


THE UNIVERSITY of TENNESSEE 
INSTITUTE for PUBLIC SERVICE
MUNICIPAL TECHNICAL ADVISORY SERVICE

April 10, 2012

The Honorable Anthony DeMatteo, Mayor
Town of Estill Springs
P.O. Drawer 100
Estill Springs, Tennessee 37330

Re: The mayor's appointment of staff

Dear Mayor DeMatteo

City Recorder Tina Smith indicated that you have requested clarification on the appointment of the fire chief and assistant fire chief under the city's charter and municipal ordinances. The charter outlines the following duties of the mayor:

6-3-106. Duties of mayor.—

(a) The mayor:

- (1) Shall be the chief executive officer of the municipality and shall preside at meetings of the board;
- (2) Shall communicate any information needed, and recommend measures the mayor deems expedient to the board;
- (3) (A) Shall make temporary appointments of any officer or department head as those terms defined in § 6-1-101, except that of alderman, arising from the absence, sickness or disability of any such officer or department head, and shall report such appointment to the board at its next regular meeting.

(B) The board may confirm or reject the mayor's temporary appointments, or, at its discretion, make its own temporary appointments. The board shall make appointments to fill vacancies in office.

- (4) (A) May call special meetings of the board upon adequate notice to the board and adequate public notice;

(B) Shall state the matters to be considered at the special meeting and the action of the board shall be limited to those matters submitted;

(5) Shall countersign checks and drafts drawn upon the treasury by the treasurer and sign all contracts to which the municipality is a party;

(6) As a member of the board, may make motions and shall have a vote on all matters coming before the board;

(7) Shall make appointments to boards and commissions as authorized by law.

(b) Unless otherwise designated by the board by ordinance, the mayor shall perform the following duties or may designate a department head or department heads to perform any of the following duties:

(1) Those duties set forth in § 6-4-101, if the board does not appoint a city administrator or if someone else is not designated by the board to perform those duties.

(2) (A) Employ, promote, discipline, suspend and discharge all employees and department heads, in accordance with personnel policies and procedures, if any, adopted by the board;

(B) Nothing in this charter shall be construed as granting a property interest to employees or department heads in their continued employment;

(3) Act as purchasing agent for the municipality in the purchase of all materials, supplies and equipment for the proper conduct of the municipality's business; provided, that all purchases shall be made in accordance with policies, practices and procedures established by the board;

(4) Prepare and submit the annual budget and capital program to the board for their adoption by ordinance; and

(5) Such other duties as may be designated or required by the board.

I could not find an ordinance assigning the above duties to someone other than the mayor as required by the charter; therefore, those duties are the responsibility of the mayor. I did find a set of personnel regulations passed by resolution that indicate all appointments to full-time and full-time probationary positions with the Town of Estill Springs shall be made by the Board of

Mayor and Aldermen. As you may know a resolution does not meet the charter requirement of an ordinance. It is my opinion that the mayor currently has the power to employ, promote, discipline, suspend and discharge all employees and department heads in accordance with the town's charter and ordinances and this includes the fire chief and assistant fire chief. If the board does not want the mayor to have this power, they need to revisit the issue and provide otherwise as required by the town charter.

In the absence of a city administrator the mayor also performs the following duties of the city administrator:

6-4-101. Duties of city administrator.—

(a) The board may appoint a city administrator who shall be under the control and direction of the board. The city administrator shall report and be responsible to the board.

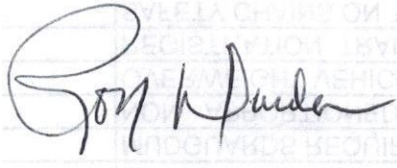
(b) The board may, by ordinance, require the city administrator to perform any or all the following duties:

- (1) Administer the business of the municipality;
- (2) Make recommendations to the board for improving the quality and quantity of public services to be rendered by the officers and employees to the inhabitants of the municipality;
- (3) Keep the board fully advised as to the conditions and needs of the municipality;
- (4) Report to the board the condition of all property, real and personal, owned by the municipality and recommend repairs or replacements as needed;
- (5) Recommend to the board and suggest the priority of programs or projects involving public works or public improvements that should be undertaken by the municipality;
- (6) Recommend specific personnel positions, as may be required for the needs and operations of the municipality, and may propose personnel policies and procedures for approval of the board; and
- (7) Perform such other duties as may from time to time be designated or required by the board.

I also noticed that the current personnel ordinance indicated that amendments to the personnel policies may be made by resolution. An ordinance is required to amend an ordinance. Unless the town has repealed the personnel ordinance, it appears that the town has a set of personnel regulations in the municipal code (ordinance) and a set passed by resolution. They need to be combined into one.

Please call me if you have questions or comments.

Respectfully Yours

A handwritten signature in black ink, appearing to read "Ron Darden". The signature is written in a cursive style with a large, looped initial "R". The signature is positioned over a faint, repeating watermark pattern that includes the words "MELBA CHAIRS ON" and "REGISTRATION LIBRARY".

Ron Darden
Municipal Management Consultant

Cc. City Recorder Tina Smith