



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

April 16, 2002

OPINION 02-0027

P.O. Box 94005
TEL: (504) 342-7013
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Mr. Gerald O'Malley
Chief of Police
36400 Hwy 16
Montpelier, LA 70422

77 OFFICERS

71 MUNICIPALITIES

R.S. 33:321, et seq; R.S. 33:404.1; R.S. 33:2337; R.S. 33:2335; R.S. 33:1234; R.S. 33:1234(1); R.S. 33:423; R.S. 33:2337(D); R.S. 51:2232(11); R.S. 33:404

Discusses several questions concerning the chief of police's authority vis-à-vis the mayor and board of aldermen in a Lawrason Act municipality.

Dear Chief O'Malley:

In recent correspondence to this office you advise that you are the elected chief of police of Montpelier, Louisiana, which municipality is governed by the provisions of the Lawrason Act, R.S. 33:321, et seq. Your questions are prompted by a continuing dispute between yourself as chief of police and the mayor and board of alderman regarding the authority of your office. Because this office has addressed many times several of your thirteen questions, requoted below, we will direct your attention to attached opinions of this office for a full recital of pertinent law, without restating the law herein.

1. If an appointed Chief of Police is receiving a certain salary, does the Council have the right to reduce this salary when he becomes elected because they failed to vote on it?

You have always held the elected office of chief of police, despite the fact that you originally retained the office via appointment to fill a vacancy. Because the office is an elected position, R.S. 33:404.1 dictates that "the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected." The prohibition against the reduction in compensation protects those who occupy this elected office. See Attorney General Opinion 98-483. The appointment of an individual to fill the position on an interim basis does not change the protection and benefits afforded one who occupies this elected position. The board of aldermen may by ordinance reduce the compensation of the newly elected chief of police, if such action is taken prior to the beginning of the new term. By failing to continue to pay you your original salary of \$405.00 per month, the board also stands in violation of constitutional authority, specifically, LSA Const. Article VI, Section 12 (1974) providing:

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other

local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected. (Emphasis added).

2. Can the Council require the Chief of Police to wait the required time plus the extra month's before paying the amount stipulated in the minutes?

The back salary owed you is due and payable now, without further delay by the board.

3. Does the Elected Chief of Police have the authority to ask the Sheriff's office to cover the community when he is not available?

The mutual aid statute, referenced in your letter, permits the chief of police of a municipality or the sheriff to request the manpower and equipment of another law enforcement agencies in two limited situations, specifically, either (1) an emergency or (2) a special event. R.S. 33:2337 provides:

A. (1) In the event of an emergency or a special event and upon the request of another police department or sheriff's office, by the chief of police, the sheriff, or their designees of that department on duty at the time of the emergency or special event, a political subdivision may furnish police manpower and equipment if the chief of police, the sheriff, or their designees on duty, of the police department or sheriff's office receiving the request for aid is of the opinion that such police manpower and equipment are available.

(2) If the responding agency agrees to provide mutual aid, the personnel of the responding agency shall report to and shall work under the direction and supervision of the senior officer of the requesting agency on duty at the time that the request for aid is made. During the emergency or special event the personnel of the responding agency shall have the same law enforcement authority as the personnel of the requesting agency. Police manpower and equipment may be recalled at the sole discretion of the highest ranking officer on duty of the police department furnishing police manpower and equipment. During the emergency, the responding agency shall be considered the agent of the requesting agency.

(3)(a) "Emergency" means an actual or potential condition that poses an immediate threat to life or property and exceeds the capability of the requesting agency to counteract successfully.

(b) "Special event" means an actual or potential situation that poses or may pose a threat to life or property because of the number of people

involved and exceeds the capability of the requesting agency to counteract successfully.

B. In situations where mutual aid is utilized, radio communications shall be established, if possible, through the radio systems patch, or one of the officers shall maintain personal eye-to-eye contact with an officer of the other agency and pass information between agencies.

C. The provision of mutual aid shall not give rise to liability or responsibility for failure to respond to a request for assistance.

D. No charge shall be made to a political subdivision for services rendered by any other political subdivision.

However, the arrangement is considered temporary. R.S. 33:2335 specifically provides "nothing herein shall allow permanent agreements between agencies."

Note also that R.S. 33:1234 permits a municipality and a sheriff to execute an intergovernmental agreement for the sheriff to perform law enforcement services within the municipality. R. S. 33:1234 pertinently states:

Any parish, or municipality of political subdivision of the state, or any combination thereof, may make arrangements between or among themselves to engage jointly in the construction, acquisition or improvement of any public project, the promotion and maintenance of any undertaking or the exercise of any power, provided that at least one of the participants to the agreement is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking. Such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning:

(1) Police, fire and health protection.

If the contract involves the expenditure of municipal funds, both the mayor and the board of aldermen would have to approve the contract. The mayor would sign the contract on behalf of the municipality. See Attorney General Opinion 93-283.

Further, whether or not a contract is perfected, note that the sheriff may exercise concurrent jurisdiction with the chief of police within municipal limits. Where a complaint of an offense occurring within a municipality is made with the sheriff's office, the sheriff may handle the complaint or refer it to the city police. See Attorney General Opinions 93-6 and 97-484. The chief of police nonetheless remains the chief law enforcement official within the municipality. His duties remain defined by R.S. 33:423:

The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance....

4. Can the Mayor and Board of Aldermen require the Sheriff's Office to maintain insurance on the Chief of Police or any police officer when doing mutual aid?

No. R.S. 33:2337(D) provides "no charge shall be made to a political subdivision for services rendered by any other political subdivision" in instances of mutual aid.

5. Can the Mayor and Board of Aldermen require the Chief of Police to disclose the nature of or the place where he went when doing mutual aid?

R.S. 33:423, quoted above, provides that the chief of police "shall perform all other duties required of him by ordinance." If the board of aldermen enacts an ordinance requiring you to disclose your work schedule, then you would be required to do so. See Attorney General Opinion 81-251. Such a work schedule would then be considered public record. However, investigative records and reports used by the chief of police for criminal investigations would remain exempt from disclosure pursuant to R.S. 44:3.¹

¹ §3. Records of prosecutive, investigative, and law enforcement agencies, and communications districts

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, or intelligence agencies of the state, which records are:

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled, except as otherwise provided in Subsection F of this Section; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information; or

(4)(a) The records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. However, the initial report of the officer or officers investigating a complaint, but not to apply to any follow-up or subsequent report or investigation, records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record.

(b) The initial report shall set forth:

(i) A narrative description of the alleged offense, including appropriate details thereof as determined by the law enforcement agency.

(ii) The name and identification of each person charged with or arrested for the alleged offense.

(iii) The time and date of the alleged offense.

6. Can the mayor and Board of Aldermen of a Lawrason Act community with an elected Chief of Police fix a charge for mileage on mutual aid calls?

No. See our response to question four, above.

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- (iv) The location of the alleged offense.
 - (v) The property involved.
 - (vi) The vehicles involved.
 - (vii) The names of investigating officers.

(c) Nothing herein shall be construed to require the disclosure of information which would reveal undercover or intelligence operations.

(d) Nothing herein shall be construed to require the disclosure of information which would reveal the identity of the victim of a sexual offense.

(5) Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer; or

(6) Records concerning status offenders as defined in the Code of Juvenile Procedure.

(7) Repealed by Acts 1990, No. 59, § 3, eff. June 26, 1990.

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this Section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies and communications districts from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

E. Nothing in this Section shall be construed as forbidding the release of all or part of investigative files of fires classified as arson, incendiary, or suspicious unless, after consultation with the appropriate law enforcement agency, any sheriff, district attorney, or other law enforcement agency directs that the records not be disclosed because of pending or anticipated criminal adjudication.

F. Notwithstanding any other provision of law to the contrary, after a period of ten years has lapsed from the date of death of a person by other than natural causes, and upon approval by the district court having jurisdiction over any criminal prosecution which may result due to the death of such person, any prosecutive, investigative, and other law enforcement agency, or any other governmental agency in possession of investigative files or evidence or potential evidence, or any other record, document, or item relating to said death shall, upon request, provide copies of all such files, records, and documents to immediate family members of the victim and shall provide unlimited access for any and all purposes to all such evidence, potential evidence, and other items to any member of the immediate family and to any person or persons whom any member of the immediate family has designated for such purposes. The access granted shall include but not be limited to the examination, inspection, photographing, copying, testing, making impressions, and the use in any court proceeding of and conducting forensic studies on such evidence, potential evidence, and other items. For the purposes of this Subsection, the term "immediate family" shall mean the surviving spouse, children, grandchildren, and siblings of the victim.

7. Since an elected or even an appointed Chief of Police is on duty for 24 hours a day, 7 days a week, can the Mayor and Board of Aldermen require him to park his unit and use his personal car to go somewhere?

Concerning the use of a police vehicle, this office has opined:

Thus, it is our opinion that the chief of police has inherent authority to control city police vehicles. He has the authority to assign a police department vehicle to himself for police work but such police vehicle may not be used as a personal car by the chief of police unless this personal use has been authorized by the mayor and board of aldermen. However, because of their power to control and manage municipal property, it is also our opinion that the mayor and board of aldermen may specifically request that the village car be used by the chief of police only when he is working or conducting business relative to the municipal police department. See Attorney General Opinion 82-1106.

The vehicle may be kept at the chief's residence at night where he is on call twenty-four hours a day. See Attorney General Opinions 79-954 and 76-40; see also Attorney General Opinion 99-190, authorizing police department employees to travel to and from work in an assigned police vehicle while on call.

8. If the Chief of Police does not feel comfortable with appointing anyone to act or to be hired as a policeman does he have the right not to recommend anyone to fill the position?

No. R.S. 33:423 pertinently provides:

In those municipalities governed by the provisions of this Part, R.S. 33:321 et seq., which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel, for the promotions of officers, to effect disciplinary action, and for dismissal of police personnel. Such nominations or recommendations are to be made regardless of race, color, disability, as defined in R.S. 51:2232(11), or creed. (Emphasis added).

Use of the word "shall" is mandatory. See attorney General Opinion 01-07 for a thorough discussion of this issue.

9. Should the Chief of Police be required to ask for permission to have the police vehicle serviced or the tires replaced when needed?

In response to this question, note that this office has previously determined:

Even though police vehicles are municipal property, the chief of police has the inherent authority to control municipal police vehicles, including their repair and maintenance. However, because of the mayor's and the board of aldermen's statutory power to control and manage municipal property, they must legally designate and issue vouchers for the repair of the police vehicles.

See Attorney General Opinions 99-406 and 84-190.

Note further that "absent the failure of the chief to comply with formal municipal purchasing procedures in making the "purchase," the refusal to pay an expenditure validly incurred by the chief constitutes and infringement upon the chief's inherent powers". See Attorney General Opinion 84-190.

10. When a village as small as Montpelier only has one police unit and no other policemen other than the chief of police, does the Mayor have the right to remove the police unit out of the Chief's yard when the Chief is not at the residence?

No. See our response to question seven, above.

11. Does the Mayor have the right to call the Sheriff's office and request the name of the person requesting mutual aid from the Chief of Police?

He may request and obtain this information from the chief of police. R.S. 33:404 provides, in part:

The mayor shall reside at all meetings of the board of aldermen, and in case there is an equal division, he shall give the deciding vote. . . He may require any officer of the municipality to exhibit his accounts or other papers, and to make a report to the board of aldermen, in writing, on any matter pertaining to his office. . .

Thus, the mayor may require a chief of police, as an officer of the municipality, to make a written report to the board of aldermen concerning any matter pertaining to his office, including the circumstances surrounding your participation in a mutual aid program. Such a report would include information about the use of a police vehicle and any bills incurred by the police department via mutual aid participation.

12. Does the Mayor have the right to call the Sheriff's Office and tell them not to request mutual aid from the Chief of Police?

No. The authority to determine participation in a mutual aid program is by statute conferred solely upon the chief of police or sheriff as circumstances dictate. See R.S. 33:2337, quoted above.

13. If an elected Chief of Police of a Lawrason Act community has no recourse but to hire a lawyer can the Chief of Police require the governing board to reimburse him for the cost of doing so?

This office has determined that municipal funds may be utilized to reimburse attorney's fees and expenses for those proceedings filed by municipal officials in their official capacities and for the benefit of the municipality. See Attorney General Opinion 02-0005. However, the municipal governing authority would be charged with the responsibility of making the necessary factual determinations regarding whether the action was in fact brought to benefit the municipality. Further, the governing authority would have to determine that (1) the hourly rate charged by legal counsel was reasonable, (2) the number of hours spent by legal counsel was reasonable and necessary, and (3) any costs incurred by legal counsel were reasonable and necessary. See Attorney General Opinions 01-94, 97-428, 95-492, 95-242 and 94-384.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: 
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge
70804

February 17, 1976

OPINION NO. 76-40

Honorable Howard Zerangue
Chief of Police
City of Opelousas
P. O. Box 669
Opelousas, Louisiana

Dear Chief Zerangue:

In your letter of January 8, 1976, you requested an opinion from this office on the following issue:

Whether the Mayor and City Council have the authority to prohibit you from issuing a departmental vehicle to yourself as elected Chief of Police.

The circumstances you state are as follows: it is necessary for you to be on call 24 hours a day and it is desirable to have a police department vehicle assigned to you which would be kept at your residence at night, to be used strictly for police work. Effective January 31, 1976, you notified the Mayor and City Council that you were discontinuing the practice of drawing a car allowance from the City to be used for your personal automobile; however, the Mayor and City Council issued a directive to you to retain the car allowance and use your personal automobile.

The City of Opelousas is subject to the provisions of the Lawrason Act, LSA-R.S. 33:321 et seq. Under R.S. 33:401A, the mayor and board of aldermen shall have the care, management, and control of the municipality and its property and finances, and by Section 401(30) are generally empowered to prescribe duties and fix the compensation of all officers and employees. In Cogwell v. Town of Logansport, 321 So. 2d 774 (1975), the Court of Appeals stated that these provisions gave the mayor and aldermen of a Lawrason municipality the right to "...exercise

#77-----OFFICERS-LOCAL AND
MUNICIPAL
R.S. 33:401A; R.S. 33:401(3)
R.S. 33:423

Chief of Police has inherent powers to assign proper of the police department, police department vehicle, to himself.

Mayor and City Council do not have authority to prohibit an elected chief of police from assigning a police department vehicle to himself.

Mayor and City Council cannot revoke, restrict or limit an "inherent power" of the chief of police under his responsibility for law enforcement.

Honorable Howard Zerangue
February 17, 1976
Page -2-

their authority over an elected chief of police and the police department, as long as the power of the chief of police to supervise the operation of the department and assign its personnel and property is not revoked, restricted or limited." (Emphasis added)

R.S. 33:423 provides:

"Duties of marshal

"The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of R.S. 33:321 through R.S. 33:481 which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel. Such nominations or recommendations are to be made irregardless of race, color, or creed. Amended by Acts 1970, No. 120, §1; Acts 1975, No. 790, §1."

The responsibility of the chief of police to enforce all ordinances and laws carries with it the grant of certain inherent powers which are necessary to fulfill this duty, and it is an established principle that the mayor and aldermen may not revoke the "inherent powers" of an elected chief of police of a Lawrason municipality. Lentini v. City of Kenner, 252 La. 413, 211 So. 2d 311 (1968).

In view of the applicable statutes and jurisprudence discussed herein, it is our opinion that the mayor and city council do not have the authority to prohibit an elected chief of police from assigning a police department vehicle to himself for police work. Such action falls in the category of an "inherent power" under the responsibility for law

Honorable Howard Zerangue
February 17, 1976
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enforcement and the mayor and city council cannot revoke,
restrict or limit said power.

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

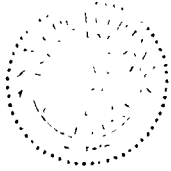
Very truly yours,

WILLIAM J. GUSTE, JR.
Attorney General

By:
(MRS.) BETTY G. RATCLIFF
Assistant Attorney General

BGR:gjp

an



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112

7-1-74
OPINION: 74-954

Honorable Carl F. Grant
Secretary-Treasurer
Iberville Parish Police Jury
P.O. Box 389
Plaquemine, Louisiana 70764

4- ASSESSORS
90- POLICE JURIES-Powers & Functions
Police Jury must purchase equipment
needed by Assessor and bill other tax
recipients for their share of cost.

Dear Mr. Grant:

We are in receipt of your letter wherein you advise that the Assessor's office is in need of a \$30,000.00 piece of equipment, and ask whether the Police Jury must pay for same itself, or apportion the costs to all taxing bodies.

L.R.S. 33:4713 provides as follows:

The cost of such furniture and equipment, supplies and maps, as may be needed by the tax collector and assessors of each parish shall be borne proportionately by all tax recipient bodies in the parish in the proportion of the amount received from such tax monies by each recipient body in the parish.

The police jury or other governing authority shall make the purchases and then bill the other tax recipients for their proportionate share.

Therefore, the Police Jury should purchase this equipment, and bill the other tax receiving bodies for their proportionate share.

If we can be of any further assistance, please do not hesitate to contact this office.

Yours very truly,

WILLIAM J. GUSTE, JR.
Attorney General

By: Louis A. Gerdes, Jr.
LOUIS A. GERDES, JR.
Assistant Attorney General

LAG:ab

6/2/74



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

Revised
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3:19

State of Louisiana
DEPARTMENT OF JUSTICE

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112

March 18, 1981

OPINION NO. 81-251

71-MUNICIPALITIES

107-SHERIFFS, CONSTABLES, MARSHALS

Board is prohibited from reducing the
salary of chief of police.

Honorable Walter M. Godwin
Chief of Police
Village of Woodworth
P. O. Box 177
Woodworth, Louisiana 71425

Dear Chief Godwin:

Your letter addressed to the Attorney General has been referred to the undersigned for attention and reply. Therein, you posed the following questions:

1. At the present time I am the only municipal police officer in the Village of Woodworth. Does the board of aldermen have the authority to set my working hours? It would seem to me that for them to do so would impair "the inherent powers" of an elected chief of police.

2. Several years ago the board of aldermen established my salary at \$3.75 per hour. At one time I worked part-time, but for the past several years I have been full-time. Does the board of aldermen have the authority to reduce my hours or rate of pay?

3. Can the board of aldermen hire a patrolman and pay him at a higher rate of pay than at which I am paid?

4. Until recently I have always had 1 or 2 patrolmen in my department. Several months ago the board of aldermen fired my two full-time patrolmen and have refused to hire anymore. Can the board of aldermen be legally required to hire additional police officers for the town?

5. Since a small town such as ours cannot afford 24 hour a day, seven day a week police patrol, it has been my policy to vary the hours of operation so that it appears to the casual observer that we have more police coverage than we actually have. This is done as a deterrent to crime and I feel it has been successful. On a previous occasion when, at the insistence of the board of aldermen, I distributed to them a copy of the police duty schedule, a particularly brazen burglary was perpetrated under circumstances that made it apparent that the burglars had knowledge of the schedule. Since then I have refused to publish a schedule. I have also refused to make known which hours of the

Hon. Walter M. Godwin
OPINION NO. 81-251
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day were worked since would-be criminals could establish a trend from this. My question is, can the board of aldermen force me to divulge this information and does a citizen have a right to this information?

In answering your first question, Lentini v. City of Kenner, 211 So. 2d 311 (1968), provides that the chief of police has inherent powers to manage the affairs of his office. As such, it would be an infringement upon said powers for the board to set the chief's working hours.

In answering your second question, it is our opinion that the board is prohibited from reducing your salary pursuant to Article 6, Section 12 of the Louisiana Constitution which provides that "Compensation of a local official shall not be reduced during the term for which he is elected." The only prohibition regarding the board's reducing the work hours is that this can not infringe upon the chief's unquestionable right to manage the affairs of his office.

In answering your third question, the answer is no. To hire a patrolman and pay him a higher rate of pay than the chief would clearly constitute an act of undermining the status the chief of police traditionally holds in relation to the other elected officials in general and his personnel in particular.

In answering your fourth question, both R.S. 33:402(4) and R.S. 33:423 provide that where the chief of police is an elected official he shall make recommendations to the mayor and board for the appointment of police personnel. However, neither of these statutes nor any other related statutes provide that the board may be legally required to hire additional police officers for the town.

In answering your final question, R.S. 33:423 provides that the chief "shall perform all other duties required of him by ordinance." Therefore, if the board enacts an ordinance which provides that the chief shall disclose his work schedule, then he would be compelled to do so. As such, said work schedule will then be covered by our public records statutes and any citizen would be entitled to obtain access to same as provided by these statutes. However, this is not to infer that investigative records and reports used by the chief for criminal investigations are subject to inspection; these are exempt from public inspection by the applicable statutes which govern same.

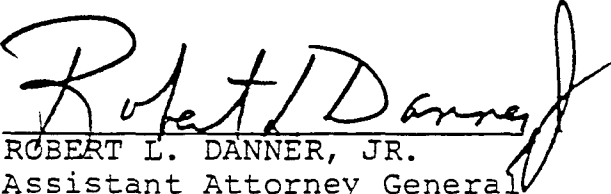
Hon. Walter M. Godwin
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March 18, 1981
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We trust that this answers your questions, If further assistance is needed, please contact this office.

Very truly yours,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY:


ROBERT L. DANNER, JR.
Assistant Attorney General

RLD,jr:caj



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

OPINION NUMBER 82-613

June 28, 1982

Rel. 7/12/82

OPINION NUMBER 82-613

71 Municipalities

77 Officers

LSA-R.S. 33:381, 33:381.1, 33:386, 33:401
33:404, 33:423, Art. VI, §12 of the La.
Const. of 1974

Duties and powers of officers of a
Lawrason Act Municipality.

Honorable Frank Muscarello
Chief of Police
Post Office Box F
Tickfaw, Louisiana 70466

Dear Mr. Muscarello:

You recently requested an opinion from this office concerning the duties and powers of certain elected officials of a Lawrason Act municipality.

Your questions were:

1. Can the Board of Aldermen employ a clerk or any town employee without consent of the Mayor?
2. Can a Mayor dismiss a town employee for good reason?
3. Can the Board of Aldermen employ auxillary police without recommendation of the Chief of Police?
4. Can the Board of Aldermen employ his brother to work for the City if his brother is dismissed for a period of twelve (12) days?
5. Can the Board of Aldermen set hours for an elected Chief of Police?
6. Can the Board of Aldermen cut an elected Chief of Police's salary?
7. If the Chief of Police has two (2) cars, can the Board of Aldermen sell one of them?

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8. Can the Mayor and the Board of Aldermen make an elected Chief of Police log his mileage, etc.?
9. Can the Chief appoint an assistant chief if not full-time?

Most of your inquiries dealt with the hiring and firing of non-elected municipal officials. More specifically, the thrust of the inquiries were centered around the delegation of the authority to hire and fire municipal officials and which municipal officials possess this delegated authority.

The Village of Tickfaw is a Lawrason Act municipality and is therefore governed by the applicable statutes. The pertinent statutes dealing with the authority to hire and fire municipal officials are LSA-R.S. 33:401, 33:386 and 33:423. LSA-R.S. 33:401, provides, in pertinent part, that:

A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. They shall have power:

(30) To provide for municipal officers other than those required by this Part who may be found necessary; to prescribe, the duties and fix the compensation of all officers and employees, subject to any applicable civil service law; and to require bonds with sureties for the performance of duties from all officers and employees.

(31) To provide for the removal of officers and discharge of employees for misconduct or neglect of duty, subject to any applicable civil service law.

LSA-R.S. 33:386 provides, in part, as follows:

Honorable Frank Muscarello
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At the first regular meeting of the board of aldermen succeeding each regular municipal election, the mayor, subject to confirmation by the board of aldermen, shall appoint a clerk, tax collector, and all other necessary officers whose election is not provided for in R.S. 33:381. In the event of a vacancy, the mayor, subject to confirmation by the board of aldermen, shall appoint a successor to any such office. (Emphasis added.)

LSA-R.S. 33:423 provides:

"The marshall shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of R.S. 33:321 through R.S. 33:481 which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel. Such nominations or recommendations are to be made irregardless of race, color, or creed." (Emphasis added)

In accordance with the statutes quoted above, it is the opinion of this office that the power to hire and fire municipal employees is vested in the mayor and board of aldermen. In the first regular meeting of the board of aldermen succeeding each regular municipal election, the mayor, subject to confirmation by the board of aldermen, shall appoint a clerk, tax collector, and all other necessary non-elected municipal officers. Although the power to hire municipal officers is vested in the mayor and board of aldermen, they may only appoint or hire, as police personnel, those persons who have been recommended by the chief of police. In other words, the mayor

Honorable Frank Muscarello
OPINION NUMBER 82-613
June 28, 1982
Page -4-

and board of aldermen's general power to hire police personnel is subject to the recommendations of the chief of police. However, generally speaking, the power to hire and fire all non-elected municipal officers is vested in the mayor and board of aldermen.

One of your questions asked if the board of aldermen can set the working hours for an elected chief of police. LSA-R.S. 33:381 provides, in part, that:

A. The officers of every municipality shall be a mayor, aldermen, a chief of police, a tax collector, a clerk, and a street commissioner.

LSA-R.S. 33:381.1 continues by stating in part:

The marshal who is the chief of police in such municipalities shall be elected at large . . .

It has been the opinion of this office that the chief of police is an elected official on full-time duty, and that as an elected official, he can not be relegated to an inferior position of an employee. Thus, as an elected official and not an employee, the chief of police is not required to keep a time sheet, record and file the number of hours worked at the municipal hall nor can his working hours be set by the board of aldermen.

You also asked if the board of aldermen can reduce an elected chief of police's salary. Article VI, Section 12 of the Louisiana Constitution of 1974 provides:

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local

Honorable Frank Muscarello
OPINION NUMBER 82-613
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governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected. (Emphasis added.)

Thus, applying the above-quoted constitutional article, it is our opinion that the municipal board of aldermen can not reduce the compensation of an elected chief of police during the term for which he is elected.

There was another inquiry concerning the board of aldermen's control over municipal police property. Specifically you asked if the board of aldermen could sell one of the two cars assigned to the police department. LSA-R.S. 33:401 gives the mayor and board of aldermen the power to control all municipal property. It provides, in pertinent part, as follows:

A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. . .

Therefore, because of their power to control and manage municipal property, it is our opinion that the mayor and board of aldermen can sell one of the two cars assigned to the police department.

In your final inquiry, you asked if the mayor and board of aldermen can require an elected chief of police to log his mileage. LSA-R.S. 33:404 delineates the duties and powers of a Lawrason Act mayor. It provides, in part, that:

The mayor shall preside at all meetings of the board of aldermen, and in case there is an equal division, he shall give the deciding vote. He shall have the superintending control of all offices and affairs of the municipality He may require any officer of the municipality to exhibit his accounts or other papers, and to make report to the board of aldermen, in writing, on any matter pertaining to his office. . . .

Honorable Frank Muscarello
OPINION NUMBER 82-613
June 28, 1982
Page -6-

Applying this statute, it is the opinion of this office that the mayor may require a municipal officer to make written reports to the board of aldermen on any matter pertaining to his office. Such reports would include the reporting of mileage by the chief of police.

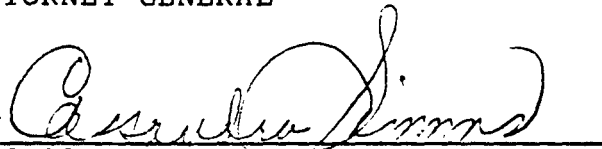
Our office has issued numerous opinions dealing with some of the same issues posed in your opinion request. I have enclosed, for your convenience, some of these opinions hoping that they may be of some assistance to you.

It is hoped that we have been of some assistance to you. If we may be of any further assistance, please feel free to contact us.

Sincerely,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY



CASSANDRA SIMMS
STAFF ATTORNEY

CS:rjl

Enclosures

cc: Chief Jesse Pingno
Chief J. C. Ricks



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

OPINION NUMBER 82-1106

February 4, 1983

KL 2-7-83

Honorable Mildred Bell
Alderman
P. O. Box 215
Robeline, Louisiana 71469

Honorable Odell Jenkins
Alderman
P. O. Box 313
Robeline, Louisiana 71469

Aldermen:

OPINION NUMBER 82-1106
71 Municipalities
77 Officers
LSA-R.S. 33:401; 33:423; 33:404
Duties and powers of officers of
a Lawrason Act municipality.

You requested an opinion from this office concerning municipal officers and their control over municipal property. The Village of Robeline is a Lawrason Act municipality and is therefore governed by the applicable statutes.

Several of your inquiries dealt with the chief's authority over the village car and related matters. LSA-R.S. 33:401 gives the mayor and board of aldermen the power to control all municipal property. It provides, in pertinent part, as follows:

A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. . .

LSA-R.S. 33:423 provides:

The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws.

Honorable Mildred Bell
Honorable Odell Jenkins
OPINION NUMBER 82-1106
February 4, 1983
Page, -2-

He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of R.S. 33:321 through R.S.33:481 which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel. Such nominations or recommendations are to be made irregardless of race, color, or creed.

The chief of police is given the general responsibility for law enforcement in the municipality. His authority to enforce all ordinances and laws also includes the granting of certain inherent powers which are necessary for him to effectively carry out his duties.

In the case of Cogswell v. Town of Logansport, 321 So.2d 774 (La. App. 2nd Cir. 1974), it was said that the general responsibility for law enforcement granted to a chief of police means the power to supervise the operation of the police department and assign its personnel and equipment, subject to the statutory authority exercisable by the mayor and board of aldermen. Therefore, the chief of police has the general responsibility for law enforcement in the municipality, supervisory powers over police property and personnel, and other powers which may be delegated by the local governing authority. The court in Lentini v. City of Kenner, 211 So.2d 311 (La. 1968), said that the chief of police is granted certain inherent powers which gives him the authority to control city police property.

Thus, it is our opinion that the chief of police has inherent authority to control city police vehicles. He has the authority to assign a police department vehicle to himself for police work but such police vehicle may not be used as a personal car by the chief of police unless this personal use has been authorized by the mayor and board of aldermen. However, because of their power to control and manage municipal property, it is also our opinion that the mayor and board of aldermen may specifically request that the village car be used by the chief of police only when he is working or conducting business relative to the municipal police department. In the same vein, in that

Honorable Mildred Bell
Honorable Odell Jenkins
OPINION NUMBER 82-1106
February 4, 1983
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the mayor and board of aldermen are also vested with the care, management and control of the municipality's finances, it appears that they may legally designate where fuel for municipal owned vehicles may be purchased.

You also asked if the governing authority can require the chief of police to log data relative to the use of the municipal vehicle, if they may question the fuel bill and if they may request itemized receipts for bills incurred for municipal purposes. LSA-R.S. 33:404 provides, in part, that:

The mayor shall preside at all meetings of the board of aldermen, and in case there is an equal division, he shall give the deciding vote. . . He may require any officer of the municipality to exhibit his accounts or other papers, and to make report to the board of aldermen, in writing, on any matter pertaining to his office. . .

Applying this statute, it is the opinion of this office that the mayor may require a municipal officer to make written reports to the board of aldermen on any matter pertaining to his office. Such reports would include reporting on the use of a police vehicle and bills incurred by the police department.

In another one of your questions, you asked if the chief of police can legally charge a "ten dollar arrest fee" for each arrest made by his office. In researching this area of the law and those relative to allowable fees for law enforcement officials, I could find no statutes which give a municipal chief of police the authority to impose an "arresting fee" for arrests made by his office.

Your final inquiries concerned the personal use of municipal property and benefits by elected officials. These matters are ethical questions which may be submitted to the Board of Ethics. I suggest that you contact the Board of Ethics for Elected Officials at 7434 Perkins Road, Suite B, Baton Rouge, Louisiana 70808.

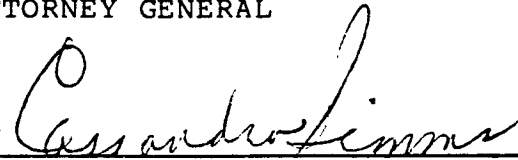
Honorable Mildred Bell
Honorable Odell Jenkins
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February 4, 1983
Page -4-

It is hoped that this opinion has been of some
assistance to you.

Sincerely,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY

A handwritten signature in cursive script, appearing to read "Cassandra Simms", written over a horizontal line.

CASSANDRA SIMMS
ASSISTANT ATTORNEY GENERAL

CS:rjl

Chief of Police has supervisory powers
over police equipment and personnel
subject to mayor and board of aldermen's
statutory authority.

Chief Flynn Kay, New Llano Police
Department, New Llano, LA 71461

YOLANDA R. JOHNSON, STAFF ATTORNEY
5/3/84



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

May 3, 1984

OPINION NUMBER 84-190

Rel. 5-4-84

Chief Flynn Kay
New Llano Police Department
New Llano, Louisiana 71461

Dear Chief Kay:

You requested an opinion from this office concerning
the repair of municipal police property. Specifically you asked:

1. When a police unit is in need of repair
that is deemed critical to the operation of
the police department, who has the authority
to have these vehicles repaired - the chief
of police - the mayor or the elected council
body?

2. On other than normal work hours, such as
week-ends or after midnight and early
morning hours, shouldn't the chief of police
have the authority to have police vehicles
repaired - because most of the other elected
officials except the police dep't. are off
duty or asleep at home.

3. Who should be the main governing
authority on issue of vouchers for repair of
police units? In the past we have had
difficulty obtaining vouchers from the
mayor's office to keep our vehicles on a 24
hour surveillance of the town of New Llano,
La.

LSA-R.S. 33:401 gives the mayor and board of aldermen
the power to control all municipal property. It provides, in
pertinent part:

§ 401. Powers of mayor and aldermen;
ordinances authorized

A. The mayor and board of aldermen of
every municipality shall have the care,

Chief Flynn Kay
OPINION NUMBER 84-190
Page 2
May 3, 1984

management, and control of the municipality and its property and finances. They shall have power...

LSA-R.S. 33:423 provides for the duties of the marshall of a Lawrason Act Municipality. It states:

The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of R.S. 33:321 through R.S. 33:481 which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel. Such nominations or recommendations are to be made irregardless of race, color, or creed.

The Chief of Police has the general responsibility for the operation of police department equipment and personnel. This power is supervisory, and is subject to the statutory authority exercisable by the mayor and board of aldermen. Cogswell v. Town of Logansport, 321 So. 2d 774 (La. App. 2nd Cir., 1974). In Lintini v. City of Kenner, 211 So. 2d 311 (La. 1968), the Court stated that the chief of police has certain inherent powers which gives him the authority to control city police property and assign personnel.

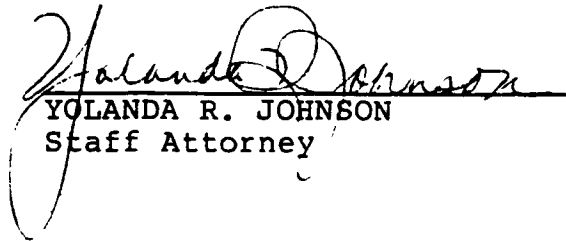
Thus, it is the opinion of this office that the Chief of Police has the inherent authority to control city police vehicles, including the repair and maintenance of these units. However, because of the mayor and board of aldermens' statutory power to control and manage municipal property, they must legally designate and issue the vouchers for repair of these units.

Chief Flynn Kay
OPINION NUMBER 84-190
Page 3
May 3, 1984

If you have any further questions, or need assistance
in the future, please contact us.

Very truly yours,

WILLIAM J. GUSTE, JR.
Attorney General


YOLANDA R. JOHNSON
Staff Attorney

YRJ/vf



RICHARD P. LEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

OPINION NUMBER 93-6

OPINION NO. 93-6

Mr. A. R. "Buddy" Hodgkins, Jr.
Assistant Executive Director
Louisianan Sheriffs' Association
1175 Nicholson Drive
Baton Rouge, LA 70802

107 SHERIFFS

LSA-R.S. 33:1435; R.S. 33:1324

A municipality may contract with the sheriff for law enforcement within municipal boundaries. The law enforcement authority of municipal and parish law enforcement officials is concurrent.

Dear Mr. Hodgkins:

This office is in receipt of your opinion request, which has been assigned to me for research and reply. We quote the issues for our resolution as stated in your letter:

- (1) Can a municipality with a population of 25,000 enter into an agreement with the sheriff for law enforcement purposes within the city limits?
- (2) Does a sheriff have law enforcement authority within the boundary of a municipality?

We answer your first question in the affirmative, and direct your attention to the provisions of LSA-R.S. 33:1324 which provide in pertinent part:

"Any parish, municipality or political subdivision of the state, or any combination thereof, may make agreements between or among themselves to engage jointly in the construction, acquisition or improvement of any public project or improvement, the promotion and maintenance of any undertaking or the exercise of any power, provided that at least one of the participants to the agreement is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking. Such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning:

Mr. A. R. "Buddy" Hodgkins
OPINION NUMBER 93-6
Page -2-

(1) Police, fire and health protection."
LSA-R.S. 33:1324(1); (Emphasis added).

It remains the opinion of this office that a municipality may enter into an intergovernmental agreement for a sheriff to perform law enforcement services within the municipality. We enclose a copy of Attorney General Opinion Number 90-211, in which the author reached a similar conclusion.

In response to your second question, we note LSA-R.S. 33:1435 requires the sheriff to "preserve the peace and apprehend public offenders" within his jurisdiction. The peacekeeping and law enforcement responsibilities of the sheriff are co-extensive with the boundaries of the parish, encompassing the municipality therein. It has been the opinion of this office that while the chief of police is the chief law enforcement official in the municipality, the parish sheriff may exercise concurrent jurisdiction. It has further been the opinion of this office that where a complaint of crime or offense within a municipality is made with the sheriff's office, the sheriff may either exercise concurrent jurisdiction with the city police and handle the complaint or he may refer the complaint to the city police. We adhere to the previous conclusions in Attorney General Opinion Numbers 84-603, 83-161, abnd 84-109, copies of which we enclose for your further reference.

Should you have further inquiries, please contact our office.

Very truly yours,

RICHARD P. IEYOUNG
Attorney General

BY: Kerry L. Kilpatrick
Kerry L. Kilpatrick
Assistant Attorney General

RPI/KLK/0178E

1/12



RICHARD P. LEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

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APRIL 26 1993

OPINION NUMBER 93-283

OPINION NUMBER 93-283

Mr. Malcolm Millet
Chief Criminal Deputy
Acadia Parish Sheriff's Office
Post Office 289
Crowley, Louisiana 70527-0289

71- MUNICIPALITIES - (See all officers -77)
107 -SHERIFFS - Constables & Marshals, including
Ex-Officio Tax Collectors, rights, powers & duties,
in general

LSA-R.S. 33:1326
LSA-R.S. 33:1326(1)
LSA-R.S. 33:404(4)

A sheriff may enter into a contract with the governing authority of a municipality to furnish law enforcement services, when there is an elected chief of police. If the contract requires expenditure of municipal funds, it would require the concurrence of the mayor and board of aldermen, and the mayor would have to sign the contract for the municipality. Under such a contract the sheriff and chief of police would enjoy concurrent jurisdiction within the municipality.

Dear Chief Millet:

You have requested an Attorney General's Opinion on the following three questions:

- (1) "May a Parish Sheriff's Department enter into a contract with a local government, ie., town or village government, to furnish law enforcement activities when there is an elected chief of police and the chief of police concurs in the agreement?
- (2) If it is legal to do so, must the Mayor and Council concur in the agreement or may the elected chief enter into a contract on his own initiative?
- (3) If such a contact is entered into, who would have the ultimate responsibility for the law enforcement operation, the sheriff, the elected chief or the governing body?"

The questions you have asked have been addressed, to some extent, by previous opinions of this office. Your first question has most recently been the subject of our Opinion Number 93-6. Accordingly, in response to your first question, I quote the following from that opinion:

Mr. Malcolm Millet
OPINION NUMBER 93-283
Page - 2 -

"We answer your first question in the affirmative, and direct your attention to the provisions of LSA-R.S. 33:1324 which provide in pertinent part:

'Any parish, or municipality of political subdivision of the state, or any combination thereof, may make arrangements between or among themselves to engage jointly in the construction, acquisition or improvement of any public project, the promotion and maintenance of any undertaking or the exercise of any power, provided that at least one of the participants to the agreement is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking. Such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning:

- (1) 'Police, fire and health protection.'
LSA-R.S. 33:1324(1). (Emphasis added).

It remains the opinion of this office that a municipality may enter into an intergovernmental agreement, for a sheriff to perform law enforcement services within the municipality...."

Your second question concerns who may sign the proposed agreement between the municipality and the sheriff. Under the provisions of LSA-R.S. 33:404(4), the mayor of a Lawrason Act Municipality has the power, duty, and responsibility "to sign all contracts on behalf of the municipality." However, relying on Smith v. Town of Vinton, 209 La. 587, 25 So.2d 237 (1946), in Attorney General's Opinion Number 90-616, this office opined that:

"The Board's legislative powers include control over the municipal fisc, and their express or implicit authorization is required for all public expenditures."

Therefore, it appears that if a Lawrason Act Municipality entered into a contract with the parish sheriff to furnish law enforcement services, and if that contract involved the expenditure of funds belonging to the municipality, both the mayor and the board of aldermen would have to concur in the contract and the mayor would sign it on behalf of the municipality.

You have also asked if such a contract were entered into, who would have the ultimate responsibility for law enforcement within the municipality. This question was addressed in Attorney General's Opinion Number 93-6. (Copy attached). We opined therein as follows:

"The peacekeeping and law enforcement responsibilities of the sheriff are co-extensive with the boundaries of the parish, encompassing the municipality therein. It has been the opinion of this office that while the chief of police is the chief law enforcement official in the municipality, the parish sheriff may exercise concurrent jurisdiction. It has further been the opinion of this office that where a complaint of crime or offense within a municipality is made with the sheriff's office, the sheriff may either exercise concurrent jurisdiction with the city police and handle the complaint or he may refer the complaint to the city police. We adhere to the previous conclusions in Attorney General Opinion Numbers 84-603, 83-161, and 84-109...."

In summary, it is the opinion of this office that a sheriff may enter into a contract with a local government to furnish law enforcement services, when there is an elected chief of police. If the contract requires the expenditure of municipal funds, it would require the concurrence of the mayor and the board of aldermen, and the mayor would have to sign the contract for the municipality. Under such a contract, the sheriff and the chief of police would enjoy concurrent jurisdiction within the municipality.

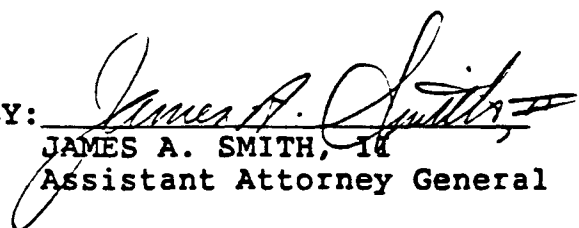
Mr. Malcolm Millet
OPINION NUMBER 93-283
Page - 4 -

I trust that the foregoing adequately answers the questions you have asked. If, however, additional information is needed, please do not hesitate to contact this office.

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY:


JAMES A. SMITH, JR.
Assistant Attorney General

RPI/JAS:pb 2607s



RICHARD P. LEYOUS
ATTORNEY GENERAL

State of Louisiana

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AUGUST 09 1994

OPINION NUMBER 94-384

OPINION NUMBER 94-384

90-A POLITICAL SUBDIVISIONS - Officers,
Agents & Employees
90-A-1 PUBLIC FUNDS & CONTRACTS
90-A 2 PUBLIC FUNDS - Loan, Pledge of
Grants

Mr. Henderson Cook, Jr.
Council Member
Town of Ferriday
212 North Second Street
Ferriday, Louisiana 71334

Town of Ferriday may reimburse its former
Mayor for attorney fees incurred in defense
of criminal charges arising out of his
employment if he is found not guilty.

Dear Mr. Cook:

This office is in receipt of your request for the opinion of this office regarding reimbursement of the attorney's fees incurred by former Mayor Sammy Davis, Jr., in connection with the successful defense of criminal charges arising out of the performance of his duties as Mayor. Specifically, you ask whether the Town of Ferriday may legally reimburse Mr. Davis for the attorney's fees in question.

This office has consistently opined that if a public official or employee is prosecuted for a criminal offense and is found not guilty and the alleged offense arose out of the performance of his official functions, then the public body that employs that person may pay the reasonable attorney's fees and expenses that result from the defense against such charges. Atty. Gen. Op. No. 93-376, 91-474, 89-110.

It appears that the charges brought against former Mayor Davis arose out of action taken by him in the course of performing his official duty. We also note that the hourly rate charged by the Mayor Davis' counsel (in accordance with the statement enclosed with your request) is reasonable, as the hourly rate does not exceed the Maximum Hourly Rates chargeable in accordance with the Maximum Hourly Fee Schedule of this office. As such, if the Town of Ferriday determines that the number of hours spent was reasonable and necessary, and that the costs incurred were reasonable and necessary, it is the opinion of this office that the Town of Ferriday can reimburse Sammy Davis, Jr. for the attorney's fees in question.

I am enclosing herewith a copy of Atty. Gen. Op. No. 94-276, as it is factually related to your request. In spite of our opinion herein regarding reimbursement of the attorneys' fees

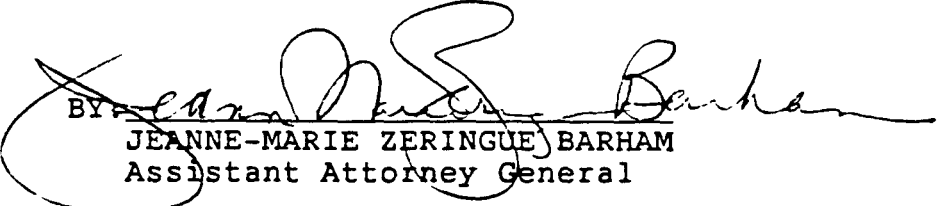
Mr. Henderson Cook, Jr.
OPINION NUMBER 94-384
Page -2-

in question by Mr. Davis' former employer, the Town of Ferriday, it remains the opinion of this office that the State of Louisiana is constitutionally prohibited from reimbursing Mr. Davis for those fees.

Trusting this adequately responds to your request, we remain,

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY 

JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jav
0473n
Enclosure



RICHARD P. JEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

JUN 3 1994

P.O. Box 94005
TEL: (504) 342-7013
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OPINION NUMBER 94-276

OPINION NUMBER 94-276

90-A POLITICAL SUBDIVISIONS - Officers,
Agents & Employees
90-A-2 PUBLIC FUNDS - Loan, Pledge or
Grants
La. Const. Art. VII, 14(A)
R.S. 13:5108.1, 13:5108.2 and 13:5108.3

Senator B. B. "60" Rayburn
Chairman, Joint Legislative
Committee on the Budget
P.O. Box 44294, Capitol Station
Baton Rouge, Louisiana 70804

The expenditure of state funds for the
payment of legal expenses incurred by a
former municipal officer is not permissible
under state law.

Dear Senator Rayburn:

This office is in receipt of your request for an opinion regarding an amendment to the General Appropriation Bill of 1994. The pertinent portion of the amendment, styled Amendment No. 203, provides as follows:

"Payable out of the State General
Fund (Direct) to pay for attorney
fees and expenses for defense for
Sammy Davis, Jr., only if and
when the Attorney General certifies
that this expenditure is permissible
under state law \$129,647"

In accordance with Amendment No. 203, the question presented for our review is whether the State of Louisiana can pay the legal expenses incurred by the former Mayor of the Town of Ferriday in defense of three counts of malfeasance in office. Although Mr. Davis was convicted of one count of malfeasance in office, the Supreme Court ultimately reversed his conviction.

R.S. 13:5108.1, 13:5108.2 and 13:5108.3 provide for the indemnification of state officers and employees, subject to certain criteria, including payment of legal fees for the defense of criminal matters when the defendant is acquitted. However, this office is unaware of any provision of law which would authorize or require the State to provide for the reimbursement of legal expenses incurred by an officer or former officer of a political subdivision, such as the former Mayor of Ferriday.

We must also advise that the State's payment of legal fees incurred by a former municipal officer, as opposed to a state officer, would be subject to constitutional challenge under the provisions of La. Const. Art. VII, Sec. 14(A). As I am sure you are aware, this provision of the Constitution prohibits the state and its political subdivisions from loaning, pledging or donating public funds to any person, public or private.

Senator B.B. "60" Rayburn
OPINION NUMBER 94-276
Page -2-

This provision has been interpreted by the Supreme Court in City of Port Allen v. Louisiana Municipal Risk Agency, 439 So.2d 399 (La. 1983), which held that the Constitution is violated whenever the state or a political subdivision seeks to give up something of value when it is under no obligation to do so.

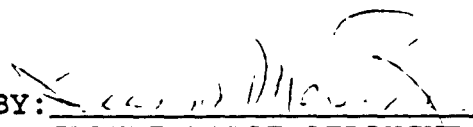
This office is unaware of any substantive provision of law that obligates or authorizes the use of state funds to reimburse legal expenses incurred by an officer or former officer of a political subdivision.

As such, it is the opinion of this office that the expenditure of State funds for the payment of legal expenses incurred by a former municipal officer is not "permissible under state law."

We trust this adequately responds to your request. Please do not hesitate to contact us if we can be of further assistance.

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY: 
JEANNE-MARIE ZERINGUE
Assistant Attorney General

RPI:JMZ:jav
444n



RICHARD P. IEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

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JULY 07 1995

OPINION NUMBER 95-242

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Const. Art. VII, Sec. 14; R.S. 13:5108.2; R.S. 13:5108.3

Mr. Joe L. Herring, Secretary
Department of Wildlife and Fisheries
P. O. Box 98000
Baton Rouge, Louisiana 70898-9000

Since public employee was exonerated of one of two allegations under investigation by the Ethics Commission, and the Ethics Commission declined to investigate the other allegation and closed its file, Department of Wildlife and Fisheries would not be prohibited from reimbursing employee's legal fees.

Dear Mr. Herring:

Reference is made to your request for an Attorney General's opinion regarding the propriety of the reimbursement by the Department of Wildlife and Fisheries (DWF) of an employee's attorney fees incurred by the employee in connection with a recent Ethics Commission probe involving the employment of the employee's son. Apparently, the Ethics Commission considered two separate alleged violations: (1) the employment of the son in a division (administered by the employee in question) of DWF, and (2) the employment of the son by Louisiana State University ("LSU") in a program administered by DWF.

You have provided us with a copy of a letter from the Ethics Commission (the "Letter") which indicates that the Ethics Commission, with regard to the son's employment by DWF, "believes [the] employment . . . was prohibited under Section 119 [sic] of the Code. . . ." We also note, however, that the Ethics Commission "declined to investigate the matter further." With regard to the son's employment by LSU, the Ethics Commission concluded that "no evidence was discovered indicating a violation of the Code." The Letter further indicates that the Ethics Commission's file in connection with these matters "has now been closed."

R.S. 13:5108.2 provides for the indemnification of state officers and employees for financial loss arising out of "any claim, demand, suit or judgment in any court" where the officer or employee was "acting in the discharge of his duties and within the scope of his office, employment. . . ." In accordance with R.S. 13:5108.3, the legal fees of such officers or employees, incurred in the defense of criminal matters, can only be paid from public funds if the officer or employee is acquitted or the proceedings are dismissed, and the payment is authorized by a specific act of the legislature. These provisions of law do not specifically address the reimbursement of legal fees incurred by state officers or employees in connection with Ethics Commission proceedings.

Nevertheless, this office has opined that if a public official or employee is exonerated of all allegations under investigation by the Ethics Commission, then the public entity which employs that individual may reimburse its employee for legal expenses incurred in connection with the investigation. Atty. Gen. Op. Nos. 94-369 and 94-369A.

Mr. Joe L. Herring
OPINION NUMBER 95-242
Page -2-

Although your employee was exonerated of one, but not "all" allegations, the Ethics Commission's decision to decline to fully investigate the first allegation and close its file in connection therewith, is equivalent to a dismissal of the proceedings in a criminal matter. As such, we are of the opinion that the Department would not, based on the action taken by the Commission, be prohibited from reimbursing its employee for the legal fees he incurred.

We caution you, however, that it appears that your employee and his son were both before the Ethics Commission, and that they were both represented by the same attorney. Unless you can determine with certainty the amount of legal fees incurred on behalf of your employee, as opposed to those incurred for the benefit of his son, you should not reimburse any of the legal fees expended in this matter. DWF has no obligation or authority to reimburse legal expenses paid in connection with the representation of your employee's son. La. Const. Art. VII, Sec. 14.

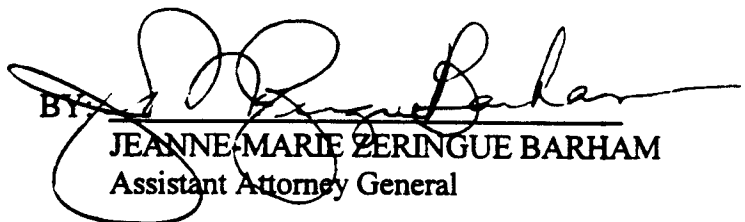
If you decide to reimburse your employee, and you can determine the amount of attorneys fees incurred strictly on behalf of your employee, then you must also determine: (1) that the hourly rate charged by the employee's counsel was reasonable (enclosed herewith is a copy of the Attorney General's Maximum Hourly Fee Schedule which may assist you in making this determination), (2) that the number of hours spent by counsel were reasonable and necessary, and (3) that any costs incurred by counsel were reasonable and necessary.

Your request indicates that it is your belief that this office would have to approve an itemized statement for any attorney fees you decide to reimburse. Please be advised that it would be inappropriate for you to submit such a statement to this office for approval. Although this office must approve the employment of counsel retained to represent the state and its agencies, it is beyond the purview of this office to review or approve statements for legal services incurred on behalf of individual employees.

Trusting the foregoing to be of assistance, we remain,

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY 
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jv



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

DECEMBER 04 1995

OPINION NUMBER 95-492

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

90-A POLITICAL SUBDIVISIONS - Officers, Agents & Employees 90-A-1 PUBLIC FUNDS & CONTRACTS

Fire Protection District may reimburse fire chief for legal expenses incurred in connection with a *quo warranto* proceeding which results in a final judgment in favor of the Chief.

Hon. Tom Greene, DVM
State Senator, District 17
P.O. Box 338
Maringouin, Louisiana 70757

Dear Senator Greene:

Reference is made to your recent request for an opinion of this office regarding attorney's fees incurred by Fire Chief Carl Smith in connection with a *quo warranto* proceeding brought against him by Mr. Homer Jones and the Town of Fordoche. We are advised that the *quo warranto* challenged Chief Smith's right to the office of Chief, but the trial court upheld Chief Smith's right to office. The court did, however, deny Chief Smith's request for attorney's fees. Subsequently, Chief Smith requested that the Fire District which employs him reimburse him for his attorney's fees.

Specifically, we are asked to opine upon the legality of the reimbursement of the attorney's fees by Fire Protection District No. 4 (the "District"), the public body that employs Chief Smith. For purposes of responding to your request, we assume that the judgment of the trial court is now final and unappealable.

This office has consistently opined that if a public official or employee is prosecuted for a criminal offense and is found not guilty, and the alleged offense arose out of the performance of his official functions, then the public body which employs that person may pay the reasonable attorney's fees and expenses that result from the defense against such charges. Atty. Gen. Ops. Nos. 94-384, 93-376, 91-474, 89-110.

Applying that reasoning, it is the opinion of this office that the District may reimburse the legal expenses incurred by the Chief in connection with the *quo warranto* proceedings, since the final judgment of the court determined that the Chief was entitled to the office of Chief.

If the District decides that it does want to reimburse the Chief for his legal expenses in connection with the *quo warranto* proceeding (the District can choose not to reimburse the Chief), then it must also determine: (1) that the hourly rate charged by the Chief's counsel was reasonable (enclosed herewith is a copy of the Attorney General's Maximum Hourly Fee Schedule which may assist the District in making such a determination), (2) that the number of hours spent by counsel were reasonable and necessary, and (3) that any costs incurred by counsel were reasonable and necessary.

Senator Tom Greene, DVM
OPINION NUMBER 95-492
Page -2-

We trust the foregoing to be responsive to your request. Please do not hesitate to contact us if we can be of assistance in other areas of the law.

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY: 
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jv
op.95-492



RICHARD P. IEYOUNG
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge
70804-9005

January 30, 1992

TO: ALL INTERESTED PERSONS
FROM: RICHARD P. IEYOUNG
RE: MAXIMUM HOURLY FEE SCHEDULE

This is to advise all interested persons that the approved Maximum Hourly Fee Schedule of this office for professional legal services shall be as follows:

\$150.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF TEN YEARS OR MORE IN THE PRACTICE OF LAW
\$135.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF FIVE YEARS OR MORE IN THE PRACTICE OF LAW
\$120.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF THREE TO FIVE YEARS IN THE PRACTICE OF LAW
\$100.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF LESS THAN THREE YEARS IN THE PRACTICE OF LAW
\$ 45.00	PER HOUR FOR PARALEGAL SERVICES
\$ 25.00	PER HOUR FOR LAW CLERK SERVICES.

RPI/JEY/MSH/jv
2578m



RICHARD P. IEYOUB
ATTORNEY GENERAL

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NOVEMBER 12 1997
OPINION NUMBER 97-428

71 MUNICIPALITIES
90-A-1 PUBLIC FUNDS & CONTRACTS
90 POLICE JURIES - Powers and functions

ART. VII, §14(A); R.S. 33:621 & 33:1334(Z), (3) & (6)

Municipalities have the authority to install culverts in drainage ditches for a public purpose and in the public's interest, as distinguished from a purely private purpose. Although a project may indirectly benefit a private landowner, it would not be prohibited solely on this basis, provided there is a public purpose for the work.

Honorable Lucas Denais
Mayor, Town of Youngsville
P.O. Box 592
305 Iberia Street
Youngsville, LA 70592

Dear Mayor Denais:

This responds to your request for an opinion pertaining to the propriety of the Town of Youngsville installing culverts in a drainage ditch on private property where the Town believes the improvements to be in the public interest, as set forth in Ordinance No. 213 of September 11, 1997.

While no explicit statement was made as to how the improvements would be in the public interest, we will assume that the proposed work would relieve drainage problems within the Town of Youngsville, as well as on the private landowner's property.

The most authoritative statement of law which applies to this area is found in Art. VII, §14(A) of the Louisiana Constitution of 1974, which prohibits the use of funds, credit or property of public entities from being used for a purely private purpose. The constitutional provision states as follows:

Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Therefore, funds, credit or property of the Town of Youngsville may be used only for a public purpose and in the public interest, not for a purely private purpose. Although a project may indirectly benefit a private landowner, it would not be prohibited on this basis, provided there is a public purpose for the work.

Prior opinions of this office have allowed the use of public funds insofar as it is necessary to insure efficient drainage through the installation of culverts at the proper elevation and grade, and then only when in the public interest, that is, when such would be necessary for the " . . . welfare of the city . . . ". See La. R.S. 33:621 and 33:1324(2), (3) and (6). Under this circumstance, the Town could furnish the labor necessary to installation of the culverts, but not the gravel, culverts and other materials customarily furnished by private landowners. Of course, if a major project contemplating work for a drainage system serving all residents in the area was at issue, our answer might be different.

However, as we understand the current situation, the work under consideration is for a single landowner who is abutted by landowners on both sides who have paid the costs for the installation of culverts across their property.

This office has consistently held that a public entity would have no legal authority to furnish labor or materials for construction work or development which primarily benefits purely private interests, as distinguished from a public purpose in the public interest. Therefore, if the Mayor and Board of Aldermen have correctly made the public purpose determination, the use of public funds and resources would be authorized.

Our conclusions stated above would be different if the works are not for a public purpose to benefit the public interest, but for a purely private interest. Each factual situation must be reviewed on its own merits to determine whether a public purpose truly exists. See Opinions of Attorney General 74-1350; 76-1026; 77-307; 77-392; 77-1394; 78-425; 88-375; 93-396; etc.

We hope that this information is of benefit to you and if we may be of further help, please call upon us at any time.

Very truly yours,

RICHARD P. IEYOUB
Attorney General

By:


GARY L. KEYSER
Assistant Attorney General

RPI/GLK:bb



RICHARD P. LEYOUNG
ATTORNEY GENERAL

State of Louisiana
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DECEMBER 22 1997

OPINION NUMBER 97-484

Mr. Denny Vicknair
Chief of Police
Town of Lutchter
P.O. Box 456
Lutchter, LA 70071

60- Law Officers - Authority and Jurisdiction
LSA-R.S. 33:404
LSA-R.S. 33:404(1)
LSA-R.S. 33:404(4) and (9)
LSA-R.S. 33:423

The chief of police in a Lawrason Act municipality is the chief law enforcement officer of the municipality and his authority extends to the limits of the municipality and to all offenses. His authority may not be superseded or limited by the sheriff.

Dear Chief Vicknair:

You have asked for an opinion from this office regarding the right of the Mayor and Board of Alderman of the Town of Lutchter, a Lawrason Act municipality, to contract with the parish sheriff to provide law enforcement services to the Town and, in furtherance of that concept, to either cut the budget of the Chief of Police and divert those funds to the sheriff's contract or expand the budget of the Chief of Police and divert certain of those funds to the sheriff.

La. R.S. 33:404, which outlines the authority of the mayor and La. R.S. 33:423, which addresses the authority of an elected chief of police, must be read together. The mayor does not have the authority, under La. R.S. 33:404(1) to supervise and direct the administration and operation of a police department with an elected chief of police. He does, however, have the authority to set the budget for the department and to exercise "any other power or perform any other duty as may be necessary or proper for the administration of municipal affairs not denied by law". La. R.S. 33:404(4) and (9). Therefore, the chief of police is not subject to the supervision and control of the Mayor and has control of the department budget, once set. In the case of *John Doyle, Jr., Chief of Police for the City of Harahan v. City of Harahan and the Honorable Carlo R. Ferrara, Mayor of the City of Harahan*, 610 So.2d 272 (La. App. 5 Cir. 1992), the court held "that once the mayor and aldermen have budgeted and appropriated money for the police department, the authority to allocate the expenditure of these funds rests with the elected chief of police."

La. R.S. 33:423 grants the chief of police the authority to enforce all ordinances and all state laws within the municipal jurisdiction. This grant of authority carries with it certain inherent powers which are necessary for him to effectively carry

out his duties. See, *Cogswell v. Town of Logansport*, 321 So.2d 774 (La. App. 2 Cir. 1974); Attorney General Opinion No. 86-589. There is no language in the statutes of the state that limit the authority of the chief of police as the chief law enforcement officer of the municipality, so the mayor and aldermen may not, by budgetary maneuvers, preempt the authority of the chief of police in favor of another law enforcement agency in the parish. Article 5, Section 27 of the 1974 Constitution establishes the office of sheriff and provides that the sheriff shall be "the chief law enforcement officer in the parish." This Article, read in conjunction with the Lawrason Act, makes it clear that any authority vested in municipal officials is retained by those officials and, as a result, the status of the sheriff as chief law enforcement officer of the parish is modified by the inherent powers of the chief of police of the Lawrason Act municipality. As the chief law enforcement officer of the town, the authority of the chief of police is at least equal to that of the sheriff. Consequently, the sheriff may not limit the authority or responsibility of the chief of police to enforce town ordinances and state laws within the boundaries of the municipality.

To answer the specific questions presented, the mayor does have the authority to contract with the sheriff for law enforcement services without the cooperation of the chief of police under the provisions of La. R.S. 33:404(9), cited above. This must be read in conjunction with the powers of the chief of police. If there is existing municipal law enforcement capable of performing adequate law enforcement for the town then the mayor and aldermen must fund it within their ability to do so. They cannot refuse to fund the chief of police in order to reserve those funds for a contract with the sheriff. If no adequate law enforcement exists in the town then the mayor and aldermen have a duty to the people to do all they can within the law to provide those services, which could, conceivably, include a contract with the sheriff. The chief of police has primary responsibility for law enforcement within the municipality and that cannot be usurped by the sheriff.

In answer to your second question, cutting a portion of the budget of the chief of police to fund a contract with the sheriff is similar to the situation above. However, in this case, it is clear that the town has the funds to allow the chief of police to operate so there is no legal justification for bringing the sheriff in to share in the law enforcement duties.

Finally, as to funding the chief of police but requiring that a portion of his budget be used to fund a contract with the sheriff, this would not be permissible since the mayor and aldermen have no authority to supervise or direct the operations of the chief of police. Once the budget is allocated, the chief of police controls the funds subject, however, to the requirement that the expenditure of those

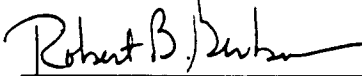
Mr. Denny Vicknair
OPINION NUMBER 97-484
Page -3-

funds only be made pursuant to or in accordance with specific appropriation authorized by a municipal ordinance enacted by the board of aldermen.

We hope this is responsive to your request, however should you have any questions or comments please contact the undersigned at your convenience.

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

By: 

ROBERT B. BARBOR
Assistant Attorney General

RPI:RBB:glb



RICHARD P. IEYOUB
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February 2, 1999

OPINION 98-483

Honorable Warren C. Pourciau
Mayor
P. O. Box 307
Livonia, LA 70755

77 MUNICIPALITIES
77-A OFFICERS-Local & Municipal
LSA-R.S. 33:404.1

The board of aldermen may not reduce the compensation of that individual appointed to fill a vacancy in the elected position of chief of police during the elected term, but may by ordinance reduce the compensation of the newly elected chief of police, if such action is taken prior to the beginning of the new term.

Dear Mayor Pourciau:

You advise that the Town of Livonia is a Lawrason Act municipality with an elected chief of police. You further advise that an appointed chief of police currently discharges the responsibilities of the office filling the vacancy created by the retirement of the former chief of police. A special election was called, and a new chief of police will soon occupy the office.

Your questions concerning compensation of this elected official are governed by LSA-R.S. 33:404.1, which states:

The board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers. The board of aldermen may by ordinance increase or decrease their compensation and the compensation of any non-elected municipal officer and may increase the compensation of other elected officials. However, the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected. (Emphasis added).

Accordingly, you may not reduce the compensation of the individual appointed to fill the vacancy. He serves as chief of police for the remainder of the elected term contemplated by R.S. 33:404.1, notwithstanding the fact that his actual tenure is shorter than a regular term. The prohibition against reduction in compensation protects those who occupy this elected office; the appointment of an individual to fill the position on an interim basis does not change the protection and benefits afforded one who occupies this elected position.

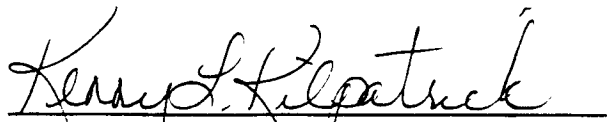
However, you may by ordinance reduce the compensation of the newly elected chief of police, if such action is taken prior to the beginning of the new term.

Honorable Warren C. Pourciau
OPINION 98-483
Page 2

Should you have other questions, please contact this office.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: 
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams



RICHARD P. LEYOUNG
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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JULY 29 1999

OPINION 99-190

77 - Officers - Local & Municipal

An ordinance which prohibits "unauthorized personal use" of Town vehicles, requires documentation of out of town use, and restricts use to and from work would be valid except in those instances where the Chief of Police authorizes use to and from work for those officers on call status.

Mayor Maurice A. Brown
Town of White Castle
P.O. Box 488
White Castle, LA 70788

Dear Mayor Brown:

This office is in receipt of your request for an opinion of the Attorney General in regard to a town ordinance restricting use of Town vehicles in order to limit the Town's liability. However, there is a concern whether the provision interferes with the powers of the elected Chief of Police.

The ordinance, Use of Town's Vehicles, provides as follows:

I The Town's vehicles shall not be driven outside the corporate limits of the Town except for the following instances:

- 1) When specifically involved in business for the Town, which use shall require the documentation of the event giving the date, time, place and purpose, which document shall be submitted in a monthly report by the department head to the Mayor and council;
- 2) When assistance is requested beyond the Town's corporate limits by other governmental agencies or department requiring the use of Town vehicles;
- 3) When engaged in "hot pursuit" of traffic violators or of felons or persons who have committed misdemeanors.

II The use of the Town's vehicle as a mode of transportation to and from work outside the Town's Corporate Limits does not constitute official Town business.

III Only Town employees, its elected officials, and volunteers with the police and/or fire department/ first responders, emergency medical technicians and/or persons

who are arrested and/or persons in need of police protection or escorting shall be allowed in the Town's vehicles.

IV The Town's vehicles shall not be used as a mode of transportation to and from work except for the Chief of Police, the Assistant Chief of Police, the Town's manager and the Maintenance Supervisor.

As noted by your town's attorney, this office has rendered several opinions in regard to the legality of restrictions being placed upon use of police vehicles by the governing authority through adoption of ordinances to regulate use of all town vehicles. In Atty. Gen. Op. No. 97-558 this office was requested to render an opinion regarding the legality of a Town ordinance that was similar to the ordinance in question, and the necessity of the elected Chief of Police to obey the ordinance. That ordinance required vehicles be marked for its departmental assignment, prohibited the use of town vehicles for personal use or being taken out of the Town limits except on official business, and prohibited passengers in any vehicle except for official business. Additionally, trip tickets were required to be turned over to the Town clerk on a daily basis, and all vehicles were to be stored in the designated fenced area unless an individual lived within the Town limits and was on call.

In that opinion this office recognized the inherent power of the chief of police to control city police property which includes assigning a police department vehicle to himself, but that such vehicle could not be used as a personal car unless this personal use has been authorized by the mayor and board of aldermen in accordance with Lentini v. City of Kenner, 211 So. 2d 311 (La. 1968), and further found that the general responsibility for law enforcement granted to a chief of police means the power to supervise the operation of the police department and assign its personnel and equipment, subject to the statutory authority exercisable by the mayor and the board of aldermen under Cogswell v. Town of Logansport, 321 So. 2d 774 (LaApp 1975). Based upon this jurisprudence it was then concluded, "Because Ordinance 312 prohibits only the unauthorized personal use of these vehicles, it is our opinion that the ordinance does not infringe on the chief of police's inherent powers."

That opinion further found the requirement of daily trip tickets valid insofar as the mayor may require any officer of the municipality to exhibit his accounts, and make reports to the board of aldermen in writing on matters pertaining to his office, "including the readings of an odometer of police vehicles, an accounting of trips made in the police vehicle and the purpose of such trips."

Mayor Maurice A. Brown
OPINION 99-190
Page 3

This office has repeatedly observed that the chief of police has the authority to control police department vehicles and assign a vehicle to himself, but such vehicle may not be used as a personal car unless this personal use has been authorized by the mayor and board of aldermen because of their power to control and manage municipal property. Atty. Gen. Op. Nos. 98-245, 96-475, 96-292.

Accordingly, we would conclude that the ordinance in question would be valid insofar as it prohibits "unauthorized personal use" of the Town vehicles, and documentation of out of town vehicle use. Moreover, insofar as the ordinance restricts the use of the Town's vehicles as a mode of transportation to and from work except for the Chief of Police and Assistant Chief of Police, this could only be an infringement upon the Chief of Police's authority in the event there are other members of the police force who would be on call and are authorized by the Chief of Police to travel to and from work in an assigned police vehicle to accommodate their on call status. However, if these individuals are not on call, the use of the police vehicle going to and from work would be personal use which may be restricted by the governing authority.

We hope this sufficiently answers your inquiry, but if we can be of further assistance, do not hesitate to contact us.

Sincerely yours,

RICHARD P. IEYOUB
Attorney General

By: Barbara B. Rutledge
BARBARA B. RUTLEDGE
Assistant Attorney General

BBR



RICHARD P. LEVOUB
ATTORNEY GENERAL

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JAN 11 2000

OPINION 99-406

Town of Sibley
Larry Merritt, Mayor
P.O. Box 128
Sibley, LA 71073

Dear Mr. Merritt:

OPINION 99-406
77 OFFICERS – LOCAL & MUNICIPAL
LA R.S. 33:423
Determining where to spend funds allocated to the police department of a Lawrason Act Municipality for the maintenance and repair of municipal police vehicles is an "inherent power" of the chief of police.

This office has received your opinion request of November 8, 1999, in which you present the following issue for our review:

Is the Town Council of a Lawrason Act Town able to specify where the town-owned police vehicle is taken for maintenance?

The powers of a police chief are reserved by LA R.S. 33:423, which states in part:

The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement of all ordinances within the municipality and all applicable state laws.
LA R.S. 33:423

In Cogswell v. Town of Logansport, 321 So.2d 774, 778 (La. App. 2d Cir. 1975), the court held that the powers and duties of the police chief of a Lawrason Act municipality are not expressly defined by statute or by jurisprudence. These powers, often referred to as 'inherent powers,' are those which are necessary for the police chief to carry out his duties. LA Att'y Gen. Op. 87-682.

"Because of the nature of his office, . . . he is the chief law enforcement officer of the City and, as such, has supervision of the police department." Lentini v. City of Kenner, 211 So.2d 311, 312 (La. 1968). "The chief of police is the only official authorized to make decisions concerning disbursement of municipal funds allocated to the police department. LA Att'y Gen. Op. 98-469. See also Doyle v. City of Harahan, 610 So.2d 272 (La. App. 5th Cir. 1992), LA Att'y Gen. Op. 98-438, 95-275, 95-135, 94-538, 94-313, 93-666, 87-682, 86-589.

Larry Merritt
Opinion 99-406
Page 2

"[I]t is an established principle that the mayor and aldermen may not revoke the 'inherent powers' of an elected chief of police of a Lawrason Act municipality." Cogswell v. Town on Logansport, 321 So.2d at 778. Absent the failure of the chief to comply with formal municipal purchasing procedures in making the "purchase," the refusal to pay an expenditure validly incurred by the chief constitutes an infringement upon the chief's inherent powers. LA Att'y Gen. Op. 98-469.

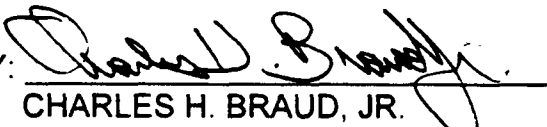
In LA Att'y Gen. Op. 84-190, this office held that even though police vehicles are municipal property, the chief of police has the inherent authority to control municipal police vehicles, including their repair and maintenance. However, because of the mayor's and the board of aldermen's statutory power to control and manage municipal property, they must legally designate and issue vouchers for the repair of the police vehicles. LA Att'y Gen. Op. 84-190.

In a previous opinion, this office held that, in a Lawrason Act community, neither the mayor nor the board of aldermen could designate where the police chief may spend police funds. LA Att'y Gen. Op. 83-257.

Therefore, it is the opinion of this office that having the mayor or board of aldermen designate where the police chief may obtain necessary maintenance on municipal police vehicles is an infringement on the police chief's inherent powers.

Should you have any further questions, please contact this office.

Very truly yours,
RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY: 
CHARLES H. BRAUD, JR.
ASSISTANT ATTORNEY GENERAL

RPI:CMF, III/mjb



RICHARD P. LEYBOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

January 19, 2001

OPINION 01-07

Honorable Harry Brown
Chief of Police
City of Port Allen
750 North Jefferson Avenue
Port Allen, LA 70767

77 Officers – Local & Municipal

In the City of Port Allen, the newly elected chief of police may not hire or appoint an individual to serve as assistant chief of police without the approval of the mayor and board of aldermen.

Dear Chief Brown:

You advise this office that you are the newly elected Chief of Police for the City of Port Allen. You ask whether or not you have the authority to appoint a current police department employee to the position of Assistant Chief of Police.

The City of Port Allen is a Lawrason Act municipality, governed by the provisions of R.S. 33:321, et seq. The duties of an elected chief of police are set forth in R.S. 33:423, providing:

§ 423. Duties of marshal

A. The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of this Part, R.S. 33:321 et seq., which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel, for the promotions of officers, to effect disciplinary action, and for dismissal of police personnel. Such nominations or recommendations are to be made regardless of race, color, disability, as defined in R.S. 51:2232(11), or creed.

B. The provisions of Subsection A of this Section shall not be construed to limit or restrict the provisions of R. S. 33:423.3. (Emphasis added).

Of further import is R.S. 33:362(A)(3) which pertinently provides:

(3) Subject to law, including R.S. 33:423.3, and applicable civil service rules and regulations, the board of aldermen shall, by ordinance, provide policies and procedures regulating the employment of municipal employees including the hiring and firing of such employees.

On many occasions this office has addressed the issue here under consideration. It remains the opinion of this office that a chief of police can only make recommendations to the mayor and board of aldermen for the hiring or appointment of police department personnel. The chief of police does not have the unilateral authority to hire and fire police personnel, based on the legal authority cited below.

In Thibodeaux vs. Hernandez, 702 So.2d 1157 (La. App. 3rd Cir. 1997), the court recognized that "except in a few isolated instances, the Lawrason Act does not explicitly grant elected Chiefs of Police the authority to hire or fire personnel." 702 So.2d at page 1158. Similarly, in Manual vs. Town of Mamou, 704 So.2d 358 (La. App. 3rd Cir. 1997), the court stated that "the elected chief of police may not appoint his own personnel", but rather must proceed according to the dictates of R.S. 33:423(A) cited above. 704 So.2d at page 360. In accord with these decisions are Attorney General Opinions 00-366, 98-460, and 88-532.

Specifically, with respect to an assistant chief of police, this office has determined that a newly elected chief of police may not replace an assistant chief of police with someone of his own choosing, as that power is reserved to the mayor and board of aldermen. See Attorney General Opinion 77-1501. Further, in Attorney General Opinion 88-532, this office concluded:

Accordingly, the Board of Aldermen for the Town of Baldwin may, by ordinance, create the position of Assistant Chief of Police and it may entertain the recommendation of the chief of police for personnel to fill that position. Since the police chief has no authority to hire and fire police personnel, it is the Board of Aldermen who ultimately must appoint the assistant to the chief of police. Further, the Board of Aldermen is not bound to accept the recommendation of the Chief of Police for the Assistant Chief's position. (Emphasis added).

See also attached Attorney General Opinion 78-1290, stating that the hiring of an assistant chief of police and the retention of the former chief of police on the payroll by the newly elected chief of police were ultra vires acts, considered null and void, because both were done without the approval of the mayor and board of aldermen.

While the mayor and the board of aldermen have final hiring authority, they may only hire as police personnel, including an assistant chief of police, those persons who have been recommended by the chief of police. In Lee vs. Grimmer, (La App. 1st Cir. 2000)

WL 1871713, the court noted "the legislature's use of the word 'shall' in LSA R.S. 33:423 either makes the chief of police's recommendation a pre-requisite to action by the mayor and board of aldermen or it does not; we believe that it does make a recommendation a pre-requisite." In accord with this decision are Attorney General Opinions 98-241, 98-460, and 82-613, copies attached.

In response to your specific questions contained in your correspondence, note first that the former chief of police had no authority to either create or abolish the position of assistant chief of police, and his attempt to do so had no effect. Thus, the mayor and board of aldermen may review and approve your recommendation for assistant chief of police as they are empowered by statute to hire police department personnel. We do not think it necessary for the board to adopt an ordinance specifically creating the position unless all positions allotted the police department by previous ordinance are already filled. Of course, any appointment or employment by the mayor and board of aldermen is subject to budgetary limitations.

Reviewing the legislative history of R.S. 33:423, the court in Lee vs. Grimmer, *supra*, noted:

By these various amendments, it is obvious to this court that the legislature intended to further limit the power that the mayor and board of aldermen had with respect to the hiring and firing of employees of the police department. Accordingly, we view the legislature's use of the word "shall" in LSA R.S. 33:423 as mandating a recommendation by the chief of police as a pre-requisite to action by the mayor and board of aldermen with respect to the termination of police personnel.

While we recognize that, as argued by the mayor and Board, the requirement of the chief of police's involvement in such actions may lead to difficulty in some situations where the administration and the chief of police are at odds concerning such matters, one cannot ignore the clear language of the statute. Any change in the statutory requirement is for the legislature to address, not the courts. (Emphasis added).

As we have already noted, although the mayor and board of aldermen are not bound to accept your first recommendation, neither may they proceed to hire outside your recommendation. Hopefully, you and the mayor and board of aldermen can work together to avoid a scenario where each recommendation made by you is rejected.

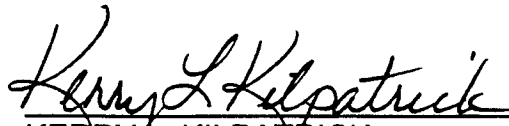
In other municipalities similar to the City of Port Allen, the result to the questions raised herein would be quite different, as the power to hire has been legislatively allocated to the Chief of Police. See R.S. 33:423.2 (City of Harahan); R.S. 33:423.3 (City of Gretna); R.S. 33:423.4 (City of Ville Platte); R.S. 33:423.5 (City of Scott); R.S. 33:423.6 (City of Westwego); R.S. 33:423.7 (City of Patterson); R.S. 33:423.8 (City of Gonzales);

Honorable Harry Brown
OPINION 01-07
Page 4

R.S. 33:423.9 (City of Crowley); and R.S. 33:423.10 (Village of Tickfaw). However, no such exemption currently exists for the City of Port Allen.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: 
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams

State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
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ROGER P. ...
ATTORNEY GENERAL

OCT 24 2000

OPINION NUMBER 00-366

Mr. Timmy Duhon
Chief of Police
Carencro City Police
Post Office Drawer 10
Carencro, Louisiana 70520

77 OFFICERS - LOCAL & MUNICIPAL
La R.S. 33:423
La R.S. 33:404.1

Chief of Police of Carencro cannot promote and increase salaries of his employees without the approval of the council.

Dear Chief Duhon:

We received your request for an opinion regarding the promotion of employees within your department. After reviewing your request and discussing the matter with you, it is our understanding that you specifically question your authority to promote and increase the salaries of your employees without the approval of the council. We understand from you that the funds for the proposed salary increases are within your current budget.

Carencro is a Lawrason Act municipality with an elected Chief of Police. Pursuant to La. R.S. 33:423, the Police Chief has the general responsibility of law enforcement in the given municipality. This statute also provides that the Police Chief is to make recommendations to the Mayor and Board of Aldermen for the appointment of police personnel, for the promotion of officers, for disciplinary action, and for the dismissal of police personnel. The Louisiana Supreme Court has in fact recognized that the Chief of Police of a Lawrason Act municipality is the chief law enforcement officer of the municipality and, as such, has the inherent power of supervision over the police department. *Lentini v. City of Kenner, 211 So.2d, 311 (La. 1968)*. Our office has recognized this principle in numerous opinions. See Attorney General Opinions 00-96, 00-113, 99-406, and 99-27. As noted in these prior opinions, the actual appointment and dismissal power of police personnel in a Lawrason Act municipality is vested in the Mayor and Board of Aldermen. However, this power is contingent upon the recommendation of the Chief of Police. All employees of the police department are included in the term "police personnel". See Attorney General Opinion 99-48.

Thus, as set forth in the statute and opinions noted above, the Chief of Police in a Lawrason Act municipality must make a recommendation to the Mayor and Board of Aldermen for the promotion of police personnel. The Mayor and Board of Aldermen have the power to promote police personnel, subject, of course, to your recommendation. Therefore, neither the Board of Aldermen nor the Chief of Police may act unilaterally to promote police personnel.

With regard to increasing the salaries of your employees, please note that because the Mayor and Board of Aldermen are empowered to hire all municipal employees, including police personnel, they have the authority to compensate police personnel contingent, of course, on your recommendation. See Attorney General Opinion 00-113. As such, it is our opinion that you may not unilaterally increase the salaries of your employees. You may recommend the salary increases to the Mayor and Board of Alderman who, by ordinance, actually effectuate the salary increases.

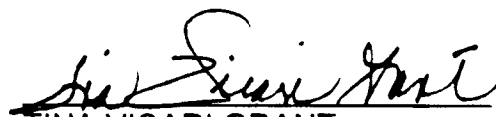
You also questioned if you could increase your salary with existing funds in your budget for salaries without the approval of the council. La. R.S. 33:404.1 provides that your compensation, as a municipal officer, **is fixed by the Board of Alderman by ordinance**. Thus, it is our opinion that only the Board of Aldermen has the authority to increase your salary by ordinance. You cannot do so on your own.

We trust that this adequately responds to your request. If you have any questions or comments, please do not hesitate to contact our office.

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:


TINA VICARI GRANT
Assistant Attorney General

RPI:TVG:ctt



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

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January 6, 1999

OPINION 98-460

Honorable Vern A. Breland
Chief of Police
P. O. Box 1204
Sterlington, LA 71280

60 Law Officers
71 Municipalities
Addresses general questions of authority concerning an elected chief of police and his municipal governing authority, where all are covered by the provisions of the Lawrason Act.

Dear Chief Breland:

You are the elected chief of police of the Town of Sterlington, which is governed by the provisions of the Lawrason Act, LSA-R.S. 33:321, et seq. You have presented several questions to us for resolution concerning the powers and duties statutorily granted to one holding your official position. We respond to your questions in chronological order.

Question One

Under the Lawrason Act, R.S. 33:321, et seq., does the Board of Alderman have the authority to tell an elected chief of police who he can hire or fire?

Our response to your first question requires application of LSA-R.S. 33:423 defining the duties of an elected chief of police, which pertinently provides:

".....In those municipalities governed by the provisions of (the Lawrason Act) which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel, for the promotion of officers, to effect disciplinary action, and for dismissal of police personnel....."

There is now jurisprudence interpreting the foregoing statute which specifically answers your first question. In the case of Thibodeaux vs. Hernandez, 702 So.2d 1157 (La. App. 3rd Cir. 1997), the court resolved the power struggle between the board of aldermen and an elected chief of police concerning hiring and firing of police employees as follows:

"....we conclude that the Aldermen and Mayor lacked the authority to unilaterally terminate (a police officer) over the objection of the elected chief of police....." See Thibodeaux, supra, at page 1159.

The court further cited with approval the following language from an opinion issued by this office:

"The ultimate decision concerning any layoffs of police personnel due to budgetary constraints rests with the board of aldermen. However, the discipline or dismissal of a police employee by the board of aldermen is contingent upon the recommendation made by the chief of police." (Emphasis added); see Thibodeaux, *supra*, at page 1159 and Attorney General Opinion 93-405.

Additional language from Thibodeaux, at page 1159, directs that "R.S. 33:423 vests and common sense dictates in elected chiefs of police a stake in the hiring and firing of police officers." We adopt the determination of the court, as we are required to do, and answer your first question as follows: your recommendation is required in order for the board of aldermen to hire or fire police personnel. Otherwise, the board of aldermen could "...make such critical personnel decisions without the chief of police's input or concurrence" in contradiction to the directives of the court in Thibodeaux. Thibodeaux, at page 1159.

Question Two

If the Board of Alderman has not enacted an ordinance that provides for Policies and Procedures regulating the employment of municipal employees, including the hiring and firing, who has the authority to do such hiring or firing, the Board of Alderman or the elected chief of police?

LSA-R.S. 33:362(A)(1) and (3) empowers the board of aldermen to provide by ordinance policies and procedures "regulating the employment of municipal employees including the hiring and firing of such employees" but as the court noted in Thibodeaux, the statute "fails to mention police officers". See Thibodeaux, at page 1159. Nonetheless, we infer from R.S. 33:423 that the board of aldermen retain appointment and dismissal authority over police personnel despite the fact that no formal procedures manual may have been adopted. The court has instructed that an elected chief of police's "input or concurrence" is mandatory concerning such "critical personnel decisions". See Thibodeaux, at pages 1158 and 1159. Again, as in the instance of dismissal of police personnel, the hiring of police personnel is contingent upon your recommendation as chief of police.

Question Three

Do the employees of the police department of an elected chief of police fall under the authority of the elected chief of police or the mayor and

board of alderman under Lawrason Act R.S. 33:404? I need clarification as to whether an elected chief is responsible for all aspects of his department from the hiring and firing to the daily running of his department and what role the board of alderman play in this aspect.

This office has rendered numerous opinions holding that an elected chief of police has control over the administration of his department in a Lawrason Act municipality. The chief of police is the final authority in the day-to-day operation of his office and equipment. The governing authority cannot revoke or impair the inherent powers of an elected chief of police, which powers have been defined "as the power to supervise the operation of the police department and assign its personnel and control its equipment." See Opinions 98-204, 97-393, 95-135. Again, note that the board of aldermen hire and fire police personnel, subject to your mandatory recommendation.

Question Four

Does the Board of Alderman set the qualifications for the police department employees or does the elected chief of police?

While the chief of police may adopt a policy and procedure manual with respect to qualifications of potential police employees, the Board of Alderman is not bound by these criteria. Again, the ultimate authority to hire and fire rests with the Board and the chief of police cannot, by way of internal policy, disrupt or impair that authority. See Attorney General Opinion 98-204.

Question Five

Can an outgoing chief of police and Board of Alderman enter into a contract for training services which will continue into another chief of police's term and affecting his budget? If so, can the contract be legally broken by the newly elected chief once his term begins?

We refrain from directly responding to this question regarding the legality of a contract with which we are unfamiliar. However, please refer to Attorney General Opinion 98-438, attached, in which we concluded that a contract involving the expenditure of municipal funds requires the approval of both the mayor and the board of aldermen. This factor would, in our opinion, be determinative of whether the new administration must continue to abide by the contract, absent any other illegality.

Question Six

Does the Lawrason Act pertain the same to an elected chief of police as to an appointed chief of police?

Yes, the provisions of the Lawrason Act are equally applicable to either an appointed or an elected chief of police. An appointed chief of police enjoys the same powers as an elected chief. See Attorney General Opinion 83-11. A notable difference is that an elected chief of police may only be involuntarily removed from office through the recall election process. See Attorney General Opinion 83-523.

Question Seven

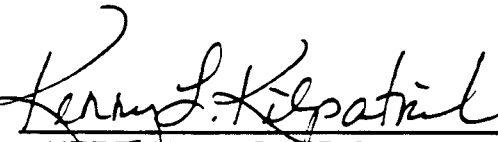
Can the Board of Alderman set an elected chief of police's work hours or is this under the direct control of the elected chief of police?

The chief of police, as an elected official, is not required to establish specific working hours, but serves on a full-time basis. See Attorney General Opinion 97-431.

We hope the foregoing is helpful to you. Should you require further assistance, please contact this office.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: 
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams

Citation	Search Result	Rank 1 of 1	Database
La. Atty. Gen. Op. No.			LA-AG
La. Atty. Gen. Op. No. 88-532			
(Cite as: 1989 WL 454029 (La.A.G.))			

Office of the Attorney General
State of Louisiana

*1 Opinion No. 88-532
February 14, 1989

71 Municipalities
77 Officers

La.R.S. 33:381; 33:423; 33:362

Board of Aldermen of a Lawrason Act municipality may, by ordinance, create the position of Assistant Chief of Police. The Chief of Police has no authority to hire police department personnel.

Thomas C. Senette, Esquire
Assistant District Attorney
Courthouse Building
Franklin, LA 70538

Dear Mr. Senette:

You have requested an opinion from this office on behalf of the Town of Baldwin, a Lawrason Act municipality, for which you serve as City Attorney.

You have asked whether the Board of Aldermen, by ordinance, may require the Chief of Police to appoint an Assistant Chief of Police?

The Town of Baldwin is governed by a Mayor and Board of Aldermen. It is known as a Lawrason Act municipality. La.R.S. 33:321 et seq. Its Chief of Police is elected.

Revised statute 33:381 sets forth the required municipal officers for every Lawrason Act municipality. It states:

"A. The officers of every municipality shall be a mayor, aldermen, a chief of police, a tax collector, a clerk, and a street commissioner."

We view this statute as one which establishes the essential officers that a municipality must provide. It does not limit the other non-essential municipal officers that a municipality may provide.

The legislative powers of a municipality are statutorily vested in and exercised by its board of aldermen. La.R.S. 33:362. The mayor serves as the chief executive officer of the municipality. id. One of powers vested in the Board of Aldermen is the ability to enact ordinances. La.R.S. 33:362 (2)b.

An elected chief of police is charged with law enforcement in the

La. Atty. Gen. Op. No.

•(Cite as: 1989 WL 454029, *1 (La.A.G.))

municipality, but can only make recommendations to the mayor and board of aldermen for the appointment of police personnel. La.R.S. 33:423. In other words, the chief of police does not have authority to hire and fire police personnel.

Accordingly, the Board of Aldermen for the Town of Baldwin may, by ordinance, create the position of Assistant Chief of Police and it may entertain the recommendation of the chief of police for personnel to fill that position.

Since the police chief has no authority to hire and fire police personnel, it is the Board of Aldermen who ultimately must appoint the assistant to the chief of police. Further, the Board of Aldermen is not bound to accept the recommendation of the Chief of Police for the Assistant Chief's position.

You have also requested an opinion regarding the legality of the Chief of Police creating a position of juvenile officer and appointing his secretary to fill that position.

As stated in your request, the Chief of Police employed a secretary after approval by the Board of Aldermen. He then created the position of juvenile officer within the police department and hired his secretary as the juvenile officer.

The actions of the Chief of Police in appointing his secretary to the position of juvenile officer without the prior approval of the Board of Aldermen is in violation of La.R.S. 33:423.

*2 It is, therefore, our opinion that the position of juvenile officer must be vacated so that it may be properly appointed by the Board of Aldermen if they so desire. Accordingly, the secretary hired with the approval of the Board of Aldermen is still a secretary because that is the only position in the police department for which she has been lawfully appointed.

Very truly yours,

William J. Guste, Jr.
Attorney General

By: Henry A. Barham, III
Assistant Attorney General

La. Atty. Gen. Op. No. 88-532, 1989 WL 454029 (La.A.G.)
END OF DOCUMENT

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

November 8, 1977

OPINION NO. 77-1501

77-Officers-Local & municipal selecti
Qualifications & tenure; vacancies

R.S. 33:401 (31) R.S. 33:2218

R.S. 33:402 (4)

Mr. Terry J. Galland
Chief of Police
Village of Plaquemine
Route 1, Box 5-B
Plaquemine, Louisiana 71362

Newly elected Chief of Police of
Lawson Act municipality may not re-
place assistant police chief with some-
one of his own choosing. This power is
reserved to the mayor and board of
aldermen.

Dear Mr. Galland:

Your letter to the Secretary of State requesting an
opinion relative to the powers of a Lawson Act municipality
police chief has been transferred to this office for reply.

As we understand your request, you have two
questions.

- 1.) Does the elected chief of police
have the power to replace the
assistant chief of police with
someone of his own choosing?
- 2.) Must the chief of police certify
the warrant entitling municipal
police employees to state supple-
mental pay?

R.S. 33:401 (31) states the mayor and board of alder-
men shall have the power to provide for the removal of officers
and discharge of employees for misconduct or neglect of duty,
subject to any applicable civil service law. R.S. 33:402 (4)
states the mayor and alderman shall also have the power:

"to establish, regulate and support
night watch and police and define
the duties thereof, subject to any
applicable civil service law. How-
ever, in those municipalities governed

Mr. Jerry J. Galland
November 8, 1977
OPINION NO. 77-1501
• Page Two

by the provisions of R.S. 33:321 through R.S. 33:481, which have a chief of police elected by a majority of the qualified voters thereof, appointments of police personnel shall be made only upon the recommendation of the chief of police. Such nominations or recommendations are to be made irregardless of race, color or creed."

Upon reviewing the above two provisions, this office is of the opinion the chief of police may not replace the assistant police chief. This power is retained by the mayor and board of aldermen under R.S. 33:401 (31). R.S. 33:402 (4) simply says the mayor and board of aldermen may not hire any police personnel except upon recommendation of the chief of police. R.S. 33:402 (4) does not give the chief of police the power to discharge anyone. However, the issue of discharging a police employee seems to be treated differently from the matter of suspension. I am enclosing a copy of Opinion No. 77-1428 of this office concerning this issue.

Secondly, you state you refused to certify a document entitling the assistant police chief to \$200 per month state supplemental pay but that this document was mailed anyway without your certification.

In your request you state the assistant police chief has held this position for seven years. Under R.S. 33:2218.2 this man is entitled to \$200 per month state supplemental pay. R.S. 33:2218.4 states this pay is disbursed upon warrants drawn by the mayor and forwarded to the Director of the State Department of Public Safety. The director then delivers the checks to the individuals.

The chief of police cannot interfere with the payment of this state supplemental compensation. The warrant for payment is drawn by the mayor, not the chief of police.

If we can be of further assistance, please contact us.

Sincerely,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY:


TOMMY D. TEAGUE
STAFF ATTORNEY

TDT/dyj

Enclosure



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

October 11, 1978

OPINION NO. 78-1290

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112

Mr. Raymond L. Cannon
Attorney and Counselor
At Law
1100 West Craig Street
P. O. Box 1108
Tallulah, Louisiana 71282

77-OFFICERS

A newly elected Chief of Police in a municipality covered by the Lawrason Act may not replace the Assistant Chief of Police without the approval of the Mayor and Board of Aldermen.
Op. Atty. Gen. No. 74-668.

Dear Mr. Cannon:

This letter is in response to your request on behalf of the Mayor and Board of Aldermen of the City of Tallulah as to the authority of a newly elected Chief of Police to replace the Assistant Chief with someone of his own choosing while allowing the former Chief of Police to remain on the force.

In answering your request, I must refer to a previous opinion of this office, Op. Atty. Gen. No. 74-668, in which a similar question was addressed. That opinion dealt with an Assistant Chief of Police who was fired by the Chief of Police without the approval of the Mayor and Board of Aldermen. In pertinent part, that opinion states:

"Construing together R.S. 33:401 A, Paragraph (31), and R.S. 33:404, it is our opinion that the discharge of a validly appointed employee of the municipality can be effected only by the mayor and board of aldermen convened and acting as the governing authority, and not by the Chief of Police."

In your letter to this office you state that the hiring of the current Assistant Chief of Police and the retention of the former Chief of Police in another capacity, were both done without the approval of the Mayor and Board of Aldermen. This being the case, both actions are ultra vires acts and, therefore, null and void.

Mr. Raymond L. Cannon
October 11, 1978
Opinion No. 78-1290
Page Two

In order to fully clarify the issue, I have attached a copy of Opinion No. 74-668 which fully explains the proper application of the law in this regard.

I trust that this adequately answers your inquiry. If there is need for further clarification, do not hesitate to call on us.

Very truly yours,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY: Henry P. Julien, Jr.
HENRY P. JULIEN, JR.
Assistant Attorney General

HPJ/cac

Encl.

10/11/78



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

OPINION NUMBER 82-613

June 28, 1982

Rel. 7/12/82

OPINION NUMBER 82-613

71 Municipalities

77 Officers

LSA-R.S. 33:381, 33:381.1, 33:386, 33:401
33:404, 33:423, Art. VI, §12 of the La.
Const. of 1974

Duties and powers of officers of a
Lawrason Act Municipality.

Honorable Frank Muscarello
Chief of Police
Post Office Box F
Tickfaw, Louisiana 70466

Dear Mr. Muscarello:

You recently requested an opinion from this office concerning the duties and powers of certain elected officials of a Lawrason Act municipality.

Your questions were:

1. Can the Board of Aldermen employ a clerk or any town employee without consent of the Mayor?
2. Can a Mayor dismiss a town employee for good reason?
3. Can the Board of Aldermen employ auxillary police without recommendation of the Chief of Police?
4. Can the Board of Aldermen employ his brother to work for the City if his brother is dismissed for a period of twelve (12) days?
5. Can the Board of Aldermen set hours for an elected Chief of Police?
6. Can the Board of Aldermen cut an elected Chief of Police's salary?
7. If the Chief of Police has two (2) cars, can the Board of Aldermen sell one of them?

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8. Can the Mayor and the Board of Aldermen make an elected Chief of Police log his mileage, etc.?
9. Can the Chief appoint an assistant chief if not full-time?

Most of your inquiries dealt with the hiring and firing of non-elected municipal officials. More specifically, the thrust of the inquiries were centered around the delegation of the authority to hire and fire municipal officials and which municipal officials possess this delegated authority.

The Village of Tickfaw is a Lawrason Act municipality and is therefore governed by the applicable statutes. The pertinent statutes dealing with the authority to hire and fire municipal officials are LSA-R.S. 33:401, 33:386 and 33:423. LSA-R.S. 33:401, provides, in pertinent part, that:

A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. They shall have power:

(30) To provide for municipal officers other than those required by this Part who may be found necessary; to prescribe, the duties and fix the compensation of all officers and employees, subject to any applicable civil service law; and to require bonds with sureties for the performance of duties from all officers and employees.

(31) To provide for the removal of officers and discharge of employees for misconduct or neglect of duty, subject to any applicable civil service law.

LSA-R.S. 33:386 provides, in part, as follows:

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At the first regular meeting of the board of aldermen succeeding each regular municipal election, the mayor, subject to confirmation by the board of aldermen, shall appoint a clerk, tax collector, and all other necessary officers whose election is not provided for in R.S. 33:381. In the event of a vacancy, the mayor, subject to confirmation by the board of aldermen, shall appoint a successor to any such office. (Emphasis added.)

LSA-R.S. 33:423 provides:

"The marshall shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of R.S. 33:321 through R.S. 33:481 which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel. Such nominations or recommendations are to be made irregardless of race, color, or creed." (Emphasis added)

In accordance with the statutes quoted above, it is the opinion of this office that the power to hire and fire municipal employees is vested in the mayor and board of aldermen. In the first regular meeting of the board of aldermen succeeding each regular municipal election, the mayor, subject to confirmation by the board of aldermen, shall appoint a clerk, tax collector, and all other necessary non-elected municipal officers. Although the power to hire municipal officers is vested in the mayor and board of aldermen, they may only appoint or hire, as police personnel, those persons who have been recommended by the chief of police. In other words, the mayor

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and board of aldermen's general power to hire police personnel is subject to the recommendations of the chief of police. However, generally speaking, the power to hire and fire all non-elected municipal officers is vested in the mayor and board of aldermen.

One of your questions asked if the board of aldermen can set the working hours for an elected chief of police. LSA-R.S. 33:381 provides, in part, that:

A. The officers of every municipality shall be a mayor, aldermen, a chief of police, a tax collector, a clerk, and a street commissioner.

LSA-R.S. 33:381.1 continues by stating in part:

The marshal who is the chief of police in such municipalities shall be elected at large . . .

It has been the opinion of this office that the chief of police is an elected official on full-time duty, and that as an elected official, he can not be relegated to an inferior position of an employee. Thus, as an elected official and not an employee, the chief of police is not required to keep a time sheet, record and file the number of hours worked at the municipal hall nor can his working hours be set by the board of aldermen.

You also asked if the board of aldermen can reduce an elected chief of police's salary. Article VI, Section 12 of the Louisiana Constitution of 1974 provides:

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local

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governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected. (Emphasis added.)

Thus, applying the above-quoted constitutional article, it is our opinion that the municipal board of aldermen can not reduce the compensation of an elected chief of police during the term for which he is elected.

There was another inquiry concerning the board of aldermen's control over municipal police property. Specifically you asked if the board of aldermen could sell one of the two cars assigned to the police department. LSA-R.S. 33:401 gives the mayor and board of aldermen the power to control all municipal property. It provides, in pertinent part, as follows:

A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. . .

Therefore, because of their power to control and manage municipal property, it is our opinion that the mayor and board of aldermen can sell one of the two cars assigned to the police department.

In your final inquiry, you asked if the mayor and board of aldermen can require an elected chief of police to log his mileage. LSA-R.S. 33:404 delineates the duties and powers of a Lawrason Act mayor. It provides, in part, that:

The mayor shall preside at all meetings of the board of aldermen, and in case there is an equal division, he shall give the deciding vote. He shall have the superintending control of all offices and affairs of the municipality He may require any officer of the municipality to exhibit his accounts or other papers, and to make report to the board of aldermen, in writing, on any matter pertaining to his office. . . .

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Applying this statute, it is the opinion of this office that the mayor may require a municipal officer to make written reports to the board of aldermen on any matter pertaining to his office. Such reports would include the reporting of mileage by the chief of police.

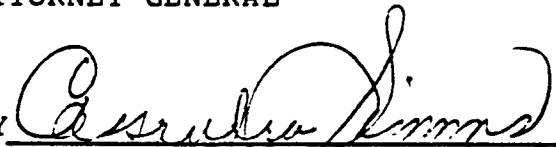
Our office has issued numerous opinions dealing with some of the same issues posed in your opinion request. I have enclosed, for your convenience, some of these opinions hoping that they may be of some assistance to you.

It is hoped that we have been of some assistance to you. If we may be of any further assistance, please feel free to contact us.

Sincerely,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY



CASSANDRA SIMMS
STAFF ATTORNEY

CS:rjl

Enclosures

cc: Chief Jesse Pingno
Chief J. C. Ricks



RICHARD P. LEYBOUR
ATTORNEY GENERAL

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September 7, 2001

OPINION NUMBER 01-94

Honorable Robert R. "Bobby" Faucheux, Jr.
Louisiana House of Representatives, District 57
P. O. Box 367
Gramercy, Louisiana 70052

Opinion Number 01-94

90-A-1 Public Funds & Contracts

Discussion of issues in connection with Town of
Gramercy's reimbursement of attorney's fees incurred
by aldermen and mayor

Dear Representative Faucheux:

This office is in receipt of your opinion request regarding the propriety of the Town of Gramercy's reimbursement of attorney's fees incurred by its Mayor and members of its Board of Aldermen, in connection with legal proceedings initiated by the Aldermen against the Mayor.

According to your correspondence, the Aldermen filed a petition for a restraining order and injunction against the Mayor, seeking to prohibit the Mayor from executing contracts that bind the Town of Gramercy before the Board of Aldermen approve the contracts. Subsequently, the Mayor hired counsel and filed an exception and answer and reconventional demand. Thereafter, the Aldermen filed an exception and answer to the Mayor's reconventional demand. As we understand your letter, judgment was rendered in favor of the Aldermen against the Mayor in connection with the Aldermen's petition, and the Mayor's exceptions and reconventional demand were dismissed.

You have requested that this office examine whether the Town of Gramercy can reimburse the fees incurred by the Aldermen, or by the Mayor, in connection with these legal proceedings, specifically with regard to: (1) the petition filed by the Aldermen and the hearing thereon, (2) the Exception and Answer filed by the Mayor, (3) the reconventional demand filed by the Mayor, and (4) the exception and answer to reconventional demand filed by the Aldermen.

R.S. 13:5108.1, et seq. provides for the indemnification of state officers and employees for financial loss arising out of claims, demands, suits or judgments where the officer or employee was "acting in the discharge of his duties and within the scope of his employment...". However, neither R.S. 13:5108.1, et seq., nor any other provision of state law of which we are aware, provides for the indemnification of the officers and/or employees of municipalities or other political subdivisions.

Nevertheless, this office has consistently opined that if a public official or employee is sued for civil damages and is found not liable and the allegations arose out of the performance of his official functions, then the public body that employs that person may, but does not have to, pay the reasonable attorneys fees and expenses that result from the defense against the suit. Attorney General's Opinions Nos. 97-248, 96-398, 96-210, 96-95, 85-822. See also: Atty. Gen. Op. 89-401, which determined that a public official acting beyond the course and scope of his duties is not entitled to attorneys fees for the defense of civil or criminal actions brought against him. It is the opinion of this office that public funds can be utilized to pay or reimburse the legal fees of a public official or employee who is or was the target of civil claim, as long as the allegations arose out of the performance of, as well as within the course and scope of, the official functions and duties of the public official or employee.

With regard to reimbursement of the Aldermen's attorney's fees, we note that the litigation in question was instituted by, not against, the Aldermen. Although as originally filed, the pleadings are styled in the individual aldermen's names, an amendment indicates that the litigation was filed by the plaintiffs in their capacities as Aldermen for the Town of Gramercy. The suit appears to have been filed not to provide relief to the Aldermen individually, but to enforce the authority granted to the Board of Aldermen by law to approve contracts before they are executed by the Mayor, similar in nature to a quo warranto proceeding. Additionally, we are advised that the District Attorney recommended filing of the suit, and that counsel to the Board of Aldermen represented the Aldermen in the proceedings.

This office is not a finder of fact, and it would be beyond the purview of this office to determine whether the proceedings filed by the Aldermen were filed personally, or in their official capacities. However, it is our advice that if it is properly determined that the Aldermen filed the proceedings against the Mayor in their individual capacities, then all fees incurred by the Aldermen in connection with the petition, the hearing thereon, and the answer thereto must be borne by the Aldermen personally, and are not reimbursable by the Town of Gramercy. On the other hand, if the Aldermen filed the proceedings in question in their official capacities, then the Town could reimburse the expenses incurred by the Aldermen in connection therewith.

An examination of the reconventional demand filed against the Aldermen by the Mayor indicates that the allegations contained therein primarily allege misconduct in office by the individual Aldermen. Specifically, the Mayor alleges that each Alderman engaged in acts of "misfeasance, malfeasance and nonfeasance" in office. As such, although this office is not a finder of fact, it appears that the allegations arise out of the performance of the Aldermen's official functions.

You have advised that the Aldermen were successful in their defense of the reconventional demand, and that all charges filed against them by the Mayor were dismissed. As such, if the allegations made by the plaintiff arose out of the performance of, as well as within the course and scope of, the official functions and duties of the Aldermen, it is our opinion that the Town of Gramercy may (but does not have to) reimburse the Aldermen for the attorneys fees they incurred in their defense of the reconventional demand.

As to the fees incurred by the Mayor in connection with his defense of the action filed against him and his reconventional demand, it is beyond the purview of this office to determine whether his actions giving rise to the litigation, or actions taken in the litigation were taken personally, or in the Mayor's official capacity on behalf of the Town. Pleadings filed in the Mayor's individual capacity, and the attorney's fees incurred in connection therewith would not be reimbursable by the Town. However, if it is properly determined that the Mayor's actions which gave rise to the Aldermen's petition were taken in his official capacity, the attorney's fees incurred in connection with his defense of the petition could be (but are not required to be) reimbursed by the town. Similarly, if the reconventional demand was filed in his official capacity and on behalf of the Town, then the Town could (but does not have to) reimburse the Mayor for the expenses he incurred in connection therewith.

Since the Aldermen were represented by the same attorney in connection with their petition as well as the reconventional demand filed against them, care should be taken to determine which portions of their attorney's fees, if any, are reimbursable. Similarly, since the Mayor was represented by the same attorney in connection with his answer and exception and reconventional demand, care should be taken to determine which portions of his attorney's fees, if any, are reimbursable.

The Town has no obligation or authority to reimburse expenses or attorney fees incurred by the Aldermen or the Mayor individually, and the Town's reimbursement of the individual or personal legal fees incurred by the Aldermen or the Mayor would be a violation of La. Const. Art. VII, Sec. 14. In accord: Attorney General's Opinion No. 95-242. Of course, as to any proceedings determined filed by either the Aldermen or the Mayor in their official capacities and for the benefit of the Town, this issue should not pose a problem.

If the Town does decide to reimburse all or a portion of the legal expenses incurred by the Aldermen or the Mayor, the Town will also have to determine that: (1) the hourly rate charged by the Aldermen's counsel was reasonable, (2) the number of hours spent by counsel was reasonable and necessary, and (3) any costs incurred by counsel were reasonable and necessary. Attorney General's Opinions Nos. 97-248, 95-492, 95-242, and 94-384.

We trust the foregoing to be of assistance. Please do not hesitate to contact us if we can be of help in other areas of the law.

Yours very truly,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

By:


JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI/JMZB/jv



RICHARD P. IEYOUS
ATTORNEY GENERAL

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January 28, 2002
OPINION 02-0005

Honorable Gloria Anderson
Mayor
P. O. Box 45
Sicily Island, LA 71368

90-A-1 Public Funds
R.S. 13:5108.1, et seq.
Discussion of proper reimbursement of attorneys' fees and expenses by
municipality on behalf of Village aldermen.

Dear Mayor Anderson:

You advise this office that you are the elected mayor of the Village of Sicily Island, a Lawrason Act municipality. Your question concerns the legality of the use of public funds for the payment of attorneys' fees for all parties to the lawsuit referenced in your recent letter to this office.

Specifically, the dispute arose among the members of the Sicily Island Board of Aldermen and concerned the legality of the appointment of an interim mayor to fill a vacancy created in that office by virtue of the former mayor's recall. Indeed, this office issued a legal opinion to the governing authority of the Village of Sicily Island concerning the issue on January 26, 2001. See Attorney General Opinion 01-36, copy attached.

On January 31, 2001, Mr. Tim Ford, an alderman of the Village of Sicily Island, filed suit against Ms. Emma Hilliard and Ms. Excelena Williams, the other two aldermen of the Village, alleging that these aldermen had held clandestine meetings in violation of the Open Meetings Law, in order to illegally select an interim mayor. An answer and reconventional demand was filed by the defendants. The trial court granted plaintiff's request for a temporary restraining order which was overturned by the appellate court. The Village Board of Aldermen thereafter named an interim mayor. The Village then filed a new petition for intervention, seeking judgment against Tim Ford for the attorneys' fees of the Village.

The matter has yet to proceed to trial on the merits. However, all parties to the lawsuit have agreed to a settlement of the issues, and now seek reimbursement from the Village for payment of attorneys' fees.

R.S. 13:5108.1, et seq., provides for the indemnification of state officers and employees for financial loss arising out of claims, demands, suits or judgments where the officer or employee was "acting in the discharge of his duties and within the scope of his

employment. . .". However, R.S. 13:5108.1, et seq., does not provide for the indemnification of the officers and employees of municipalities or other political subdivisions.

Despite the foregoing, this office has consistently determined that if a public official or employee is sued for civil damages and is found not liable and the allegations arose out of the performance of his official functions, then the public body that employs that person may pay the reasonable attorneys' fees and expenses that result from the defense against the suit. Attorney General Opinions Nos. 97-248, 96-398, 96-210, 96-95, 85-822. However, "public funds may be utilized to pay the legal expenses incurred by public officials and employees in connection with civil suits brought against *them if and only after the defense of the litigation is successful* and if the allegations arose out of the performance of the official functions of the public officer or employee...". See Attorney General Opinion 97-491.

Note further that the Village of Sicily Island has no obligation or authority to reimburse expenses or attorneys' fees incurred by the aldermen individually, and such reimbursement would be considered a violation of the constitutional prohibition against the donation of public funds. See LSA Const. Art. VII, Section 14 (1974). However, Village funds may be utilized to reimburse attorneys' fees and expenses for those proceedings filed by the aldermen in their official capacities and for the benefit of the Village.

It is beyond the authority of this office to determine whether these actions were filed against or on behalf of the aldermen personally, (for which there should be no reimbursement) or against aldermen in their official capacities alleging malfeasance or misconduct in office. In the later scenario mentioned, the official would have to be exonerated of these allegations by final judgment in order for reimbursement to be proper. However, as mentioned above, Village funds may be used to reimburse those legal fees and expenses incurred by the aldermen where the action is brought for the benefit of the Village, notwithstanding the fact that the matter is resolved by settlement .

Thus, it is the opinion of this office that the Village, specifically, the Board of Aldermen, must carefully review the proceedings and make the necessary factual determinations. We have issued a similar conclusion in Attorney General Opinion 01-94, a copy of which we attach for your further review.

If the Village should decide to reimburse any or all of the legal expenses incurred by the parties, note that the Village will have to determine that (1) the hourly rate charged by legal counsel was reasonable, (2) the number of hours spend by legal counsel was reasonable and necessary, and (3) any costs incurred by legal counsel were reasonable and necessary. See Attorney General Opinions 01-94, supra, and 97-428, 95-492, 95-242, and 94-384.

Mayor Gloria Anderson
OPINION 02-5
Page 3

Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams



RICHARD P. IEYOUNG
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January 26, 2001
OPINION 01-36

Honorable Emma Hillard
Mayor Pro Tem/Alderman
P. O. Box 45
Sicily Island, LA 71368

35 ELECTIONS
77 OFFICERS
R.S. 18:602(A) and (D)

Responsive to questions concerning appointment of interim mayor to fill vacancy created in office of mayor by virtue of his recall.

Dear Mayor Pro Tem Hillard:

You have advised us that you serve as one of three aldermen for the village of Sicily Island, a Lawrason Act municipality. You also advise that you serve as Mayor Pro Tem, and that a special meeting has been called to appoint an interim mayor to the vacancy created by the recall of the former mayor.

In response to your first question, a mayor pro tempore retains his right to vote as an alderman. See Attorney General Opinions 93-669 and 93-398A, copies attached.

Our response to your first question obviates the necessity for a response to your second and third questions.

In response to your fourth question, the procedures governing the appointment are stated in the Election Code at R.S. 18:602(A) and (D), providing:

§ 602. Vacancies in certain local and municipal offices; exceptions

A. When a vacancy occurs in the office of a member of a parish or municipal governing authority or a combination thereof, a mayor, or any other local or municipal office, except an office covered by Subsections B and C hereof and except the office of judge, state legislator, or marshal of a city or municipal court, and the office is filled by election wholly within the boundaries of a local governmental subdivision where the vacancy occurs shall, within ten days, appoint a person to fill the vacancy who meets the qualifications of the office. The presiding officer of the governing authority shall not be required to vote on such an appointment to be made by the governing authority of a local governmental subdivision unless a tie vote occurs thereon, in which case he shall vote to break the tie; however, in no case shall the presiding officer vote more than once on the appointment.

* * * * *

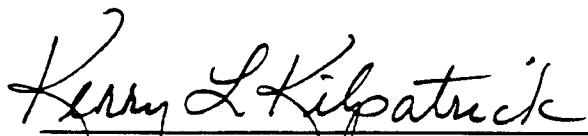
D. If a vacancy is not filled within the time specified in Subsections A, B, or C herein, the governor shall fill the vacancy.

As the statute reflects, the mayor pro tempore is not required to vote as the presiding officer unless a tie vote occurs. In that circumstance, he shall vote as the presiding officer to break the tie, but in no case shall he vote more than once, as presiding officer, on the appointment.

In response to your fifth question, there is no prohibition in the Election Code preventing a person designated interim appointee in the office of mayor from becoming a candidate at the special election called to fill the office for the remainder of the term. See Attorney General Opinion 80-91, copy attached.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY: 
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams



RICHARD P. LEYOUS
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NOVEMBER 16 1993

OPINION NUMBER 93-669

Atty.Gen. Op. Nos. 93-398A & 93-698

Honorable O. V. Hall
Alderman/Mayor Pro Tempore
Village of Powhatan
Post Office Box 4043
Powhatan, Louisiana 71066

Dear Mrs. Hall:

Based on the October 16th election results, the governing authority of the Village of Powhatan shall proceed to make an appointment to fill the vacancy in the office of alderman, within ten days of the vacancy. (LSA-R.S. 18:602(A)). If the mayor is recalled at the November 13th election (see Opinion No. 93-698), the mayor pro tempore will not assume the mayor's vacancy, but act in the absence of the mayor. Additionally, the mayor pro tempore retains his right to vote to appoint a qualified person to fill the vacancy in the office of mayor. (See Op. No. 93-398 A). The governing authority shall issue a proclamation, within ten days of the vacancy, or vacancies (if applicable), calling a special election on October 1, 1994 (primary) and November 8, 1994 (general).

Our office is in receipt of your request for an Attorney General's opinion regarding the legal responsibilities and duties of the governing authority for the Village of Powhatan. We will reiterate the facts from your letter of September 1, 1993. The Mayor of the Village of Powhatan and an alderman are on the October 16th ballot for the question of recall. If the mayor and alderman are recalled, you have the following questions:

1. Will the mayor pro tempore assume the mayor's vacancy?
2. Will two aldermen be appointed to fill vacancies, or will the council appoint a mayor and an alderman?
3. Will the governing body have to issue a proclamation ordering a special election to fill the vacancies within ten days?

The Village of Powhatan is a Lawrason Act municipality. (LSA-R.S. 33:321 et seq.) Under the provisions of the Lawrason Act, R.S. 33:385, the law provides for a vacancy in the office of alderman to be filled pursuant to R.S. 18:602. Section 602 states, in pertinent part:

A. When a vacancy occurs in the office of a member of a parish or municipal governing authority or a combination thereof, a mayor,

or any other local or municipal office, ... and the office is filled by election wholly within the boundaries of a local governmental subdivision, the governing authority of the local governmental subdivision where the vacancy occurs shall, within ten days, appoint a person to fill the vacancy who meets the qualifications of the office. The presiding officer of the governing authority shall not be required to vote on such an appointment to be made by the governing authority of a local governmental subdivision unless a tie vote occurs thereon, in which case he shall vote to break the tie; however, in no case shall the presiding officer vote more than once on the appointment.

* * *

D. If a vacancy is not filled within the time specified in Subsections A, B, or C herein, the governor shall fill the vacancy.

E.(1)(a) If the unexpired term of an office covered by Subsection A, B, or C above is one year or less, the person appointed to fill the vacancy or designated to assume the duties of the office shall serve for the remainder of the unexpired term.

(2)(a) If the unexpired term exceeds one year, the governing authority of the local governmental subdivision in which the vacancy occurs, ... within ten days after the vacancy occurs, shall issue a proclamation ordering a special election to fill the vacancy and shall specify in the proclamation, in accordance with R.S. 18:402, the dates on which the primary and general elections shall be held. In selecting the dates for such special

elections, the governing authority, ... shall first choose a gubernatorial or congressional election date. If no such date is available within a year of the occurrence of the vacancy, the governing authority, ... shall then select an election date in accordance with R.S. 18:402. If the governing authority or school board fails to issue the proclamation within ten days after the vacancy occurs, the governor shall issue the proclamation.

* * *

We will respond to your questions based on the election results of the October 16, 1993 special election for the recall of Mayor Colvin and Alderman Colvin in the Village of Powhatan. In said election, the alderman was recalled by a vote of 44 to 42, and the recall of the mayor resulted in a tie. The question of recalling the mayor will be returned to the people on November 13, 1993. (See Opinion Number 93-698, enclosed herein.)

LSA-R.S. 33:405 provides for the board of aldermen to select one of the aldermen to be mayor pro tempore, who shall act in the absence of the mayor, with the same power and duties, except for the veto power of the mayor. A recent Attorney General Opinion, Number 93-398 A, concludes that the mayor pro tempore retains his power to vote as a councilman, absent a specific statutory prohibition. This opinion further concludes that "nothing in the Lawrason Act (Title 33 of the revised statutes Section 321 et. seq.) indicates that the mayor pro tempore assumes the office of mayor. He is temporarily vested with only the ability to perform some of the mayor's powers, functions and duties."

In response to your first question, if the mayor is recalled on November 13, 1993, it is the opinion of this office that the mayor pro tempore will not assume the mayor's vacancy, but act in the absence of the mayor until an appointment is made to fill the vacancy, in accordance with LSA-R.S. 18:602.

In response to your second question, since only the alderman was recalled at the October 16th election, there is only one vacancy to fill at this time. The governing authority shall, within ten days of the vacancy, appoint a qualified person to the office of alderman. (LSA-R.S. 18:602(A))

As of this date, the governing authority consists of the mayor and the remaining two aldermen. However, the mayor is not required to vote on the appointment for the office of alderman unless a tie vote occurs. In that case, the mayor shall vote to break the tie; however, the mayor shall not vote more than once on the appointment. If the governing authority fails to make the appointment within ten days, the governor shall make the appointment. (LSA-R.S. 18:602(D))

If the mayor is recalled at the November 13th election, the governing authority shall, within ten days of the vacancy, appoint a qualified person to the office of mayor. At that time, the governing authority should consist of three aldermen (one who is the newly appointed alderman and one who serves as mayor pro tempore). The mayor pro tempore retains his right to vote as an alderman and also has the right to vote as the presiding officer; however, he is not required to vote as the presiding officer unless a tie vote occurs. In that case, he shall vote as the presiding officer to break the tie, but in no case shall he vote more than once, as presiding officer, on the appointment. If the governing authority fails to make the appointment within ten days, the governor shall do so. (LSA-R.S. 18:602(A) and (D)).

In reference to your third question, the unexpired terms of the mayor and alderman exceed one year. Therefore, it is our opinion that the governing authority shall issue a proclamation within ten days of the vacancy in the office of alderman, ordering a special election and specifying the dates for the primary and general elections. (LSA-R.S. 18:602(E)(2)) The governing authority shall first choose a gubernatorial or congressional election date, if available within a year of the occurrence of the vacancy. There is a congressional election date available on October 1, 1994 (primary) and November 8, 1994 (general). If the governing authority fails to issue the

Honorable O. V. Hall
OPINION NUMBER 93-669
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proclamation within ten days after the vacancy occurs, the governor shall issue the proclamation calling the special election.

Additionally, if the mayor is recalled at the November 13th election, the governing authority shall issue a proclamation within ten days of the vacancy, ordering a special election for October 1, 1994 (primary) and November 8, 1994 (general). If the governing authority fails to issue said proclamation, the governor shall do so.

We have enclosed herein a copy of the relevant statutes, as per your request, and a copy of Opinion No. 93-398 A. If we can be of further assistance in this matter, please advise.

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY:


ANGIE ROGERS LaPLACE
Assistant Attorney General

RPI/ARL/pb/0017s

Enclosures



RICHARD P. LEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

JULY 29, 1993

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

OPINION NO. 93-398 A

Mr. John Jeffrey Simon
Attorney at Law
P. O. Box 9260
New Iberia, LA 70562-9260

Dear Mr. Simon:

OPINION NO. 93-398(A)
71-1 MUNICIPALITIES-Special Charters
77 OFFICERS-Local & Municipal
R.S. 33:321, et seq.; City of New Iberia
special legislative charter; R.S. 33:405; LSA
Const. Art. II, Sec. 2.
Reaffirming Attorney General Opinion 93-398,
the trustee appointed to serve as mayor pro
tempore may continue to exercise his power to
vote in his capacity as trustee, while simul-
taneously serving as mayor pro tempore. Inasmuch
as Attorney General opinion 90-149 is
inconsistent with the conclusion of AG Opinion
93-398 and 93-398A, it is recalled.

In your letter of July 6, 1993, you indicated that you had relied upon Opinion 90-149 of this office in your rendering of advice to the City of New Iberia in your capacity as City Attorney.

Opinion 90-149 dealt with the issue as to whether R.S. 33:405 A(13), of the Lawrason Act, would operate to deny a municipal councilman, who was selected by his fellow councilmen to be mayor pro tempore, the right to exercise his power to vote as a councilman when he is acting as mayor pro tempore. Opinion 90-149 concluded that the mayor pro tempore may not vote in his capacity as a councilman while presiding over a meeting of the council as mayor pro tempore. The author reasoned that because the Lawrason Act provides that the mayor, when presiding over a council meeting, may only vote to break a tie, the mayor pro tempore, in the absence of the mayor may only perform the duties of the mayor. The rationale of Opinion 90-149 was that in the mayor's absence, the councilman/mayor pro tempore assumes the executive office of mayor and thereby becomes disqualified from exercising his legislative duties. Thus, the mayor pro tempore could only vote in the event of a tie vote of the council. The author of 90-149 relied upon a prior Attorney General's Opinion reported as, opinions of the Attorney General, 1944-1946, p. 616.

In the reported opinion it should be noted that the facts reflect that the municipal by-laws of the Town of Lockport required the convening of a minimum of the mayor and two councilmen. The opinion concluded that if one alderman and the mayor were both absent that the quorum could not be established because the municipality's rules of order required the convening of at least three persons. The rationale of that opinion does not clearly support the conclusion in Opinion 90-149 although it does allude to a provision in the Lawrason Act.

On reconsideration of Opinion 93-398 we now examine whether Opinion 90-149 is distinguishable from opinion 93-398, in light of the fact that New Iberia is governed by a special legislative charter.

The Lawrason Act provision R.S. 33:405 A(3) reads in pertinent part as follows:

absence of the mayor, have the same power, and perform all duties of the mayor in the absence or disability of the mayor, except the veto power of the mayor. (Emphasis added).

The New Iberia Charter provision reads in pertinent part as follows:

(3) Mayor pro tempore. The trustee elected at large shall serve as mayor pro tempore, who, in the absence or inability of the mayor to act, shall exercise all the rights and powers of the office of mayor. (Emphasis added).

According to the two provisions quoted, the following is a summary of mode of selection and powers and functions of the mayor pro tempore.

LAWRASON ACT

1. Board of aldermen select one of their members to be mayor pro tempore.
2. Presides at meeting in mayor's absence.
3. Has mayor's powers in his absence.
4. Performs mayor's duties in his absence or disability.
5. May not veto board's action.

NEW IBERIA CHARTER

1. Trustee at-large ex officio is mayor pro tempore.
2. Serves as mayor pro tempore in mayor's absence or inability. (Sec. 14 of New Iberia Code provides that the mayor presides over meetings of the Board of Trustees).
3. Exercises rights and powers of mayor in absence or inability of mayor.

We perceive no significant distinction between the mayor pro tempore's powers, functions and duties under the provisions of R.S. 33:405 or the New Iberia Charter. We are of the opinion that we must adhere to the conclusion reached in Opinion 93-398. First, we believe that Opinion 90-149 incorrectly reached the conclusion that because the mayor pro tempore "assumed" the office of mayor (due to the mayor's absence or inability) he was subject to incapacity to perform his legislative functions. We believe that conclusion is incorrect because nothing in the Lawrason Act (Title 33 of the revised statutes Section 321 et. seq.) indicates that the mayor pro tempore assumes the office of mayor. He is temporarily vested with only the ability to perform some of the mayor's powers, functions and duties. He cannot veto any action by the council as that power is always reserved to the office of mayor. Additionally, the separation of powers among three branches of government applies to state and not local governments (Article II, Louisiana Constitution).

Mr. John Jeff Simon
Opinion No. 93-398A
Page 3

In the absence of a specific statutory prohibitions that would prevent the mayor pro tempore from exercising his power to vote as a councilman he must be deemed to have retained that power. Otherwise, where a councilman is selected from a subdistrict within the municipality his constituency would be without representation which presents equal protection - one-person-one-vote complications. Furthermore, a crafty mayor might purposefully absent himself from any meetings at which the council was to consider overriding the mayor's veto of a council action, thereby increasing the already difficult burden of obtaining a two-thirds vote of the membership of the council that is legally required for an override. Finally, we believe that should the Legislature have intended, in adopting the Lawrason Act, or in New Iberia's special legislative charger, to prevent the mayor pro tempore from exercising his power to vote as a councilman while presiding over the council as mayor pro tempore, that body would have adopted such expressed prohibitions.

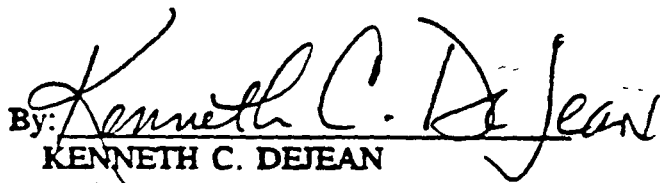
Therefore, it is our conclusion that whether according to the Lawrason Act or according to the New Iberia Special Charter a councilman, who is mayor pro tempore, may when presiding as such over a meeting of the municipal council, continue to exercise his power to vote as a councilman. This may result in his voting to make a tie.

Thus, it is the opinion of this office that our conclusion in Opinion 93-398 is reaffirmed. Inasmuch as 90-149 is inconsistent, herewith it is recalled.

Regarding your remaining question where in the absence of the mayor, the mayor pro tempore of New Iberia sought not to vote when the Board of Trustees was considering the override of a mayor's veto and the vote was four for the override and two against the override, it is our opinion that unless there is an explicit charter provision that permits, reconsideration of the vote such may not be reconsidered.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

By: 
KENNETH C. DEJEAN
Assistant Attorney General

KCD:ams:93-398A

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

January 23, 1980

1/28/80

OPINION NUMBER 80-91

77...OFFICERS-LOCAL & MUNICIPAL, VACANCIES
R.S. 18:652 - 654; R.S. 18:602, R.S. 402

Mr. Anthony Lamonte
Alderman, Village of Tickfaw
Tickfaw, Louisiana 70466

Bd. of aldermen advised how to proceed to
fill a vacancy in office of mayor.

Dear Mr. Lamonte:

In your letter of January 21, 1980, you state that the mayor of the Village of Tickfaw resigned on December 31, 1979. You state that you are now serving as mayor pro tem and ask for our advice on the procedure to be followed in appointing or electing a new mayor.

R.S. 18:652 through 654 provide the method for legally resigning a public office. These provisions state:

"Section 652. Resignations

A. Except for members of the legislature and the congress, all resignations of elected officials shall be filed with the secretary of state. Resignations may be filed in person or by certified mail, return receipt requested.

B. A resignation shall be in writing, shall be dated, may specify a prospective date on which the resignation is to be effective and shall be signed by the official and duly acknowledged by him before an officer authorized to administer oaths.

Section 653. Transmission of
Resignations

The secretary of state shall immediately transmit notice of resignations to the authority required by law to make the appointment to fill the vacancy and to the

Mr. Anthony Lamonte
Opinion Number 80-91
January 23, 1980
Page Two

authority required by law to call the election to fill the vacancy, if said authority is not the same as the authority required to make the appointment.

Section 654. Effect of Filing of Resignations

A resignation shall become irrevocable three days after the date on which the secretary of state has transmitted the notice to the appropriate authority."

The Secretary of State for the State of Louisiana has not received the resignation of Nick Marino as Mayor of the Village of Tickfaw. Therefore, because the provisions of R.S. 18:652 through 654 have not been followed, Nick Marino is still the legal mayor of the Village of Tickfaw. Any purported resignation of Mr. Marino is not effective as the legal requirements for the submission of a resignation have not been followed.

Should Mr. Marino decide to send a proper resignation to the Secretary of State, this resignation will become effective three (3) days after the date on which the Secretary of State transmits notice of the resignation to the governing authority of the Village of Tickfaw. At this point, a vacancy in the office of mayor will exist and the Board of Aldermen of the Village of Tickfaw must take steps to fill this vacancy pursuant to the provisions of R.S. 18:602. (Copy enclosed)

Since the term of office for the Mayor for the Village of Tickfaw does not expire until June 31, 1982, it will be presumed that more than one year will exist on the unexpired portion of the term as of the date a vacancy will occur. Therefore, pursuant to R.S. 18:602, the Board of Aldermen of the Village of Tickfaw must, within ten (10) days after the vacancy occurs, issue a proclamation ordering a special election to fill the vacancy and specifying the date on which the primary and general elections will be held to fill the vacancy. The date selected for the holding of the primary and general elections must comply with the provisions of R.S. 18:402(E). (Copy enclosed)

Mr. Anthony Lamonte
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If a proclamation calling a special election is issued by the Tickfaw Board of Aldermen prior to July 12, 1980, the primary election for the filling of this vacancy should be held on October 18, 1980, and the general election on November 29, 1980.

Additionally, should a vacancy occur, the Board of Aldermen of the Village of Tickfaw should appoint someone meeting the qualifications for the office to fill the position of mayor until the election can be held. The person filling this vacancy on an interim basis may qualify for this position at the subsequent election.

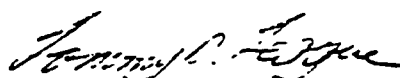
Should you be appointed to fill the position of mayor on an interim basis, you would have to resign your position as an alderman of the Village of Tickfaw.

In answer to your last question, a copy of the 1974 Louisiana Constitution may be purchased from the Secretary of State's Office.

It is hoped this opinion has answered your questions. If we can be of further assistance, please contact us.

Sincerely,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY: 
TOMMY D. TEAGUE
STAFF ATTORNEY

TDT/dyj



RICHARD P. JEYOUNG
ATTORNEY GENERAL

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September 7, 2001
OPINION NUMBER 01-94

Honorable Robert R. "Bobby" Fauchaux, Jr.
Louisiana House of Representatives, District 57
P. O. Box 367
Gramercy, Louisiana 70052

Opinion Number 01-94

90-A-1 Public Funds & Contracts

Discussion of issues in connection with Town of
Gramercy's reimbursement of attorney's fees incurred
by aldermen and mayor

Dear Representative Fauchaux:

This office is in receipt of your opinion request regarding the propriety of the Town of Gramercy's reimbursement of attorney's fees incurred by its Mayor and members of its Board of Aldermen, in connection with legal proceedings initiated by the Aldermen against the Mayor.

According to your correspondence, the Aldermen filed a petition for a restraining order and injunction against the Mayor, seeking to prohibit the Mayor from executing contracts that bind the Town of Gramercy before the Board of Aldermen approve the contracts. Subsequently, the Mayor hired counsel and filed an exception and answer and reconventional demand. Thereafter, the Aldermen filed an exception and answer to the Mayor's reconventional demand. As we understand your letter, judgment was rendered in favor of the Aldermen against the Mayor in connection with the Aldermen's petition, and the Mayor's exceptions and reconventional demand were dismissed.

You have requested that this office examine whether the Town of Gramercy can reimburse the fees incurred by the Aldermen, or by the Mayor, in connection with these legal proceedings, specifically with regard to: (1) the petition filed by the Aldermen and the hearing thereon, (2) the Exception and Answer filed by the Mayor, (3) the reconventional demand filed by the Mayor, and (4) the exception and answer to reconventional demand filed by the Aldermen.

R.S. 13:5108.1, et seq. provides for the indemnification of state officers and employees for financial loss arising out of claims, demands, suits or judgments where the officer or employee was "acting in the discharge of his duties and within the scope of his employment...". However, neither R.S. 13:5108.1, et seq., nor any other provision of state law of which we are aware, provides for the indemnification of the officers and/or employees of municipalities or other political subdivisions.

Nevertheless, this office has consistently opined that if a public official or employee is sued for civil damages and is found not liable and the allegations arose out of the performance of his official functions, then the public body that employs that person may, but does not have to, pay the reasonable attorneys fees and expenses that result from the defense against the suit. Attorney General's Opinions Nos. 97-248, 96-398, 96-210, 96-95, 85-822. See also: Atty. Gen. Op. 89-401, which determined that a public official acting beyond the course and scope of his duties is not entitled to attorneys fees for the defense of civil or criminal actions brought against him. It is the opinion of this office that public funds can be utilized to pay or reimburse the legal fees of a public official or employee who is or was the target of civil claim, as long as the allegations arose out of the performance of, as well as within the course and scope of, the official functions and duties of the public official or employee.

With regard to reimbursement of the Aldermen's attorney's fees, we note that the litigation in question was instituted by, not against, the Aldermen. Although as originally filed, the pleadings are styled in the individual aldermen's names, an amendment indicates that the litigation was filed by the plaintiffs in their capacities as Aldermen for the Town of Gramercy. The suit appears to have been filed not to provide relief to the Aldermen individually, but to enforce the authority granted to the Board of Aldermen by law to approve contracts before they are executed by the Mayor, similar in nature to a quo warranto proceeding. Additionally, we are advised that the District Attorney recommended filing of the suit, and that counsel to the Board of Aldermen represented the Aldermen in the proceedings.

This office is not a finder of fact, and it would be beyond the purview of this office to determine whether the proceedings filed by the Aldermen were filed personally, or in their official capacities. However, it is our advice that if it is properly determined that the Aldermen filed the proceedings against the Mayor in their individual capacities, then all fees incurred by the Aldermen in connection with the petition, the hearing thereon, and the answer thereto must be borne by the Aldermen personally, and are not reimbursable by the Town of Gramercy. On the other hand, if the Aldermen filed the proceedings in question in their official capacities, then the Town could reimburse the expenses incurred by the Aldermen in connection therewith.

An examination of the reconventional demand filed against the Aldermen by the Mayor indicates that the allegations contained therein primarily allege misconduct in office by the individual Aldermen. Specifically, the Mayor alleges that each Alderman engaged in acts of "misfeasance, malfeasance and nonfeasance" in office. As such, although this office is not a finder of fact, it appears that the allegations arise out of the performance of the Aldermen's official functions.

You have advised that the Aldermen were successful in their defense of the reconventional demand, and that all charges filed against them by the Mayor were dismissed. As such, if the allegations made by the plaintiff arose out of the performance of, as well as within the course and scope of, the official functions and duties of the Aldermen, it is our opinion that the Town of Gramercy may (but does not have to) reimburse the Aldermen for the attorneys fees they incurred in their defense of the reconventional demand.

As to the fees incurred by the Mayor in connection with his defense of the action filed against him and his reconventional demand, it is beyond the purview of this office to determine whether his actions giving rise to the litigation, or actions taken in the litigation were taken personally, or in the Mayor's official capacity on behalf of the Town. Pleadings filed in the Mayor's individual capacity, and the attorney's fees incurred in connection therewith would not be reimbursable by the Town. However, if it is properly determined that the Mayor's actions which gave rise to the Aldermen's petition were taken in his official capacity, the attorney's fees incurred in connection with his defense of the petition could be (but are not required to be) reimbursed by the town. Similarly, if the reconventional demand was filed in his official capacity and on behalf of the Town, then the Town could (but does not have to) reimburse the Mayor for the expenses he incurred in connection therewith.

Since the Aldermen were represented by the same attorney in connection with their petition as well as the reconventional demand filed against them, care should be taken to determine which portions of their attorney's fees, if any, are reimbursable. Similarly, since the Mayor was represented by the same attorney in connection with his answer and exception and reconventional demand, care should be taken to determine which portions of his attorney's fees, if any, are reimbursable.

The Town has no obligation or authority to reimburse expenses or attorney fees incurred by the Aldermen or the Mayor individually, and the Town's reimbursement of the individual or personal legal fees incurred by the Aldermen or the Mayor would be a violation of La. Const. Art. VII, Sec. 14. In accord: Attorney General's Opinion No. 95-242. Of course, as to any proceedings determined filed by either the Aldermen or the Mayor in their official capacities and for the benefit of the Town, this issue should not pose a problem.

If the Town does decide to reimburse all or a portion of the legal expenses incurred by the Aldermen or the Mayor, the Town will also have to determine that: (1) the hourly rate charged by the Aldermen's counsel was reasonable, (2) the number of hours spent by counsel was reasonable and necessary, and (3) any costs incurred by counsel were reasonable and necessary. Attorney General's Opinions Nos. 97-248, 95-492, 95-242, and 94-384.

We trust the foregoing to be of assistance. Please do not hesitate to contact us if we can be of help in other areas of the law.

Yours very truly,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

By:


JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI/JMZB/jv



RICHARD P. LEYDUB
ATTORNEY GENERAL

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MARCH 17 1998
OPINION NUMBER 97-491

OPINION NUMBER 97-491

Honorable Truman M. Durr, Mayor
Village of Pleasant Hill
P. O. Box 125
Pleasant Hill, LA 71065

90-A-1 PUBLIC FUNDS & CONTRACTS

Discussion of issues in connection with municipality's
reimbursement of Police Chief's attorneys fees.

Dear Mayor Durr:

This office is in receipt of your recent opinion request regarding the propriety of the Village of Pleasant Hill's reimbursement of its Chief of Police for attorney's fees incurred in his defense of a civil lawsuit involving federal charges of sexual harassment brought against the Chief And the Town of Pleasant Hill. It is our understanding that both the Chief and the Town were successful in the defense of these suits. Specifically you ask the following questions:

1. Was the alleged offense against the Chief of Police considered committed during the performance of, as well as within the course and scope of, the official functions and duties of his position as Chief of Police?
2. Would payment of legal fees be in order since the Chief chose to retain "private counsel"?
3. Would the suit be considered settled and final, and payment be in order since plaintiff's attorney has filed a motion to overturn the jury's verdict?
4. Was there an ethics violation committed or at the least, a conflict of interest involved in voting on the resolution to pay the Chief's legal fees by one of the Aldermen because he is the chief's nephew? Should said Alderman have recused himself from the issue or abstained voting?
5. Did the Aldermen err in authorizing payment of \$15,000 in legal expenses for the Chief's separate civil suit and has a misuse of public funds been committed?

With regard to your first question, we must respectfully advise that we are not in a position to provide you with an answer. The question of whether particular acts committed by a municipal officer or employee were committed during the performance of, as well as within the course and scope of, the official functions and duties of his position is fact-sensitive and can only be answered by finders of fact, such as courts of law. Although this office is happy to address questions of law, we are not finders of fact.

Honorable Truman M. Durr
OPINION NUMBER 97-491
Page -2-

In answer to your third question, it is the opinion of this office that litigation is not successfully concluded until the time for the filing of all motions and appeals has passed.

Your fourth question would be more appropriately addressed by the Ethics Administration, and we suggest that you contact them directly. By copy hereof, we are, however, making the Ethics Administration aware of this advice.

In response to your second and fifth questions, it is the opinion of this office that the Board of Aldermen may reimburse the Chief of Police for the reasonable legal expenses he incurred in defending the suit, as long as the allegations against him arose during the performance of, and out of the course and scope of his employment. In order to determine that the legal expenses incurred by the Chief were reasonable, the Board of Aldermen would have to determine that: (1) the hourly rate charged by counsel was reasonable (and although the Attorney General's Maximum Hourly Fee Schedule, enclosed herewith, is not controlling it may assist the Aldermen in making that determination), (2) that the number of hours spent by counsel was reasonable and necessary, and (3) that any costs incurred by counsel were reasonable and necessary. Atty. Gen. Ops. Nos. 96-95, 95-492, 95-242.

We hope that this addresses your concerns. Should you have further questions, please contact this office.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: 
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jv
Attachment
cc: Ethics Administration



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

January 30, 1992

TO: ALL INTERESTED PERSONS
FROM: RICHARD P. IEYOUB
RE: MAXIMUM HOURLY FEE SCHEDULE

This is to advise all interested persons that the approved Maximum Hourly Fee Schedule of this office for professional legal services shall be as follows:

\$150.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF TEN YEARS OR MORE IN THE PRACTICE OF LAW
\$135.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF FIVE YEARS OR MORE IN THE PRACTICE OF LAW
\$120.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF THREE TO FIVE YEARS IN THE PRACTICE OF LAW
\$100.00	PER HOUR FOR ATTORNEYS HAVING EXPRIENCE OF LESS THAN THREE YEARS IN THE PRACTICE OF LAW
\$ 45.00	PER HOUR FOR PARALEGAL SERVICES
\$ 25.00	PER HOUR FOR LAW CLERK SERVICES.

RPI/JEY/MSH/jv
2578m



RICHARD P. LEYOUS
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MARCH 11 1998

OPINION 98-51

9 - Civil Service Commission
77 - Officers - Local & Municipal

R.S. 33:404
R.S. 33:2533

Mr. Bobby Abrusley, Mayor
City of Oakdale
P.O. Box 728
Oakdale, LA 71463

A mayor has the discretion to appoint a citizens committee for a fact finding project and advise him based upon their findings but they cannot take action on their own.

Dear Mayor Abrusley:

This office is in receipt of your request for an opinion of the Attorney General in regard to your power to appoint a five member Citizen's Investigative Committee to inquire into an incident involving three of the city's police officers. You indicate that the Sheriff and District Attorney are presently investigating the incident, and you feel a Citizen's Investigative Committee may impair this official investigation.

Obviously you may appoint individuals of your choice to constitute a citizen committee for fact finding studies and to render advice based upon their findings, but they would have no power to take action on their own. However, the advisability of having such a committee is solely within your discretion.

Inquiry has indicated that Oakdale is a Lawrason community that now has an elected Chief of Police, having had until recently an appointed Chief of Police. Under R.S. 33:404(A) the mayor has the duty and responsibility "to appoint and remove municipal employees" subject to applicable civil service rules. We have been informed that civil service was adopted approximately twenty years ago for the Oakdale police department, and they operate in accordance with the provisions for civil service for municipalities between 7,000 and 13,000 population. The mayor would be the "appointing authority" for the police civil service personnel as is defined in R.S. 33:2533 as the "person having the power to make appointments to positions in the municipal, parish or fire protection district fire service", Atty. Gen. Op. No. 91-93.

However, while the mayor may be the appointing authority under the civil service the law, R.S. 33:2537 provides in part that the Civil Service Board represents the public interest in matters of personnel administration, is to advise and assist the mayor, and they are to conduct investigations and pass upon complaints by or against any officer or employee in the classified service, R.S. 33:2537. Moreover, while R.S. 33:2560 provides that the tenure of persons in

positions of classified service "shall be during good behavior" and the "appointing authority may remove any employee from the service or take such disciplinary action as circumstances warrant", the statute further provides that upon written request of any qualified elector the Board shall "make an investigation of the conduct and performance of any employee in the classified service, and thereupon, may render such judgment and order action to be taken by the appointing authority."

Consequently, it appears that the proper investigatory body to investigate the conduct of police as civil service employees is the Civil Service Board and the Mayor must abide by their directive.

Also, any charge for criminal action is not a matter for the Mayor who is the chief executive officer of the community, but is a matter for law enforcement officials and the district attorney, and it is our understanding that they are already investigating the incident in question.

Therefore, your authority as the executive officer of the community would be limited to appointment of committees for fact finding inquires, and they in turn could render advice to you based upon conclusions drawn from the facts. Obviously, they would have no authority for any independent action, and your action would be limited by statutory provisions as to your powers and duties.

We hope this sufficiently answers your inquiry, but if we can be of further assistance, do not hesitate to contact us.

Sincerely yours,

RICHARD P. IEYOUB
Attorney General

By: Barbara B. Rutledge
BARBARA B. RUTLEDGE
Assistant Attorney General

BBR



RICHARD P. IEYOUB
ATTORNEY GENERAL

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NOVEMBER 12 1997
OPINION NUMBER 97-428

71 MUNICIPALITIES
90-A-1 PUBLIC FUNDS & CONTRACTS
90 POLICE JURIES - Powers and functions

ART. VII, §14(A); R.S. 33:621 & 33:1324(2), (3) & (6)

Municipalities have the authority to install culverts in drainage ditches for a public purpose and in the public's interest, as distinguished from a purely private purpose. Although a project may indirectly benefit a private landowner, it would not be prohibited solely on this basis, provided there is a public purpose for the work.

Honorable Lucas Denais
Mayor, Town of Youngsville
P.O. Box 592
305 Iberia Street
Youngsville, LA 70592

Dear Mayor Denais:

This responds to your request for an opinion pertaining to the propriety of the Town of Youngsville installing culverts in a drainage ditch on private property where the Town believes the improvements to be in the public interest, as set forth in Ordinance No. 213 of September 11, 1997.

While no explicit statement was made as to how the improvements would be in the public interest, we will assume that the proposed work would relieve drainage problems within the Town of Youngsville, as well as on the private landowner's property.

The most authoritative statement of law which applies to this area is found in Art. VII, §14(A) of the Louisiana Constitution of 1974, which prohibits the use of funds, credit or property of public entities from being used for a purely private purpose. The constitutional provision states as follows:

Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Therefore, funds, credit or property of the Town of Youngsville may be used only for a public purpose and in the public interest, not for a purely private purpose. Although a project may indirectly benefit a private landowner, it would not be prohibited on this basis, provided there is a public purpose for the work.

Prior opinions of this office have allowed the use of public funds insofar as it is necessary to insure efficient drainage through the installation of culverts at the proper elevation and grade, and then only when in the public interest, that is, when such would be necessary for the "... welfare of the city ...". See La. R.S. 33:621 and 33:1324(2), (3) and (6). Under this circumstance, the Town could furnish the labor necessary to installation of the culverts, but not the gravel, culverts and other materials customarily furnished by private landowners. Of course, if a major project contemplating work for a drainage system serving all residents in the area was at issue, our answer might be different.

However, as we understand the current situation, the work under consideration is for a single landowner who is abutted by landowners on both sides who have paid the costs for the installation of culverts across their property.

This office has consistently held that a public entity would have no legal authority to furnish labor or materials for construction work or development which primarily benefits purely private interests, as distinguished from a public purpose in the public interest. Therefore, if the Mayor and Board of Aldermen have correctly made the public purpose determination, the use of public funds and resources would be authorized.

Our conclusions stated above would be different if the works are not for a public purpose to benefit the public interest, but for a purely private interest. Each factual situation must be reviewed on its own merits to determine whether a public purpose truly exists. See Opinions of Attorney General 74-1350; 76-1026; 77-307; 77-392; 77-1394; 78-425; 88-375; 93-396; etc.

We hope that this information is of benefit to you and if we may be of further help, please call upon us at any time.

Very truly yours,

RICHARD P. IEYOUB
Attorney General

By:


GARY L. KEYSER
Assistant Attorney General



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

DECEMBER 04 1995

OPINION NUMBER 95-492

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

**90-A POLITICAL SUBDIVISIONS - Officers, Agents & Employees
90-A-1 PUBLIC FUNDS & CONTRACTS**

Fire Protection District may reimburse fire chief for legal expenses incurred in connection with a quo warranto proceeding which results in a final judgment in favor of the Chief

Hon. Tom Greene, DVM
State Senator, District 17
P.O. Box 338
Maringouin, Louisiana 70757

Dear Senator Greene:

Reference is made to your recent request for an opinion of this office regarding attorney's fees incurred by Fire Chief Carl Smith in connection with a *quo warranto* proceeding brought against him by Mr. Homer Jones and the Town of Fordoche. We are advised that the *quo warranto* challenged Chief Smith's right to the office of Chief, but the trial court upheld Chief Smith's right to office. The court did, however, deny Chief Smith's request for attorney's fees. Subsequently, Chief Smith requested that the Fire District which employs him reimburse him for his attorney's fees.

Specifically, we are asked to opine upon the legality of the reimbursement of the attorney's fees by Fire Protection District No. 4 (the "District"), the public body that employs Chief Smith. For purposes of responding to your request, we assume that the judgment of the trial court is now final and unappealable.

This office has consistently opined that if a public official or employee is prosecuted for a criminal offense and is found not guilty, and the alleged offense arose out of the performance of his official functions, then the public body which employs that person may pay the reasonable attorney's fees and expenses that result from the defense against such charges. Atty. Gen. Ops. Nos. 94-384, 93-376, 91-474, 89-110.

Applying that reasoning, it is the opinion of this office that the District may reimburse the legal expenses incurred by the Chief in connection with the *quo warranto* proceedings, since the final judgment of the court determined that the Chief was entitled to the office of Chief.

If the District decides that it does want to reimburse the Chief for his legal expenses in connection with the *quo warranto* proceeding (the District can choose not to reimburse the Chief), then it must also determine: (1) that the hourly rate charged by the Chief's counsel was reasonable (enclosed herewith is a copy of the Attorney General's Maximum Hourly Fee Schedule which may assist the District in making such a determination), (2) that the number of hours spent by counsel were reasonable and necessary, and (3) that any costs incurred by counsel were reasonable and necessary.



RICHARD P. IEYOUNG
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

January 30, 1992

TO: ALL INTERESTED PERSONS
FROM: RICHARD P. IEYOUNG
RE: MAXIMUM HOURLY FEE SCHEDULE

This is to advise all interested persons that the approved Maximum Hourly Fee Schedule of this office for professional legal services shall be as follows:

\$150.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF TEN YEARS OR MORE IN THE PRACTICE OF LAW
\$135.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF FIVE YEARS OR MORE IN THE PRACTICE OF LAW
\$120.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF THREE TO FIVE YEARS IN THE PRACTICE OF LAW
\$100.00	PER HOUR FOR ATTORNEYS HAVING EXPERIENCE OF LESS THAN THREE YEARS IN THE PRACTICE OF LAW
\$ 45.00	PER HOUR FOR PARALEGAL SERVICES
\$ 25.00	PER HOUR FOR LAW CLERK SERVICES.

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RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

P.O. Box 94005
TEL: (504) 342-7013
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JUL 10 1995

OPINION NUMBER 95-242

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Const. Art. VII, Sec. 14; R.S. 13:5108.2; R.S. 13:5108.3

Mr. Joe L. Herring, Secretary
Department of Wildlife and Fisheries
P. O. Box 98000
Baton Rouge, Louisiana 70898-9000

Since public employee was exonerated of one of two allegations under investigation by the Ethics Commission, and the Ethics Commission declined to investigate the other allegation and close its file, Department of Wildlife and Fisheries would not be prohibited from reimbursing employee's legal fees.

Dear Mr. Herring:

Reference is made to your request for an Attorney General's opinion regarding the propriety of the reimbursement by the Department of Wildlife and Fisheries (DWF) of an employee's attorney fees incurred by the employee in connection with a recent Ethics Commission probe involving the employment of the employee's son. Apparently, the Ethics Commission considered two separate alleged violations: (1) the employment of the son in a division (administered by the employee in question) of DWF, and (2) the employment of the son by Louisiana State University ("LSU") in a program administered by DWF.

You have provided us with a copy of a letter from the Ethics Commission (the "Letter") which indicates that the Ethics Commission, with regard to the son's employment by DWF, "believes [the] employment . . . was prohibited under Section 119 [sic] of the Code. . . ." We also note, however, that the Ethics Commission "declined to investigate the matter further." With regard to the son's employment by LSU, the Ethics Commission concluded that "no evidence was discovered indicating a violation of the Code." The Letter further indicates that the Ethics Commission's file in connection with these matters "has now been closed."

R.S. 13:5108.2 provides for the indemnification of state officers and employees for financial loss arising out of "any claim, demand, suit or judgment in any court" where the officer or employee was "acting in the discharge of his duties and within the scope of his office, employment. . . ." In accordance with R.S. 13:5108.3, the legal fees of such officers or employees, incurred in the defense of criminal matters, can only be paid from public funds if the officer or employee is acquitted or the proceedings are dismissed, and the payment is authorized by a specific act of the legislature. These provisions of law do not specifically address the reimbursement of legal fees incurred by state officers or employees in connection with Ethics Commission proceedings.

Nevertheless, this office has opined that if a public official or employee is exonerated of all allegations under investigation by the Ethics Commission, then the public entity which employs that individual may reimburse its employee for legal expenses incurred in connection with the investigation. Atty. Gen. Op. Nos. 94-369 and 94-369A.

Mr. Joe L. Herring
OPINION NUMBER 95-242
Page -2-

Although your employee was exonerated of one, but not "all" allegations, the Ethics Commission's decision to decline to fully investigate the first allegation and close its file in connection therewith, is equivalent to a dismissal of the proceedings in a criminal matter. As such, we are of the opinion that the Department would not, based on the action taken by the Commission, be prohibited from reimbursing its employee for the legal fees he incurred.

We caution you, however, that it appears that your employee and his son were both before the Ethics Commission, and that they were both represented by the same attorney. Unless you can determine with certainty the amount of legal fees incurred on behalf of your employee, as opposed to those incurred for the benefit of his son, you should not reimburse any of the legal fees expended in this matter. DWF has no obligation or authority to reimburse legal expenses paid in connection with the representation of your employee's son. La. Const. Art. VII, Sec. 14.

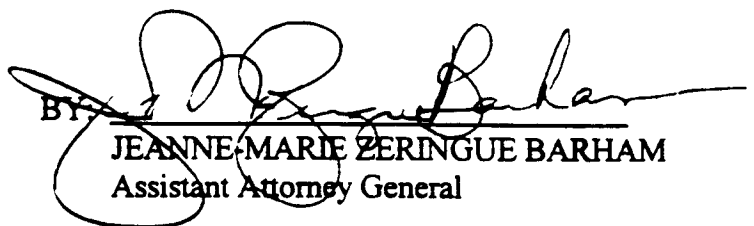
If you decide to reimburse your employee, and you can determine the amount of attorneys fees incurred strictly on behalf of your employee, then you must also determine: (1) that the hourly rate charged by the employee's counsel was reasonable (enclosed herewith is a copy of the Attorney General's Maximum Hourly Fee Schedule which may assist you in making this determination), (2) that the number of hours spent by counsel were reasonable and necessary, and (3) that any costs incurred by counsel were reasonable and necessary.

Your request indicates that it is your belief that this office would have to approve an itemized statement for any attorney fees you decide to reimburse. Please be advised that it would be inappropriate for you to submit such a statement to this office for approval. Although this office must approve the employment of counsel retained to represent the state and its agencies, it is beyond the purview of this office to review or approve statements for legal services incurred on behalf of individual employees.

Trusting the foregoing to be of assistance, we remain,

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY: 
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jv



RICHARD P. LEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

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AUGUST 09 1994

OPINION NUMBER 94-384

OPINION NUMBER 94-384

90 A POLITICAL SUBDIVISIONS - Officers,
Agents & Employees
90-A-1 PUBLIC FUNDS & CONTRACTS
90-A-2 PUBLIC FUNDS - Loan, Pledge of
Grants

Town of Ferriday may reimburse its former
Mayor for attorney fees incurred in defense
of criminal charges arising out of his
employment if he is found not guilty.

Mr. Henderson Cook, Jr.
Council Member
Town of Ferriday
212 North Second Street
Ferriday, Louisiana 71334

Dear Mr. Cook:

This office is in receipt of your request for the opinion of this office regarding reimbursement of the attorney's fees incurred by former Mayor Sammy Davis, Jr., in connection with the successful defense of criminal charges arising out of the performance of his duties as Mayor. Specifically, you ask whether the Town of Ferriday may legally reimburse Mr. Davis for the attorney's fees in question.

This office has consistently opined that if a public official or employee is prosecuted for a criminal offense and is found not guilty and the alleged offense arose out of the performance of his official functions, then the public body that employs that person may pay the reasonable attorney's fees and expenses that result from the defense against such charges. Atty. Gen. Op. No. 93-376, 91-474, 89-110.

It appears that the charges brought against former Mayor Davis arose out of action taken by him in the course of performing his official duty. We also note that the hourly rate charged by the Mayor Davis' counsel (in accordance with the statement enclosed with your request) is reasonable, as the hourly rate does not exceed the Maximum Hourly Rates chargeable in accordance with the Maximum Hourly Fee Schedule of this office. As such, if the Town of Ferriday determines that the number of hours spent was reasonable and necessary, and that the costs incurred were reasonable and necessary, it is the opinion of this office that the Town of Ferriday can reimburse Sammy Davis, Jr. for the attorney's fees in question.

I am enclosing herewith a copy of Atty. Gen. Op. No. 94-276, as it is factually related to your request. In spite of our opinion herein regarding reimbursement of the attorneys' fees

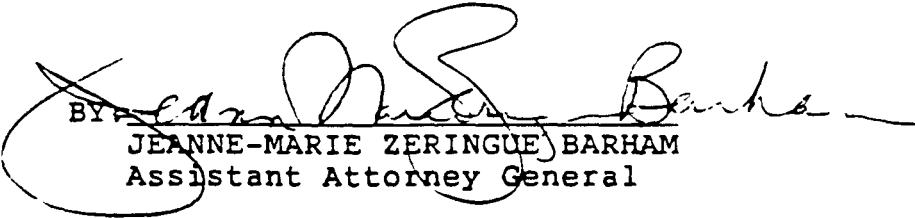
Mr. Henderson Cook, Jr.
OPINION NUMBER 94-384
Page -2-

in question by Mr. Davis' former employer, the Town of Ferriday, it remains the opinion of this office that the State of Louisiana is constitutionally prohibited from reimbursing Mr. Davis for those fees.

Trusting this adequately responds to your request, we remain,

Yours very truly,

RICHARD P. IEYOUB
Attorney General


BY JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jav
0473n
Enclosure



RICHARD P. LEYBOUR
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

JUNE 3 1994

P.O. Box 94005

TEL (504) 342-7013

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OPINION NUMBER 94-276

OPINION NUMBER 94-276

90-A POLITICAL SUBDIVISIONS - Officers,
Agents & Employees

90-A-2 PUBLIC FUNDS - Loan, Pledge or
Grants

La. Const. Art. VII, 14(A)

R.S. 13:5108.1, 13:5108.2 and 13:5108.3

The expenditure of state funds for the
payment of legal expenses incurred by a
former municipal officer is not permissible
under state law.

Senator B. B. "60" Rayburn
Chairman, Joint Legislative
Committee on the Budget
P.O. Box 44294, Capitol Station
Baton Rouge, Louisiana 70804

Dear Senator Rayburn:

This office is in receipt of your request for an opinion
regarding an amendment to the General Appropriation Bill of
1994. The pertinent portion of the amendment, styled Amendment
No. 203, provides as follows:

"Payable out of the State General
Fund (Direct) to pay for attorney
fees and expenses for defense for
Sammy Davis, Jr., only if and
when the Attorney General certifies
that this expenditure is permissible
under state law \$129,647"

In accordance with Amendment No. 203, the question presented
for our review is whether the State of Louisiana can pay the
legal expenses incurred by the former Mayor of the Town of
Ferriday in defense of three counts of malfeasance in office.
Although Mr. Davis was convicted of one count of malfeasance in
office, the Supreme Court ultimately reversed his conviction.

R.S. 13:5108.1, 13:5108.2 and 13:5108.3 provide for the
indemnification of state officers and employees, subject to
certain criteria, including payment of legal fees for the
defense of criminal matters when the defendant is acquitted.
However, this office is unaware of any provision of law which
would authorize or require the State to provide for the
reimbursement of legal expenses incurred by an officer or
former officer of a political subdivision, such as the former
Mayor of Ferriday.

We must also advise that the State's payment of legal fees
incurred by a former municipal officer, as opposed to a state
officer, would be subject to constitutional challenge under the
provisions of La. Const. Art. VII, Sec. 14(A). As I am sure
you are aware, this provision of the Constitution prohibits the
state and its political subdivisions from loaning, pledging or
donating public funds to any person, public or private.

Senator B.B. "60" Rayburn
OPINION NUMBER 94-276
Page -2-

This provision has been interpreted by the Supreme Court in City of Port Allen v. Louisiana Municipal Risk Agency, 439 So.2d 399 (La. 1983), which held that the Constitution is violated whenever the state or a political subdivision seeks to give up something of value when it is under no obligation to do so.

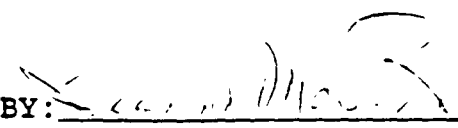
This office is unaware of any substantive provision of law that obligates or authorizes the use of state funds to reimburse legal expenses incurred by an officer or former officer of a political subdivision.

As such, it is the opinion of this office that the expenditure of State funds for the payment of legal expenses incurred by a former municipal officer is not "permissible under state law."

We trust this adequately responds to your request. Please do not hesitate to contact us if we can be of further assistance.

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY: 
JEANNE-MARIE ZERINGUE
Assistant Attorney General

RPI:JMZ:jav
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