

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00016 COA**

CITY OF LAUREL, MISSISSIPPI

APPELLANT

v.

FIREFIGHTERS OF LAUREL, MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	12/04/95
TRIAL JUDGE:	HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED:	JONES COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	WILLIAM SYLVESTER MULLINS III DEIDRA DANIELLE JONES LINNEA KATHLEEN HALL
ATTORNEY FOR APPELLEE:	GUY M. WALKER
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	CIRCUIT COURT AFFIRMED CIVIL SERVICE COMMISSION RULING THAT FIRE CHIEF WAS CIVIL SERVANT
DISPOSITION:	REVERSED AND RENDERED - 12/2/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

EN BANC

MCMILLIN, P.J., FOR THE COURT:

The case now before the court poses the question of whether the position of fire chief of the City of Laurel is subject to the jurisdiction of the City's Civil Service Commission. The Circuit Court of Jones County considered the matter and determined that the position was a covered position, and the City appealed. We reverse and render.

I.

Facts

In 1995, the City of Laurel's fire chief retired. The Mayor appointed an acting fire chief, and the appointment was confirmed by the City Council. An organization of city firefighters under the name of Firefighters of Laurel (hereafter "the Firefighters") protested the appointment, claiming that the position could only be filled in accordance with the City's Civil Service Commission rules and regulations. Under civil service rules, the mayor, before making such an appointment, was required to submit a statement to the Commission describing the vacant position and relevant job qualifications. The Commission would then provide to the mayor a list of eligible candidates from which the appointment could be made.

The mayor and council (hereafter referred to for sake of simplicity as "the City") determined that the position of fire chief was not a covered position under civil service. The Firefighters perfected an appeal of that ruling to the circuit court. The Firefighters additionally requested a hearing before the Civil Service Commission on the question. The Commission concluded that the position of fire chief was subject to civil service regulation. The City perfected an appeal of that decision. The circuit court consolidated the two cases on appeal, and as we have observed, ruled in favor of the Firefighters' position, concluding that "[t]here is no authority under . . . statute that authorizes the mayor or the city council to amend the laws applicable to civil service so as to remove the police and fire chiefs from their civil service protection and reclassify them as directors of departments." The City perfected this appeal from that judgment.

II.

Discussion

The City of Laurel has, for some time, had a Civil Service Commission operating under procedures set out in state laws pertaining to the subject. *See Miss. Code Ann. §§ 21-31-1 to -75 (Rev. 1990)*. One provision of the law, last amended in 1962, provides that:

The provisions of [the civil service law] shall include all full paid employees of the fire and/or police departments of each municipality coming within its purview, *including the chiefs of those departments*.

Miss. Code Ann. § 21-31-13 (Rev. 1990) (emphasis supplied).

In 1973, the Mississippi Legislature approved a new form of municipal government, known as the mayor-council form of government. *See Miss. Code Ann. §§ 21-8-1 to -47 (Rev. 1990)*. Some time thereafter, the City of Laurel elected to convert to this optional form of government. The mayor-council system contemplates, for purposes of administration, the division of city functions into a number of departments of special responsibility.

The municipality may have a department of administration and such other departments as the

council may establish by ordinance. All of the administrative functions, powers and duties of the municipality shall be allocated and assigned among and within such departments.

Miss. Code Ann. § 21-8-23(1) (Rev. 1990).

The statutory scheme of government also contemplates that each department created by the city will have a director, "who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council" **Miss. Code Ann. § 21-8-23(2) (Rev. 1990).**

Pursuant to this authority, the City adopted an ordinance creating several departments, including a separate city department to provide fire protection. The head of the City's fire department carries the title "Fire Chief."

At this point in our analysis, there would appear to be a conflict between (a) section 21-31-13, which specifically brings "the chiefs" of "the fire and/or police departments" within the provisions of civil service regulation and (b) section 21-8-23(2), which provides that the head of a department "shall be appointed by the mayor and confirmed by . . . the council," without reference to consideration of civil service. *See Miss. Code Ann. § 21-31-13 (Rev. 1990); § 21-8-23(2) (Rev. 1990).*

However, this apparent conflict was resolved by the legislature at the time it created the mayor-council form of government. As a part of providing for the creation and management of city departments, the law -- adopted at a time when section 21-31-13 was already in effect -- declared that:

Directors of departments shall be excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality; provided, however, all individuals serving as heads of departments at the time of the municipality's adoption of the mayor-council form as described in this chapter shall continue to be covered by the provisions of the civil service system in effect at the time the mayor-council form is adopted.

Miss. Code Ann. § 21-8-23(3) (Rev. 1990).

This Court holds that the fire chief of the Laurel Fire Department is the director of that department within the intent of section 21-8-23(3). To suggest otherwise is to become bogged down in meaningless quibbling over the use of terms. The statute cannot be so narrowly construed as to exclude persons who are, in actuality, the head of a municipal department simply because the title associated with the position does not specifically include the term "director." Thus, the City might create a separate department to handle the maintenance and repair of the city's public streets, in which case, the head of that department would not be included or excluded from civil service jurisdiction depending on whether the ordinance refers to that person as Director of the Street Department or the more traditional term of Street Commissioner. It is the nature of the position that controls the issue and not the particular term chosen to identify the position. The exempting law itself alternately uses the term "director of any department" and "heads of departments" to describe the class of city employee affected by the statute. *See Miss. Code Ann. § 21-8-23(3) (Rev. 1990).*

The title "Fire Chief" may indeed be a more colorful term than "Director of Fire Protection" to describe the office of the person in charge of the City of Laurel's fire protection department. The person occupying that position is, nevertheless, by any reasonable interpretation, the "director" or "head" of that department within the intent of section 21-8-23(3) and is, thus, "excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality" **Miss. Code Ann. § 21-8-23(3) (Rev. 1990).**

The facial conflict between (a) the civil service law extending protection to fire chiefs and (b) the law giving the mayor and city council unfettered authority to select department heads was addressed by the legislature when it authorized the mayor-council municipal government. The legislation exempted all department heads under that form of governments from civil service jurisdiction (except for department heads serving when the new form of government was adopted -- an exception having no relevance in this case). "Where statutes conflict the one last enacted controls." *Stingily v. City of Jackson*, 140 Miss. 19, 104 So. 465,466 (1925). The circuit court was in error in holding otherwise, and that judgment must be reversed.

We observe that our decision is limited to the facts as presented in this appeal. We have determined that the fire department was created as a separate department by the City of Laurel ordinance, and it is on that finding that our decision turns. It is conceivable that another city might create some such creature as a Department of Emergency Services, to be headed by a Director of Emergency Services and broken down into divisions to provide fire protection, police protection, ambulance service, and natural disaster relief. In such case, the head of the fire protection division might be referred to as the "Fire Chief," and this opinion would not necessarily be authority for the proposition that the person holding that office was exempt from the protection of section 21-31-13.

THE JUDGMENT OF THE CIRCUIT COURT OF JONES COUNTY IS REVERSED AND JUDGMENT IS RENDERED IN FAVOR OF THE APPELLANT, CITY OF LAUREL, ADJUDICATING THAT THE POSITION OF CITY OF LAUREL FIRE CHIEF AS CONSTITUTED AT THE TIME THIS APPEAL WAS PERFECTED IS EXEMPT FROM CIVIL SERVICE JURISDICTION. COSTS ARE ASSESSED TO THE APPELLEE.

THOMAS, P.J., COLEMAN, DIAZ, HINKEBEIN, PAYNE, SOUTHWICK, JJ., CONCUR. KING, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, C.J., AND HERRING, J.

KING, J., DISSENTING:

I dissent from the majority opinion adopted herein.

The majority resolves this matter by making the pontifical finding "that the Fire Chief of the Laurel Fire Department is the director of that department" and any suggestion to the contrary "is to become bogged down in meaningless quibbling over the use of terms." I disagree.

The executive order appointing Edwards clearly defines Edwards' role to be that of "acting fire chief,

" not director. The law of civil service requires that all appointments to and promotions in the police and fire departments be based solely on merit, efficiency, and fitness. **Miss. Code Ann. Section 21-31-13 (Miss. 1972)**. This requirement also applies to the positions of police and fire chief. *Id.* Although the City authorized the police and fire chiefs to serve as directors, it did not eliminate the positions of police and fire chief. Laurel police and fire chiefs functioned in dual capacities. Even through Section 21-8-23(3) of the Mississippi Code exempts department directors from civil service coverage, I do not construe this provision as exempting from civil service coverage police and fire chiefs, who merely perform the director's functions. Despite the duality of functions, I believe the civil service law governed the mayor's appointment of a temporary fire chief.

The circuit court noted that in the administration prior to Mayor Vincent's administration, one David Nichols was appointed Director of Public Safety over the fire and police departments. Nichol's appointment suggests that the responsibilities of the fire and police chief were separate and distinct from the functions performed by the director.

In construing a statute, the chief desire of this Court should be "to reach the real intention of the legislature, and knowing this to adopt that interpretation which will meet the real meaning, though such interpretation may be beyond or within, wider or narrower, than the mere letter of the statute."

***Ziegler v. Zeigler*, 174 Miss. 302, 310, 164 So. 768, 771(1935)**. In enacting Section 21-8-23, the legislature authorized municipalities to establish departments, headed by directors, which would fulfill the municipalities' administrative function, powers, and duties. Thus, the purpose of Section 21-8-23 was to provide for the administrative functioning of a municipality. By providing for the administrative functioning of a municipality, the legislature did not specifically contemplate exclusion of the positions of police chief and fire chief from civil service protection.

As the circuit court determined, the record does not indicate that the City repealed its civil service provisions to exclude "chiefs" from civil service coverage, nor does the record indicate that the City abolished the positions of fire and police chief. If there was synonymity between the positions of chief and director, the City bore the burden of establishing that synonymity. The city failed to meet its burden, therefore, I would construe the positions as being separate and distinct. Because Section 21-31-13 specifically provides civil service coverage for the chiefs of a municipality's police and fire department, I find that the circuit court correctly determined that Edwards' appointment violated the civil service statutes, for these reasons, I would affirm.

BRIDGES, C.J., AND HERRING, J., JOIN THIS SEPARATE OPINION.