City of Hattiesburg, Mississippi, operates under the mayor-council form of government and, thus, is subject to Section 21-8-23 of the Mississippi Code of 1972, as amended; and,

WHEREAS, the mayor of the City of Hattiesburg began a new term of office on July 1, 2005, and, of this date, has not yet submitted the directors of each city department for consideration of confirmation by the council; and

WHEREAS, Section 21-8-23 of the Mississippi Code of 1972, as amended, requires the director of each department to be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at such meeting; and,

WHEREAS, the Attorney General of the State of Mississippi has stated that the mayor, after having been re-elected to a new four-year term of office, must submit his appointees to the city council for confirmation, even if the appointees are the same individuals who serve as department directors during the prior term, and that this appointment should be made within "a reasonable time after the beginning of the new term"; and,

WHEREAS, the council is concerned about its legal obligations and responsibilities pursuant to Mississippi law and, after having carefully considered the issue as to what constitutes a "reasonable time" for the mayor of the City of Hattiesburg to have submitted his proposed department directors for consideration by the council and having requested of the mayor his reasons and possible justifications for further delay;

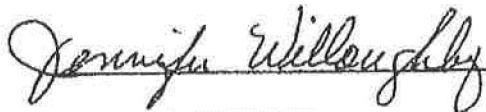
IT IS, THEREFORE, RESOLVED that more than a reasonable amount of time has expired since June 27, 2005, and the mayor of the City of Hattiesburg has not complied with his legal requirements pursuant to Section 21-8-23 of the Mississippi Code of 1972, as amended, and that no further justification for delay in submitting said appointments exists.

THE above and foregoing Resolution was introduced by Council member

THE President thereby declared the motion carried and the Resolution adopted this, the
2nd day of May, A.D., 2006.

(SEAL)

ATTEST:



CLERK OF COUNCIL

ADOPTED:



COUNCIL PRESIDENT

THE above and foregoing Resolution having been submitted to and approved by the
Mayor on this, the 2nd day of May, A.D., 2006.

ATTEST:



CITY CLERK

APPROVED:



MAYOR

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL, C. E. BAILEY,
AND KIM BRADLEY,

PLAINTIFFS)

VERUS

) CASE
) NUMBER

JOHNNY L. DUPREE, In His Official
Capacity as Mayor of the City of
Hattiesburg, Mississippi,

Copy

CF06-0132

DEFENDANT)

SUMMONS

THE STATE OF MISSISSIPPI

To: Johnny L. DuPree
Mayor of the City of Hattiesburg
City Hall
Hattiesburg, MS 39401

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU
MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to
S. Wayne Easterling Post Office Box 1471, Hattiesburg, Mississippi 39403-1471, the attorney for
the plaintiff. Your response must be mailed or delivered within thirty (30) days from the date of
delivery of this summons and complaint or a judgment by default will be entered against you for the
money or other things demanded in the complaint.

You must also file the original of your response with the Clerk of this Court within a
reasonable time afterward.

Issued under my hand and seal of said Court, this 30th day of May, A.D., 2006.

Lou Ellen Adams
Circuit Clerk
Post Office Drawer 992
Hattiesburg, MS 39403-0992

By

LEA

Deputy Clerk

**IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI
TWELFTH JUDICIAL DISTRICT**

**CARTER CARROLL, C. E. BAILEY,
AND KIM BRADLEY**

FILED

SEP 29 2006

PLAINTIFFS

VERSUS

John L. Dupree
FORREST COUNTY CIRCUIT CLERK

CAUSE NO. CI06-0132

**JOHNNY L. DUPREE, In His Official
Capacity as Mayor of the City of
Hattiesburg, Mississippi**

DEFENDANT

ORDER

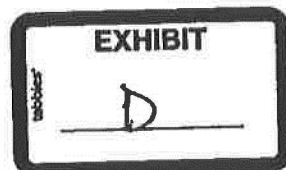
This matter is before the Court on the Petition for Writ of Mandamus filed by Plaintiffs, Carter Carroll, C. E. Bailey and Kim Bradley. Pursuant to the Findings of Fact and Conclusions of Law entered on September 29, 2006, this Court finds that said Petition for Writ of Mandamus is well taken and should be granted to the extent stated herein.

IT IS THEREFORE ORDERED that the Petition for Writ of Mandamus filed by Plaintiffs, Carter Carroll, C. E. Bailey and Kim Bradley, be granted in that the Defendant, Johnny L. Dupree, in his official capacity as Mayor of the City of Hattiesburg, Mississippi, is ordered to appoint and submit his directors to the council for confirmation.

SO ORDERED this the 29th day of September, A. D., 2006.

[Signature]

CIRCUIT COURT JUDGE



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Document: DuPree v. Carroll, 967 So. 2d 27

DuPree v. Carroll, 967 So. 2d 27

Copy Citation

Supreme Court of Mississippi

October 25, 2007, Decided

NO. 2006-CA-01875-SCT

Reporter

967 So. 2d 27 | 2007 Miss. LEXIS 589

JOHNNY L. DUPREE, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF
HATTIESBURG, MISSISSIPPI v. CARTER CARROLL, C. E. BAILEY AND KIM BRADLEY

Prior History: [1] COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT
COURT. DATE OF JUDGMENT: 09/29/2006. TRIAL JUDGE: HON.
ROBERT B. HELFRICH ▼.

DuPree v. Carroll, 2007 Miss. LEXIS 149 (Miss., Feb. 15, 2007)

Disposition: AFFIRMED.

Core Terms

council member, resubmit, writ of mandamus, nominate, department director,
appointing, mandamus, general public, new term, re-elected, holdover, powers,
checks and balances, executive power, city council, requires, separate interest,
private person, previous term, writ petition



Case Summary

Procedural Posture

Appellant mayor sought review of an order from the Circuit Court of Forrest County (Mississippi), which granted appellee council members' petition for a writ of mandamus directing the mayor to resubmit department directors for approval to the council.

Overview

In 2001, the mayor nominated department directors pursuant to Miss. Code Ann. § 21-8-23(2) (Rev. 2007). The council approved the directors. The mayor was reelected and began a second term in 2005. At that time, the mayor indicated he was not going to resubmit the department directors for approval to the council. Three council members sought a writ of mandamus to compel him to comply with what they perceived the law required. The trial court issued the writ. On appeal, the court found that the council members had standing to seek a writ under Miss. Code Ann. § 11-41-1 (Rev. 2002). It was undisputed that the mayor had a duty to nominate, and the council a duty to approve or disapprove, directors of municipal departments. The council members demonstrated that, by virtue of their position as the legislative check and balance on the executive power of the mayor, they had a separate interest or an interest in excess of the general public. Miss. Code Ann. § 21-8-23(2) required that the mayor resubmit directors for approval by the council at the beginning of the new term of office, even if a director was a holdover from the previous term and had been previously approved by the council.

Outcome

The court affirmed the judgment of the trial court.

Counsel: FOR APPELLANT: CHARLES E. LAWRENCE, JR. ▼

FOR APPELLEE: S. WAYNE EASTERLING ▼, FRANK D. MONTAGUE, JR. ▼

Judges: BEFORE DIAZ ▼, P.J., CARLSON ▼ AND RANDOLPH, JJ. SMITH ▼, C.J.,
WALLER ▼, P.J., CARLSON ▼, GRAVES ▼, DICKINSON, RANDOLPH AND LAMAR, JJ.,
CONCUR. EASLEY ▼, J., CONCURS IN RESULT ONLY.

Opinion by: DIAZ ▼

Opinion

[28] NATURE OF THE CASE: CIVIL - OTHER

DIAZ ▼, PRESIDING JUSTICE, FOR THE COURT:

P1. This case asks whether members of a city council have standing to seek a writ of mandamus against the mayor of their city. It also addresses whether a mayor must resubmit directors for approval by the council at the beginning of a new term of office. Finding in the affirmative as to both issues, we affirm the circuit court's order of mandamus.

Facts and Proceedings Below

P2. The facts are undisputed. The City of Hattiesburg has a "mayor-council form of government" adopted under Mississippi Code Section 21-8-1, et seq. (Rev. 2007). The city has five wards and five city council persons who act as the legislative branch of government. Miss. Code Ann. § 21-8-9 (Rev. 2007).

P3. Johnny DuPree is the mayor of Hattiesburg, and [2] at the time this suit was filed, all three adverse parties--Carter Carroll, C.E. Bailey, and Kim Bradley--were councilpersons in the city. In 2001, DuPree became mayor and nominated department directors pursuant to statute. See Miss. Code Ann. § 21-8-23 (2) (Rev. 2007). The council approved the directors. Then, DuPree was re-elected and began a second term in 2005.

P4. At that time, the mayor indicated he was not going to resubmit the department directors for approval to the council. The council demanded he do so. DuPree refused, and the three named council members sought a writ of mandamus to compel him to comply with what they perceived the law required. [1.5] The Circuit Court of Forrest County agreed with the council members, and issued the writ demanding that the mayor resubmit the department heads for approval.

P5. Aggrieved, the mayor appeals. We are presented with only two questions. First, do the councilpersons have the necessary statutory standing to seek a writ of mandamus? If they do, does state statute require a mayor to resubmit a choice of department directors for approval at the beginning of a new term of office, [3] even if those directors are holdovers from the previous term?

P6. **HN1** We will review these questions of law de novo. See *Aldridge v. West*, 929 So. 2d 298, 300 (Miss. 2006).

I. Do the plaintiffs have standing to seek a writ of mandamus?

P7. The named council members sought a writ of mandamus to compel the mayor to resubmit the directors. The writ of mandamus exists to force an elected official to perform a duty of office. State statute authorizes the writ, which can only be issued:

HN2 On the complaint of the state, by its Attorney General or a district attorney, in any matter affecting the public interest, or on the complaint of any private person who is interested, the judgment shall be issued by the circuit court, commanding any inferior tribunal, corporation, board, officer, or person to do or not to do an act the performance or omission of which the law specially enjoins as a duty resulting from an office, trust, or station, where there is not a plain, [29] adequate, and speedy remedy in the ordinary course of law. All procedural aspects of this action shall be governed by the Mississippi Rules of Civil Procedure.

Miss. Code Ann. § 11-41-1 (Rev. 2002). Our precedent has developed a four-part test [4] to determine who may seek mandamus. **HN3** To obtain relief, we have previously stated that "It must affirmatively appear that four essential elements are present: (1) the petition must be brought by the officers or persons authorized to bring the suit; (2) there must appear a clear right in petitioner to the relief sought; (3) there must exist a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel; and (4) there must be an absence of another remedy at law." *Aldridge*, 929 So. 2d at 302 (citation omitted).

P8. Part one of the test addresses whether the person seeking the writ is authorized; per statute, an authorized person may be the Attorney General, a district attorney, or "any private person who is interested." The council members concede they must proceed under the "any private person who is interested" portion of the statute.

P9. Part two of the test requires that one seeking a writ be "authorized to bring the suit." **HN4** A private person may only be authorized to "petition for a writ of mandamus 'if he can show an interest separate from or in excess of that of the general public.'" *Aldridge*, 929 So. 2d at 302 (quoting *Jackson County Sch. Bd. v. Osborn*, 605 So. 2d 731, 734 (Miss. 1992)); [5] *Fondren v. State Tax Comm'n*, 350 So. 2d 1329, 1332 (Miss. 1977)). The crux of our analysis today is whether the council members have a separate interest or one in excess of the general public.

P10. The council members offer that their interest in pursuing the writ is unique from that of the public at large because of the role they play within the separation of powers. The statutory scheme authorizing the mayor-council system expressly gifts that legislative body with strong checks and balances on the executive power of the mayor. **HN5** While only the mayor may nominate department directors, it is only through the assent of the council that they may become directors. Miss. Code Ann. § 21-8-23 (2) (Rev. 2007). The council members argue that they are prevented from exercising their legislative power as authorized by the Legislature, which vests in them an interest separate from, and in excess of, the general public. The trial court agreed with this argument, and held that "[a]s members of the City Council, [the plaintiffs] have the right and duty to confirm directors appointed by the Mayor," [6] determining that this distinction sufficed as an interest separate from or in excess of the general public.

P11. By analogy, the council members offer the case of *Dye v. State ex rel. Hale*, 507 So. 2d 332, 338 (Miss. 1987), where two state senators alleged the lieutenant

governor was exercising legislative powers in violation of the Constitution of 1890. We found that the actions of the lieutenant governor "certainly ha[d] an adverse impact upon [the state senators] sufficient to confer upon them standing to sue," and "[w]e refuse[d] to relegate to the Attorney General either the exclusive authority to bring a suit such as this or the discretion whether and how that authority should be exercised." *Id.* at 338.

P12. The mayor counters that the state senators in *Dye* did not file a writ of mandamus, as the council members did in this case. Yet while the *Dye* petition was not filed as a writ of mandamus, it certainly shared some characteristics with that statutory right. The state senators sought to enjoin the lieutenant governor from exercising [30] authority the senators argued was unconstitutional as a violation of separation of powers; they also sought a declaratory judgment that the Senate [7] Rules, as written, conferred an unconstitutional grant of power. *Id.* at 335-36. This is certainly similar to seeking a writ of mandamus to "command[] any . . . officer . . . to do or not to do an act the performance or omission of which the law specially enjoins as a duty resulting from an office, trust, or station" under the mandamus statute. Miss. Code Ann. § 11-41-1 (Rev. 2002). Additionally, there is no doubt that the question at hand was whether the mayor had encroached upon the powers expressly granted to the council by the Legislature.

P13. The mayor asserts in response that one cannot be a public official and claim that a duty arising out of one's elected position confers standing for a writ of mandamus. He argues that "[i]f you have a duty as a result of your elected position and it affects a matter of public interest, then [the mandamus statute] requires that a petition for a writ of mandamus be brought on complaint by the state." Yet the statute does not set out such a requirement; nor does the mayor cite any case law in support of such an interpretation of the statute.

P14. The third factor, whether there is a duty, is to an extent addressed in the second section of this [8] opinion. However, it is undisputed by the parties that the mayor did have a duty to nominate, and the council a duty to approve or disapprove, directors of municipal departments. It was also undisputed by the parties that there was no other legal remedy available, meeting the fourth prong of the test.

P15. The council members have demonstrated that, by virtue of their position as the legislative check and balance on the executive power of the mayor, they have a separate interest or an interest in excess of the general public. Accordingly, they have also demonstrated they have the standing necessary to seek a writ of mandamus.

II. Does state statute require the mayor to resubmit his directors once he is re-elected?

P16. **HN6** State law governing the mayor-council system requires that the mayor nominate the directors of the city departments; the nominated directors may only serve if approved by the council. Miss. Code Ann. § 21-8-23 (2) (Rev. 2007). The statute also provides that "[e]ach director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor." Miss. Code Ann. § 21-8-23 (2) (Rev. 2007). The parties do not dispute [9] that a mayor cannot unilaterally hire directors without the approval of the council. The question presented today is whether a mayor must resubmit directors who have been previously approved at the beginning of a new term of office.

P17. **HN7** "Where the statute is plain and unambiguous there is no room for

construction." *Bailey v. Al-Mefty*, 807 So. 2d 1203, 1206 (Miss. 2001) (Internal quotation and citation omitted). Further, "[t]he *HN8* primary rule of construction is to ascertain the intent of the legislature from the statute as a whole and from the language used therein," and we "may look not only to the language used but also to its historical background, its subject matter, and the purposes and objects to be accomplished." *Id.* at 1206 (internal quotation and citation omitted).

P18. In his appeal, the mayor urges that "the statute itself is silent" when directors should be presented to the council for approval, "regardless of whether it is [31] during a first term or successive term of office." While the statute may not be explicit, it is not silent.

P19. The statute clearly vests in the council checks and balances on the executive powers of the mayor. A plain reading of the statute supports the [10] conclusion that "the term of office" is to be read in the singular, meaning that a director, once confirmed, serves only for the term of the mayor nominating him. As the trial court reasoned, *HN9* the mayor and the council members each serve four-year terms. See Miss. Code Ann. § 21-8-7 (2) (Rev. 2007). Accordingly, the council members who originally confirmed the nomination of a director may no longer be on the council at the beginning of the new term. As discussed *supra*, the checks and balances on executive power vested in each council member are unique and separate abilities not shared by members of the general public. An interpretation which allowed those council members who were present when a mayor first took office to have greater powers than those council members present at the beginning of the new term of office would subvert the statutory scheme.

P20. Additionally, it is not uncommon for mayors to serve multiple terms, and in some extreme cases, remain in office for decades. The council, as a legislative body, would be stripped of valuable checks and balances that preserve the separation of powers if a mayor could simply shield his or her decisions with political longevity. A contrary [11] construction of the statute where the simple re-election of a mayor would nullify the checks and balances on executive power expressly created by the Legislature would disregard the clear intention of that body. We shall not disregard the clear intent of the Legislature to create these checks and balances. [24]

P21. This result has previously been reached by the Attorney General in multiple written opinions on the subject, including one involving the parties and facts at hand, and dating back to at least 1994. The opinions state "that *HN10* department directors are appointed for a term commensurate and coterminous with the term of the appointing mayor" and opine that a re-elected mayor must resubmit holdover directors. Miss. Atty. Gen. Op. Opinion No. 2006-0058, 2006 Miss. AG LEXIS 26, 2006 WL 1900672, *1 (Feb. 24, 2006). While an attorney general's opinion is not binding on this Court, it is persuasive, [12] and it further underscores our analysis. See *State ex rel. Holmes v. Griffin*, 667 So. 2d 1319, 1326 (Miss.1995).

P22. Accordingly, a mayor shall resubmit directors for approval by the council if the mayor is re-elected, even if the director is a holdover from the previous term.

Conclusion

P23. The council members have standing to seek a writ of mandamus against the mayor by virtue of the fact that their position creates in them a separate interest or an interest in excess of the general public. Additionally, *HN11* Mississippi Code Section 21-8-23 (2) requires that a mayor must resubmit directors for approval by the council at the beginning of the new term of office, even if the director is a holdover from the previous term and has been previously approved by the council.

P24. The judgment of the Forrest County Circuit issuing an order of mandamus to compel the Mayor of Hattiesburg [32] to resubmit directors to the city council is affirmed. The mayor shall forthwith submit department heads for approval by the council.

P25. **AFFIRMED.**

SMITH v, C.J., WALLER v, P.J., CARLSON v, GRAVES v, DICKINSON, RANDOLPH AND LAMAR, JJ., CONCUR. EASLEY v, J., CONCURS IN RESULT ONLY.

Footnotes

1

The action was not a formal act of the Hattiesburg City Council.

2

On appeal, the mayor offered the analogy of appointment of department heads to the President's unilateral appointment of cabinet members. See U.S. Const. Art. II, § 2. Unlike that constitutional grant of power to the President, the powers of a mayor and a city council are derived wholly from enactments of the Legislature.

Content Type: Cases

Terms: dupree v carroll

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Date and Time: Oct 21, 2014 03:19:47 p.m. EDT



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COVER SHEET**Civil Case Filing Form**

(To be completed by Attorney/Party
Prior to Filing of Pleading)

Mississippi Supreme Court
Administrative Office of Courts

Form AOC/01
(Rev 2009)

Court Identification Docket #

County # Judicial District Court ID (CH, CI, CO)

Month Date Year

This area to be completed by clerk

Case Year**Docket Number**

Local Docket ID

Case Number if filed prior to 1/1/94

In the CIRCUIT

Court of FORREST

County —

Judicial District

Origin of Suit (Place an "X" in one box only)

☒ Initial Filing
☐ Remanded

☐ Reinstated
☐ Reopened

☐ Foreign Judgment Enrolled
☐ Joining Suit/Action

☐ Transfer from Other court
☐ Appeal

☐ Other

Plaintiff - Party(ies) Initially Bringing Suit Should Be Entered First - Enter Additional Plaintiffs on Separate Form

Individual Carroll

Carter

Last Name

First Name

Maiden Name, if applicable

M.I.

Jr/Sr/III/IV

Check (x) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:
Estate of _____

Check (x) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:
D/B/A or Agency _____

Business

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated

Check (x) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below:
D/B/A _____

Address of Plaintiff Hattiesburg, MS

Attorney (Name & Address) Robert D. Gholson, P.O. Box 1289, Laurel, MS 39441

MS Bar No. 4811

Check (x) if Individual Filing Initial Pleading is NOT an attorney

Signature of Individual Filing: _____

Defendant - Name of Defendant - Enter Additional Defendants on Separate Form

Individual DuPre

Johnny

Last Name

First Name

Maiden Name, if applicable

M.I.

Jr/Sr/III/IV

Check (x) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:
Estate of _____

Check (x) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:
D/B/A or Agency _____

Business

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated

Check (x) if Business Defendant is acting in the name of an entity other than the above, and enter below:
D/B/A _____

Attorney (Name & Address) - If Known _____

MS Bar No. _____

Damages Sought: Compensatory \$ _____

Punitive \$ _____

Check (x) if child support is contemplated as an issue in this suit.*

*If checked, please submit completed Child Support Information Sheet with this Cover Sheet

Nature of Suit (Place an "X" in one box only)**Domestic Relations**

- ☐ Child Custody/Visitation
☐ Child Support
☐ Contempt
☐ Divorce: Fault
☐ Divorce: Irreconcilable Diff.
☐ Domestic Abuse
☐ Emancipation
☐ Modification
☐ Paternity
☐ Property Division
☐ Separate Maintenance
☐ Termination of Parental Rights
☐ UIFSA (eff 7/1/97; formerly URESA)
☐ Other _____

Appeals

- ☐ Administrative Agency
☐ County Court
☐ Hardship Petition (Driver License)
☐ Justice Court
☐ MS Dept Employment Security
☐ Worker's Compensation
☐ Other _____

Business/Commercial

- ☐ Accounting (Business)
☐ Business Dissolution
☐ Debt Collection
☐ Employment
☐ Foreign Judgment
☐ Garnishment
☐ Replevin
☐ Other _____

Probate

- ☐ Accounting (Probate)
☐ Birth Certificate Correction
☐ Commitment
☐ Conservatorship
☐ Guardianship
☐ Heirship
☐ Intestate Estate
☐ Minor's Settlement
☐ Muniment of Title
☐ Name Change
☐ Testate Estate
☐ Will Contest
☐ Other _____

Children/Minors - Non-Domestic

- ☐ Adoption - Contested
☐ Adoption - Uncontested
☐ Consent to Abortion Minor
☐ Removal of Minority
☐ Other _____

Civil Rights

- ☐ Elections
☐ Expungement
☐ Habeas Corpus
☐ Post Conviction Relief/Prisoner
☐ Other _____

Contract

- ☐ Breach of Contract
☐ Installment Contract
☐ Insurance
☐ Specific Performance
☐ Other _____

Statutes/Rules

- ☐ Bond Validation
☐ Civil Forfeiture
☐ Declaratory Judgment
☐ Injunction or Restraining Order
☒ Other 11/41/1, et seq

Real Property

- ☐ Adverse Possession
☐ Ejectment
☐ Eminent Domain
☐ Eviction
☐ Judicial Foreclosure
☐ Lien Assertion
☐ Partition
☐ Tax Sale: Confirm/Cancel
☐ Title Boundary or Easement
☐ Other _____

Torts

- ☐ Bad Faith
☐ Fraud
☐ Loss of Consortium
☐ Malpractice - Legal
☐ Malpractice - Medical
☐ Mass Tort
☐ Negligence - General
☐ Negligence - Motor Vehicle
☐ Product Liability
☐ Subrogation
☐ Wrongful Death
☐ Other _____

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI
JUDICIAL DISTRICT, CITY OF Hattiesburg

Docket No. _____ Docket No. If Filed
File Yr Chronological No. Clerk's Local ID Prior to 1/1/94 _____

PLAINTIFFS IN REFERENCED CAUSE - Page 1 of _____ Plaintiffs Pages
IN ADDITION TO PLAINTIFF SHOWN ON CIVIL CASE FILING FORM COVER SHEET

Plaintiff #2:

Individual: Bradley Kim (_____) _____ _____
Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

____ Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: 4811 Bar # or Name: Robert D. Gholson Pro Hac Vice (✓) _____ Not an Attorney(✓) _____

Plaintiff #3:

Individual: _____ (_____) _____
Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

____ Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: _____ Bar # or Name: _____ Pro Hac Vice (✓) _____ Not an Attorney(✓) _____

Plaintiff #4:

Individual: _____ (_____) _____
Last Name First Name Maiden Name, if Applicable Middle Init. Jr/Sr/III/IV

____ Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of _____

____ Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A _____

Business _____
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

____ Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above, and enter below:

D/B/A _____

ATTORNEY FOR THIS PLAINTIFF: _____ Bar # or Name: _____ Pro Hac Vice (✓) _____ Not an Attorney(✓) _____

City of Hattiesburg, MS

*200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401*



Meeting Agenda - Final

Monday, June 1, 2015

4:00 PM

Council Chambers

City Council - Amendments to the Agenda

Add Policy Agenda Item VI.-9 at the request of the Administration as follows:

[2015-297](#)

Adopt a Resolution to authorize and approve the Mayor to enter into Grant Agreement with Mississippi Development Authority in order to receive a grant not to exceed Thirty-Eight Thousand Seven Hundred and Eighteen Dollars (\$38,718) for the purpose of completing infrastructure related to Dews Foundry; and execute Memorandum of Agreement for same.

Attachments:

[Dews Foundry Grant resolution](#)

[executed Dews Foundry Grant resolution RES2015-74](#)

[Dews Foundry Memorandum of Agreement](#)

[executed Dews Foundry Memorandum of Agreement](#)



City of Hattiesburg, MS

200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401

Master

File Number: 2015-297

File ID: 2015-297

Type: Resolution

Status: Passed

Version: 1

Reference:

In Control: City Council

File Created: 05/29/2015

Brief Title: Grant Agreement with Mississippi Development
Authority for Dews Foundry

Final Action: 06/02/2015

Minute Book Number: MB2015-171

Title:

Adopt a Resolution to authorize and approve the Mayor to enter into Grant Agreement with Mississippi Development Authority in order to receive a grant not to exceed Thirty-Eight Thousand Seven Hundred and Eighteen Dollars (\$38,718) for the purpose of completing infrastructure related to Dews Foundry; and execute Memorandum of Agreement for same.

Notes:

Sponsors:

Enactment Date:

Attachments: Dews Foundry Grant resolution, executed Dews Foundry Grant resolution RES2015-74, Dews Foundry Memorandum of Agreement, executed Dews Foundry Memorandum of Agreement

Enactment Number:

Contact:

Meeting Date: 06/02/2015

Drafter: Janet Beech

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council - Amendments to the Agenda	06/01/2015					
1	City Council	06/02/2015	Adopt				Pass

Action Text: A MOTION was made by Council Member Carroll and seconded by Council Member Dryden to Adopt a Resolution to authorize and approve the Mayor to enter into Grant Agreement with Mississippi Development Authority in order to receive a grant not to exceed Thirty-Eight Thousand Seven Hundred and Eighteen Dollars (\$38,718) for the purpose of completing infrastructure related to Dews Foundry; and execute Memorandum of Agreement for same.

Following discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Dryden and Naylor

Nays: 0

Yea: 5 Council Member Bradley
 Council Member Delgado
 Council Member Carroll
 Council Member Dryden
 Council Member Naylor

TEL-No Vote: 0

Text of Legislative File 2015-297

Title

Adopt a Resolution to authorize and approve the Mayor to enter into Grant Agreement with Mississippi Development Authority in order to receive a grant not to exceed Thirty-Eight Thousand Seven Hundred and Eighteen Dollars (\$38,718) for the purpose of completing infrastructure related to Dews Foundry; and execute Memorandum of Agreement for same.

Summary

Grant Agreement with Mississippi Development Authority for Dews Foundry

RESOLUTION

The Mayor and City Council (the "Council") acting for and on behalf of the City of Hattiesburg, Mississippi, (the "Municipality") took up for consideration the matter of authorizing and approving a grant on behalf of the Municipality from the Mississippi Development Authority (the "MDA") Development Infrastructure Program for the purpose of completing infrastructure related to C.L. Dews & Sons Foundry & Machine Co, Inc. (the "Dews Foundry") and thus enhancing economic development through the creation of jobs .

Thereupon Council Member _____ offered and moved the adoption of the following resolution:

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HATTIESBURG, MISSISSIPPI, TO AUTHORIZE AND APPROVE THE MAYOR, ON BEHALF OF THE CITY, ENTERING INTO A GRANT AGREEMENT WITH THE MISSISSIPPI DEVELOPMENT AUTHORITY IN ORDER TO RECEIVE A GRANT ON BEHALF OF THE CITY FROM THE MISSISSIPPI DEVELOPMENT AUTHORITY IN AN AMOUNT NOT TO EXCEED THIRTY EIGHT THOUSAND SEVEN HUNDRED AND EIGHTEEN DOLLARS (\$38,718) FOR THE PURPOSE OF COMPLETING INFRASTRUCTURE RELATED TO DEWS FOUNDRY AND THUS ENHANCING ECONOMIC DEVELOPMENT THROUGH THE CREATION OF JOBS.

WHEREAS, the Municipality ensures that all program guidelines and commitments are being followed and will be met. In addition, the City commits to provide a minimum 10% match of the Development Infrastructure Funds in amount of \$4,302.29 to come from _____; and

WHEREAS, the Mississippi Business Investment Act, Sections 57-61-1 et. seq., of the Mississippi Code of 1972, as amended, (the "Act") was enacted for the purpose of promoting business and economic development in the state of Mississippi (the "State") through job producing programs and by providing loans and grants to municipalities to assist in securing investment by private companies locating in the State; and

WHEREAS, pursuant to Section 57-61-36 of the Act, MDA is authorized to make grants to the Municipality for the purpose of completing infrastructure related to Dews Foundry and thus enhancing economic development through the creation of jobs; and

WHEREAS, pursuant to the Act and the guidelines adopted by MDA, the Municipality has filed an application with MDA for a grant to complete infrastructure related to Dews Foundry; and

WHEREAS, based on the application, the Act and the guidelines , MDA has agreed to provide a grant to the Municipality for the purposes set forth; and

WHEREAS, before the grant can be processed, a Grant Agreement must be entered into by the Municipality and MDA, setting out the terms and conditions of the grant.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE MUNICIPALITY, AS FOLLOWS:

Section 1. That all of the findings of fact made and set forth in the preamble to this resolution shall be and the same are hereby found, declared, and adjudicated to be true and correct.

Section 2. That the Mayor and City Council of the City of Hattiesburg, Mississippi, is now fully authorized and empowered under the provisions of Sections 57-61-1 *et. seq.*, of the Mississippi Code of 1972, as amended, to proceed with the execution of the Grant Agreement with the Department.

Section 3. That the Mayor and City Clerk are hereby authorized and directed to execute any and all documents and certificates as may be necessary in order to consummate the transaction contemplated by the resolution and upon execution, each of the documents and certificates shall be legal, valid, and binding obligations of the Municipality enforceable in accordance to the terms of each.

The above and foregoing Resolution, after having been first reduced to writing, was introduced by Councilperson _____, seconded by Councilperson _____, and was adopted by the following vote, to-wit:

YEAS:

NAYS:

The motion having received the affirmative vote of a majority of the Council members present, the President declared the motion carried and the resolution adopted, on this the _____ day of _____, 2015.

(SEAL)

ATTEST:

CLERK OF COUNCIL

PRESIDENT

The above and foregoing Resolution having been submitted to and approved by the Mayor, this the _____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

RESOLUTION

The Mayor and City Council (the "Council") acting for and on behalf of the City of Hattiesburg, Mississippi, (the "Municipality") took up for consideration the matter of authorizing and approving a grant on behalf of the Municipality from the Mississippi Development Authority (the "MDA") Development Infrastructure Program for the purpose of completing infrastructure related to C.L. Dews & Sons Foundry & Machine Co, Inc. (the "Dews Foundry") and thus enhancing economic development through the creation of jobs .

Thereupon Council Member Carroll offered and moved the adoption of the following resolution:

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HATTIESBURG, MISSISSIPPI, TO AUTHORIZE AND APPROVE THE MAYOR, ON BEHALF OF THE CITY, ENTERING INTO A GRANT AGREEMENT WITH THE MISSISSIPPI DEVELOPMENT AUTHORITY IN ORDER TO RECEIVE A GRANT ON BEHALF OF THE CITY FROM THE MISSISSIPPI DEVELOPMENT AUTHORITY IN AN AMOUNT NOT TO EXCEED THIRTY EIGHT THOUSAND SEVEN HUNDRED AND EIGHTEEN DOLLARS (\$38,718) FOR THE PURPOSE OF COMPLETING INFRASTRUCTURE RELATED TO DEWS FOUNDRY AND THUS ENHANCING ECONOMIC DEVELOPMENT THROUGH THE CREATION OF JOBS.

WHEREAS, the Municipality ensures that all program guidelines and commitments are being followed and will be met. In addition, the City commits to provide a minimum 10% match of the Development Infrastructure Funds in amount of \$4,302.29 to come from _____; and

WHEREAS, the Mississippi Business Investment Act, Sections 57-61-1 et. seq., of the Mississippi Code of 1972, as amended, (the "Act") was enacted for the purpose of promoting business and economic development in the state of Mississippi (the "State") through job producing programs and by providing loans and grants to municipalities to assist in securing investment by private companies locating in the State; and

WHEREAS, pursuant to Section 57-61-36 of the Act, MDA is authorized to make grants to the Municipality for the purpose of completing infrastructure related to Dews Foundry and thus enhancing economic development through the creation of jobs; and

WHEREAS, pursuant to the Act and the guidelines adopted by MDA, the Municipality has filed an application with MDA for a grant to complete infrastructure related to Dews Foundry; and

WHEREAS, based on the application, the Act and the guidelines , MDA has agreed to provide a grant to the Municipality for the purposes set forth; and

WHEREAS, before the grant can be processed, a Grant Agreement must be entered into by the Municipality and MDA, setting out the terms and conditions of the grant.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE MUNICIPALITY, AS FOLLOWS:

Section 1. That all of the findings of fact made and set forth in the preamble to this resolution shall be and the same are hereby found, declared, and adjudicated to be true and correct.

Section 2. That the Mayor and City Council of the City of Hattiesburg, Mississippi, is now fully authorized and empowered under the provisions of Sections 57-61-1 *et. seq.*, of the Mississippi Code of 1972, as amended, to proceed with the execution of the Grant Agreement with the Department.

Section 3. That the Mayor and City Clerk are hereby authorized and directed to execute any and all documents and certificates as may be necessary in order to consummate the transaction contemplated by the resolution and upon execution, each of the documents and certificates shall be legal, valid, and binding obligations of the Municipality enforceable in accordance to the terms of each.

The above and foregoing Resolution, after having been first reduced to writing, was introduced by Councilperson Carroll, seconded by Councilperson Dryden, and was adopted by the following vote, to-wit:

YEAS: Bradley
Delagdo
Carroll
Dryden
Naylor

NAYS: None

The motion having received the affirmative vote of a majority of the Council members present, the President declared the motion carried and the resolution adopted, on this the 2nd day of June, 2015.

(SEAL)

ATTEST:

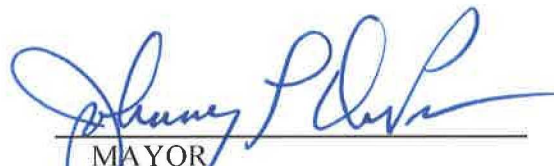

CLERK OF COUNCIL


PRESIDENT

The above and foregoing Resolution having been submitted to and approved by the Mayor, this the 2nd day of June, 2015.

ATTEST:


CITY CLERK


MAYOR

MEMORANDUM OF AGREEMENT

This Agreement is made and entered into by the City of Hattiesburg, Mississippi, acting by and through its City Council and C.L. Dews & Sons Foundry & Machine Co, Inc. to apply for a Mississippi Development Infrastructure Program (DIP) Grant. Hereinafter, the Municipality shall be referred to as "Recipient," and C.L. Dews & Sons Foundry & Machine Co, Inc. hereinafter referred to as "Company." The Agreement is as follows:

WHEREAS, the Recipient desires the Company to increase employment opportunities by expanding the Company in Hattiesburg, Mississippi and thereby is in the process of applying for a Mississippi Development Infrastructure Program (DIP) Grant, as administered by the Mississippi Development Authority, hereinafter "MDA," in the amount of thirty eight thousand seven hundred and eighteen dollars (\$38,718), to secure the expansion of the Company, and for the purpose of water main replacement and extension and infrastructure improvements for the project.

WHEREAS, the Recipient and the Company are required to enter into a written agreement specifying the terms and conditions of the relationship of the Recipient and the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Recipient and the Company agree as follows:

1. The Recipient's responsibilities shall be the following:
 - a. Provide for the coordination and submission of the application.
 - b. Sign the contract between MDA and the Recipient if the project is approved.
 - c. Proceed with the selection of necessary administrators/consultants.
 - d. Abide by all State statutes and guidelines.
 - e. Invest at least \$4,302.29 into the public improvements of this project. This may be in the form of cash and/or inkind contributions.

- f. If within two years of completion of DIP project activities identified above, reimburse the state a pro rata share for any and all program expenditures if job creation, local match, and capital investment commitments are not met as outlined in this document.
- 2. The Company's responsibilities shall be the following:
 - a. Within two years of completion of the DIP project activities identified above, the Company shall create 15 full-time and/or full-time equivalent jobs at the facility. If the Company fails to create the specified number of full-time equivalent jobs, the Company will reimburse the Recipient a pro rata share of the amount contemplated by this agreement. The reimbursement amount will be arrived at by multiplying the difference between the total number of jobs projected to be created and the number of actual jobs created by the cost per job, which is two thousand five hundred and eighty-one dollars and 20/100 (\$2,581.20). The cost per job is derived by dividing the DIP award amount by the total number of jobs projected to be created.
 - b. The company promises to act as an Equal Opportunity Employer and to give assurance of a willingness to comply with all pertinent state and federal laws or acts of non-discrimination and equal employment opportunity requirements and will fill these positions without regard to Age, Race, Religion, National Origin, Genetic Information, Color, Sex, Marital Status, or Disability.
 - c. The Company agrees to inject at least \$1,410,000 into construction and related equipment. The source of these funds is through external financing.
 - d. Keep and maintain books, records and other documents relating directly to the expenditure of private funds and the hiring of persons to fill the new jobs created as a result of this project. Furnish from time to time, upon the request by the

Recipient, reports on progress being made in meeting the requirements of 2.a. above.

- e. Allow any duly authorized representative of the MDA, Community Services Division, or the Mississippi State Auditor's Office, at all reasonable times, access to and the right to inspect, copy, audit, and examine all such records related to private expenditures and job generation as a result of the above described project until the completion of all close-out procedures respecting the grant or loan and the final settlement and conclusions of issues rising out of the grant or loan.
- f. Application of the Mississippi Employment Protection Act of 2008. All grantees, recipients, contractors, and companies known hereafter as "Contractor" (Company) entering into contracts with the Mississippi Development Authority represents and warrants that it will ensure compliance with the Mississippi Employment Protection Act (Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature) and will register and participate in the status verification system of all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program or any other successor electronic verification system replacing the E-Verify Program. Contractor (Company) agrees to maintain such compliance and, upon request of the State, to provide copy of each such verification to the State. Contractor (Company) further represents and warrants that any person assigned to perform services hereunder meet the employment eligibility requirements of all migration laws of the State of Mississippi. Contractor (Company) understands and agrees

that any breach of these warranties may subject Contractor (Company) to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor (Company) by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) or both. In the event of such cancellation/termination, Contractor (Company) would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

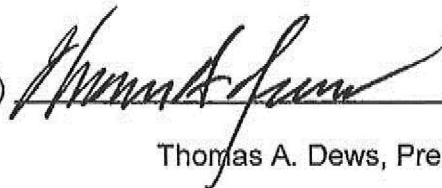
3. Terms of this agreement shall be effective and binding upon approval and award of a grant to the Recipient by the Mississippi Development Authority of the State of Mississippi.

IN WITNESS WHEREOF, the Recipient and the Company have executed this Agreement this the _____ day of _____, _____.

(X) _____

Mayor Johnny L. DuPree, Ph.D.

Mayor of Hattiesburg, Mississippi

(X)  _____

Thomas A. Dews, President

C.L. Dews & Sons Foundry & Machinery Co., Inc.

Opinion of Probable Costs		Proj. No.: 1235-084		Date: April 8, 2015	
Water Main Replacement					
Hattie Avenue & Pettigrew Street					
Item	Description	Unit	Quantity	Unit Price	Extension
Water Pipe Items					
1	4" Class 350 Ductile Iron Water Pipe (Open Cut)	Lin. Ft.	20	\$20.00	\$400.00
2	6" Class 350 Ductile Iron Water Pipe (Open Cut)	Lin. Ft.	20	\$24.00	\$480.00
3	8" Class 350 Ductile Iron Water Pipe (Open Cut)	Lin. Ft.	500	\$28.00	\$14,000.00
Connection Items					
4	Connection: Proposed 8"Water Line to Existing 8" Water Line (Hot Tap w/ Valve & fittings)	Each	1	\$4,500.00	\$4,500.00
5	Connection: Proposed 8" Water Line to Proposed 6" & Existing 4" Water Lines (Tee & other fittings)	Each	1	\$3,500.00	\$3,500.00
Valve Items					
6	4" Gate Valve	Each	1	\$625.00	\$625.00
7	6" Gate Valve	Each	1	\$725.00	\$725.00
Fire Protection items					
8	3 Way Fire Hydrant w/ Appurtenances (Incl. Tee, Valve, Hydrant, Brass Tag, Pipe, & other fittings)	Each	1	\$3,200.00	\$3,200.00
Service Items					
9	Residential Service Tap (All Sizes) (Incl: Open Cut Service Tubing, Tapping Saddle, Corp Stop, etc)	Each	3	\$325.00	\$975.00
10	Service Tubing (Bored) (All Sizes)	Lin. Ft.	40	\$10.00	\$400.00
Removal Items					

11	Removal of Fire Hydrant and Appurtenances	Each	1	\$250.00	\$250.00
	Miscellaneous Construction Items				
12	Asphalt Pavement Repair (All Depths)	Sq. Yd.	25	\$75.00	\$1,875.00
13	Temporary Erosion Control	Lump Sum	1	\$500.00	\$500.00
14	Grassing	Lump Sum	1	\$500.00	\$500.00
15	Maintenance of Traffic	Lump Sum	1	\$500.00	\$500.00
16	Mobilization	Lump Sum	1	\$2,000.00	\$2,000.00
				Subtotal:	\$34,430.00
				Engineering:	\$6,868.79
		5%	Contingencies:		\$1,721.50
			Total:		\$43,020.29

MEMORANDUM OF AGREEMENT

This Agreement is made and entered into by the City of Hattiesburg, Mississippi, acting by and through its City Council and C.L. Dews & Sons Foundry & Machine Co, Inc. to apply for a Mississippi Development Infrastructure Program (DIP) Grant. Hereinafter, the Municipality shall be referred to as "Recipient," and C.L. Dews & Sons Foundry & Machine Co, Inc. hereinafter referred to as "Company." The Agreement is as follows:

WHEREAS, the Recipient desires the Company to increase employment opportunities by expanding the Company in Hattiesburg, Mississippi and thereby is in the process of applying for a Mississippi Development Infrastructure Program (DIP) Grant, as administered by the Mississippi Development Authority, hereinafter "MDA," in the amount of thirty eight thousand seven hundred and eighteen dollars (\$38,718), to secure the expansion of the Company, and for the purpose of water main replacement and extension and infrastructure improvements for the project.

WHEREAS, the Recipient and the Company are required to enter into a written agreement specifying the terms and conditions of the relationship of the Recipient and the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Recipient and the Company agree as follows:

1. The Recipient's responsibilities shall be the following:
 - a. Provide for the coordination and submission of the application.
 - b. Sign the contract between MDA and the Recipient if the project is approved.
 - c. Proceed with the selection of necessary administrators/consultants.
 - d. Abide by all State statutes and guidelines.
 - e. Invest at least \$4,302.29 into the public improvements of this project. This may be in the form of cash and/or inkind contributions.

- f. If within two years of completion of DIP project activities identified above, reimburse the state a pro rata share for any and all program expenditures if job creation, local match, and capital investment commitments are not met as outlined in this document.
- 2. The Company's responsibilities shall be the following:
 - a. Within two years of completion of the DIP project activities identified above, the Company shall create 15 full-time and/or full-time equivalent jobs at the facility. If the Company fails to create the specified number of full-time equivalent jobs, the Company will reimburse the Recipient a pro rata share of the amount contemplated by this agreement. The reimbursement amount will be arrived at by multiplying the difference between the total number of jobs projected to be created and the number of actual jobs created by the cost per job, which is two thousand five hundred and eighty-one dollars and 20/100 (\$2,581.20). The cost per job is derived by dividing the DIP award amount by the total number of jobs projected to be created.
 - b. The company promises to act as an Equal Opportunity Employer and to give assurance of a willingness to comply with all pertinent state and federal laws or acts of non-discrimination and equal employment opportunity requirements and will fill these positions without regard to Age, Race, Religion, National Origin, Genetic Information, Color, Sex, Marital Status, or Disability.
 - c. The Company agrees to inject at least \$1,410,000 into construction and related equipment. The source of these funds is through external financing.
 - d. Keep and maintain books, records and other documents relating directly to the expenditure of private funds and the hiring of persons to fill the new jobs created as a result of this project. Furnish from time to time, upon the request by the

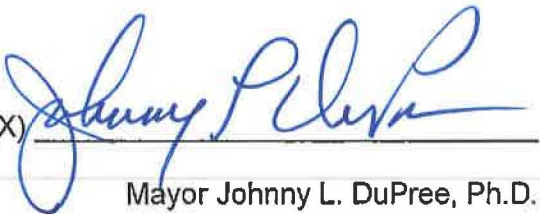
Recipient, reports on progress being made in meeting the requirements of 2.a. above.

- e. Allow any duly authorized representative of the MDA, Community Services Division, or the Mississippi State Auditor's Office, at all reasonable times, access to and the right to inspect, copy, audit, and examine all such records related to private expenditures and job generation as a result of the above described project until the completion of all close-out procedures respecting the grant or loan and the final settlement and conclusions of issues rising out of the grant or loan.
- f. Application of the Mississippi Employment Protection Act of 2008. All grantees, recipients, contractors, and companies known hereafter as "Contractor" (Company) entering into contracts with the Mississippi Development Authority represents and warrants that it will ensure compliance with the Mississippi Employment Protection Act (Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature) and will register and participate in the status verification system of all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program or any other successor electronic verification system replacing the E-Verify Program. Contractor (Company) agrees to maintain such compliance and, upon request of the State, to provide copy of each such verification to the State. Contractor (Company) further represents and warrants that any person assigned to perform services hereunder meet the employment eligibility requirements of all migration laws of the State of Mississippi. Contractor (Company) understands and agrees

that any breach of these warranties may subject Contractor (Company) to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor (Company) by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) or both. In the event of such cancellation/termination, Contractor (Company) would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

3. Terms of this agreement shall be effective and binding upon approval and award of a grant to the Recipient by the Mississippi Development Authority of the State of Mississippi.

IN WITNESS WHEREOF, the Recipient and the Company have executed this Agreement this the 2nd day of June, 2015.

(X) 
Mayor Johnny L. DuPree, Ph.D.

Mayor of Hattiesburg, Mississippi

(X) 
Thomas A. Dews, President

C.L. Dews & Sons Foundry & Machinery Co., Inc.

Opinion of Probable Costs		Proj. No.: 1235-084		Date: April 8, 2015	
Water Main Replacement					
Hattie Avenue & Pettigrew Street					
Item	Description	Unit	Quantity	Unit Price	Extension
Water Pipe Items					
1	4" Class 350 Ductile Iron Water Pipe (Open Cut)	Lin. Ft.	20	\$20.00	\$400.00
2	6" Class 350 Ductile Iron Water Pipe (Open Cut)	Lin. Ft.	20	\$24.00	\$480.00
3	8" Class 350 Ductile Iron Water Pipe (Open Cut)	Lin. Ft.	500	\$28.00	\$14,000.00
Connection Items					
4	Connection: Proposed 8"Water Line to Existing 8" Water Line (Hot Tap w/ Valve & fittings)	Each	1	\$4,500.00	\$4,500.00
5	Connection: Proposed 8" Water Line to Proposed 6" & Existing 4" Water Lines (Tee & other fittings)	Each	1	\$3,500.00	\$3,500.00
Valve Items					
6	4" Gate Valve	Each	1	\$625.00	\$625.00
7	6" Gate Valve	Each	1	\$725.00	\$725.00
Fire Protection items					
8	3 Way Fire Hydrant w/ Appurtenances (Incl. Tee, Valve, Hydrant, Brass Tag, Pipe, & other fittings)	Each	1	\$3,200.00	\$3,200.00
Service Items					
9	Residential Service Tap (All Sizes) (Incl: Open Cut Service Tubing, Tapping Saddle, Corp Stop, etc)	Each	3	\$325.00	\$975.00
10	Service Tubing (Bored) (All Sizes)	Lin. Ft.	40	\$10.00	\$400.00
Removal Items					

11	Removal of Fire Hydrant and Appurtenances	Each	1	\$250.00	\$250.00
	Miscellaneous Construction Items				
12	Asphalt Pavement Repair (All Depths)	Sq. Yd.	25	\$75.00	\$1,875.00
13	Temporary Erosion Control	Lump Sum	1	\$500.00	\$500.00
14	Grassing	Lump Sum	1	\$500.00	\$500.00
15	Maintenance of Traffic	Lump Sum	1	\$500.00	\$500.00
16	Mobilization	Lump Sum	1	\$2,000.00	\$2,000.00
				Subtotal:	\$34,430.00
				Engineering:	\$6,868.79
				5% Contingencies:	\$1,721.50
				Total:	\$43,020.29

City of Hattiesburg, MS

*200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401*



Meeting Agenda

Monday, June 1, 2015

4:00 PM

Council Chambers

City Council - Work Session

- 1. Wastewater Treatment, Reid Engineering - Mayor**
- 2. Hattiesburg Clinic Expansion - Bradley**
- 3. Environmental Court Assessment - Delgado**
- 4. Municipal Court Software Status - Delgado**
- 5. Store Signs, Graffiti-like Paintings on Buildings, Sign Requirements - Delgado**
- 6. Land Code Status - Delgado**
- 7. Club Hi Hat - Dryden**