



Shelby County Government

OPINION

A C Wharton, Jr.
Mayor

Brian L. Kuhn
County Attorney

January 20, 2004

Robert C. Lanier
Executive Assistant to Mayor
160 North Main Street
Suite 850
Memphis, Tennessee 38103

Re: Law Relative to Interim Appointment of OPD Director

Dear Bobby:

I am writing to you pursuant to your request relative to providing you the information on what law controls the appointment of the interim OPD Director Mr. Richard Copeland from the County's standpoint.

SHELBY COUNTY CHARTER

The only reference to a division director appointment in the Shelby County Charter is found in Article III, Section 3.06[b] which states in part that the division directors of the County are appointed by the County Mayor subject to approval by resolution of the Board of County Commissioners and shall be subject to dismissal by the Mayor without cause. There is no mention in the Shelby County Charter relative to interim director appointment.

Secondly, in the transition provisions of the Shelby County Charter, Article VII, Section 7.08 states that the provisions of Chapter 260 of the Private Acts of 1974 [the Restructure Act] which are not inconsistent with the terms of the Charter shall remain in full force and effect unless they are changed, amended, deleted or otherwise modified by ordinance by a Board of County Commissioners. Further Section 7.14 of that same Article VII states that all Private Acts of the General Assembly which affect Shelby County and are in effect from September 1, 1986 if they are not inconsistent with the Charter shall be deemed ordinances.

Pursuant to that authority the Shelby County Code has codified at Section 2-5 under the duties, powers and functions of the County Mayor a section of old Chapter 26 to the Private Acts of 1974 being Section 4.02 which states in part "The Mayor shall have the power to appoint, suspend, or remove his own subordinates who are within civil service classifications to the extent

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permitted by the Civil Service System. Subordinates who are not within the Civil Service System shall be appointed, suspended, or removed by the Mayor." The interim director of the OPD would not be in the Civil Service System. There is no specified time limit for any interim director appointment in any of these laws.

Additionally, the Joint Ordinance Resolution that creates the Office of Planning and Development as a joint body between the City and County indicates that the director is appointed by the City and County Mayors and subject to the approval by the City and County legislative bodies but does not speak directly to any interim appointment. Incidentally, the Director in this Joint Ordinance Resolution is really a Planning Director and is not the Division Director that the subject matter of this Opinion, which is the position that Mr. Copeland has been appointed to.

Because the aforementioned laws do not specifically limit or prohibit the Mayor from making an interim appointment, it would be my opinion that this would be under the administrative powers and duties of the Mayor to appoint and remove interim directors to serve for a reasonable period of time before the appointment of a permanent director is presented for approval by the County Commission.

I hope that you find this responsive to your request for an opinion in this regard. I have enclosed copies of those Sections of the Charter that I have referred to herein.

Regards,


Brian L. Kuhn
Shelby County Attorney

BLK/mbw
Enclosure

cc: Honorable A C Wharton, Jr., Shelby County Mayor