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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-132

June 17, 1985

Honorable John W. Parkerson
State Representative
House of Representatives
State Capitol
Little Rock, Arkansas 72201

Dear Representative Parkerson:

This is in response to your inquiry whereby you submitted the following:

Whether a member of the City of Hot Springs Civil Service Commission who was a resident of the City at the time of his appointment, but who has since moved his residence from the City, is eligible to continue serving as a member of the Civil Service Commission and whether the City Council can or must remove the Commissioner in the event it is determined that the Commissioner is no longer a resident of the City.

This is to advise that I basically agree with the opinion of the Honorable Carl Crow, Jr., City Attorney of Hot Springs to the Honorable Jim Randall, Mayor. under date of May 31, 1985. copy of which is enclosed herewith.

The foregoing opinion, which I hereby approve was prepared by Chief Deputy Attorney General Rodney Parham.

Yours truly,


STEVE CLARK
Attorney General

SC:RP:lm
Enc.



CITY OF HOT SPRINGS
OFFICE OF CITY ATTORNEY

CARL A. CROW, JR.
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May 31, 1985

Hon. Jim Randall, Mayor
P. O. Box 700
Hot Springs, Arkansas 71902

Re: Civil Service Commission

Dear Mayor Randall:

This letter is in response to your separate request for an opinion concerning whether a member of the City of Hot Springs Civil Service Commission who was a resident of the city at the time of his appointment, but who has since moved his residence from the city, is eligible to continue serving as a member of the Commission. You have also asked for an opinion as to whether the City Council can or must remove the Commissioner in the event it is determined that he is not qualified to continue serving.

In my opinion, a member of the Civil Service Commission under the circumstances stated is not legally qualified to continue serving. However, it is unlikely that actions of the Commission, in which he participates will be invalid.

Ark. Stats. Ann. §19-1601.1 (Act 326 of 1949, as amended) provides for appointment by the City Council of citizens of the city to the Board of Civil Service Commissioners. The Act does not address whether Commissioners must remain residents of the city during their tenure in office.

No cases directly on point have apparently been decided by the Arkansas Supreme Court. However, if one appointed as a Commissioner were not required to be a resident during his tenure in office, he could easily evade the spirit of the requirement of residency at appointment by moving from the city immediately after his appointment. In my opinion, the courts are likely to avoid this result and to require that Commissioners remain residents throughout their terms.

Hon. Jim Randall, Mayor
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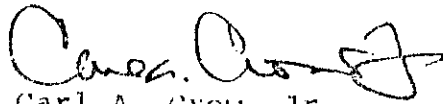
In my opinion, even if the Commissioner in question is not legally qualified to continue serving, actions of the Commission in which he participates are unlikely to be invalidated. The Arkansas Supreme Court has affirmed this principle on several occasions. See, e.g., Trussell v. Fish, 202 Ark. 956, 154 S.W. 2d 587 (1941).

Ark. Stats. Ann. §19-1601.1 grants to the City Council the authority to remove any member of the Civil Service Commission for cause upon a two-thirds vote. In the event of removal, the City Council must fill the vacancy created.

The City Council is not expressly required to remove a Commissioner who no longer legally qualifies to hold office. However, a court could order the removal of such a Commissioner in an appropriate proceeding.

If I can be of further assistance, please let me know.

Yours very truly,


Carl A. Crow, Jr.

CAC/sj