

A C WHARTON, JR. - Mayor  
GEORGE M. LITTLE - Chief Administrative Officer  
**LAW DIVISION**  
HERMAN MORRIS, JR. - City Attorney

February 9, 2010

Councilman Jim Strickland  
Chairman Personnel, Intergovernmental and Annexation Committee  
125 N. Main St., Suite 514  
Memphis, Tennessee 38103-2079

Dear Councilman Strickland:

You have requested an opinion from this office concerning the following:

**ISSUE PRESENTED**

Whether employees with the Workforce Investment Network (WIN) can lawfully be exempt from civil service coverage?

**OPINION**

Yes, pursuant to Section 250 (g) of the City Charter, all staff employees of the offices of the Mayor and the Chief Administrative Officer are exempt from civil service classification. WIN is considered a bureau within the executive division and reports directly to the Chief Administrative Officer. Accordingly, the employees of WIN are exempt from civil service classification.

**DISCUSSION**

In accordance with the Workforce Investment Act of 1998, WIN is a 100% federally funded program that operates in connection with the Local Workforce Investment Board ("LWIA Board") established by the Mayors of Memphis, Shelby County, and Fayette County. The LWIA Board is certified by the governor of the state of Tennessee and is specifically charged with the responsibility of establishing policy, providing oversight, and developing strategic plans for WIN.

Notwithstanding the board's functions, the City of Memphis ("City") has been designated by the LWIA Board as the entity that provides administrative oversight of the WIN program. The City's function in this capacity includes serving as the grant recipient for the receipt of all federal funds received by WIN from the Tennessee

Councilman Jim Strickland

February 9, 2010

Page 2

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Department of Labor and serving as fiscal agent for reporting and compliance purposes. The daily operations of WIN with regard to the City's internal organizational structure are supervised directly by the Chief Administrative Office. The Executive Director of WIN reports directly to the Chief Administrative Officer ("CAO"). Further, any issues which may arise related to WIN's daily operations and functions under the City as grant recipient and fiscal agent are resolved administratively by the Office of the CAO. In sum, WIN is considered a bureau within the executive division and a direct report to the CAO.

You have asked whether WIN employees can lawfully be classified as exempt from civil service. In response, Section 250 (g) of the City Charter expressly provides that all staff employees of the offices of the Mayor and the Chief Administrative Officer are exempt from civil service classification. Thus, based upon WIN's existence and function as a bureau within the executive division and the administrative oversight provided by the Office of the CAO, it is the opinion of this office that WIN employees were erroneously designated as civil servants in violation of Section 250(g) of the City Charter.

As a point of information, prior to January 1, 2008, all WIN employees were classified as exempt from civil service. In 2004, it was revealed that the number of appointed positions in city government had swelled to over 400 under the existing administration and that many of these positions were not classified as exempt under the City Charter. This number of 400 appointees included those positions specifically enumerated within Section 250 of the Charter, as well as, additional positions such as deputy director, comptroller, purchasing agent, etc. Following an extensive debate and exchange, the Council approved Resolution No. 48, a copy of which is attached hereto for your convenience.

In accordance with Resolution No. 48, the Council specifically approved the exempt classification of certain positions, but also noted that any position not enumerated within the Resolution and Section 250 of the Charter, were only considered appointed through the end of the Mayor's existing term, December 31, 2007. Without regard to Section 250(g), WIN employees were erroneously classified as civil servants effective January 1, 2008. In an effort to correct this error and to lawfully comply with

Councilman Jim Strickland  
February 9, 2010  
Page 3

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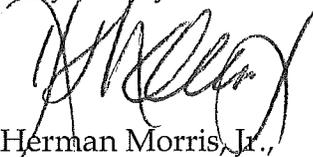
the City Charter, the prior exempt classification of all WIN employees should be duly reinstated in accordance with section 250 (g) of the City Charter.

The ability of the State of Tennessee to terminate the program at any time due to a lack of funding further supports the position that WIN employees should be classified as exempt personnel rather than civil service. Each grant contract executed by the City and the Tennessee Department of Labor with regard to the administration of the program includes a "Subject to Funds Availability" provision. Accordingly, in the event funds are not appropriated or otherwise made available, the State of Tennessee reserves the right to terminate the grant agreement which would in effect terminate the program. Thus, even if WIN employees are allowed to maintain their current classification as civil servants, Section 9-41 of the City Code provides that the "[s]ervices of any employee may be terminated when the necessity for his job or position no longer exists or when funding is no longer available, and such action shall not be reviewable by the commission."

Based upon Section 250(g) of the City Charter and the fact that the WIN program is a 100% federally funded program, subject to termination by the State of Tennessee at any given moment for lack of funding without any appealable rights to the Civil Service Commission, all WIN employees should be classified as exempt from civil service.

If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,



Herman Morris, Jr.,  
City Attorney



C C Drayton,  
Sr. Assistant City Attorney

Councilman Jim Strickland

February 9, 2010

Page 4

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xc: Mayor A C Wharton, Jr.  
George M. Little, CAO  
Kelly Rayne, Deputy CAO  
Bobby White, Chief of Staff  
Chandell Ryan, Manager - Labor Relations  
Alan Wade, City Council Attorney  
In-House Attorneys

OPN No. 003.10

RESOLUTION NO: \_\_\_\_\_

RESOLUTION TO RECOGNIZE CERTAIN POSITIONS AS APPOINTED AND EXEMPT FROM CIVIL SERVICE AND TO CLARIFY THE STATUS OF THESE EMPLOYEES

WHEREAS, Section 250 of the Memphis City Charter provides that the Director of Personnel shall classify all officers and positions;

WHEREAS, Section 250 of the Memphis City Charter sets forth certain positions as appointed and allows for the creation of additional appointed positions with the concurrence of the Council of the City of Memphis;

WHEREAS, over the past twenty years, the Director of Personnel/Human Resources has classified a number of positions as appointed that are not specifically enumerated in Section 250 of the Memphis City Charter;

WHEREAS, the Council of the City of Memphis desires to clarify the status of the employees holding these positions;

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the Council concurs with the recommendation of the Mayor and the Director of Personnel/Human Resources that the following positions shall be classified as appointed pursuant to Section 250 of the Memphis City Charter:

Deputy Director- F&A	Finance Division
Deputy Director- Finance	Finance Division
Comptroller	Finance Division
Purchasing Agent	Finance Division
Treasurer	Finance Division
Deputy Director-Fire Services	Fire Division
Deputy Director-Police Services	Police Division
Deputy Director-Parks	Parks Division
Deputy Director-Recreation Services	Parks Division
Deputy Director- Solid Waste	Public Works
Deputy Director- Maintenance	Public Works
Deputy Director-Human Resources	Human Resources
Benefits Officer	Human Resources
Manager-Labor Relations/EEO Officer	Human Resources
Deputy Director-Public Services	Public Services
Emergency Management Director	Public Services
Administrator of Animal Shelter	Public Services
Manager of Multicultural Affairs	Public Services
Executive Director of Second Chance/Ready4Work	Public Services
Deputy Director-General Services	General Services
Deputy Director-Housing/Finance & Ed Dev	HCD
Executive Director of Depot Redevelopment	Special Services
Executive Director of Workforce Investment Network	Special Services
Executive Director of Youth Opportunities	Special Services
Chief Deputy-Court Clerk	City Court Clerk
Chief Deputy-Traffic Violations Bureau	City Court Clerk

With respect to all persons currently occupying positions not specifically enumerated in Section 250 and not listed above who are or have been classified as appointed, the Council acknowledges the Director of Personnel/Human Resources' past and present classification of these persons as appointed through the end of this term, December 31, 2007, so long as these persons remain in their current position. When the

*Human Resources*

*#48 Reused*

person currently occupying these positions leaves his or her position for any reason, the position will be filled as a civil service position unless otherwise approved by the Council as an appointed position pursuant to Section 250 of the Memphis City Charter.

Except as provided herein this resolution shall not alter or impair the classification of any past or present employee as being appointed and exempt from civil service.

I hereby certify that the foregoing is a true copy  
and document was adopted, approved by the  
Council of the City of Memphis in regular  
session on

Date                      APR 12 2004

                      
*Denise E. Watson*  
Deputy Comptroller - Council Records