

August 4, 2006
OPINION NUMBER 06-0124

Robert Loupe, Fire Chief
Norco Area Volunteer
Fire Department
P. O. Box 321
Norco, Louisiana 70079

90-A-1 Public Funds & Contracts
La. Const. Art. VII, Sec. 14
La. R.S. 33:2101; La. R.S. 40:1492

Fire Chief and Assistant Fire Chiefs, all of whom are on 24-hour call, may use vehicles purchased with public funds and assigned to them for occasional personal use without violating Art. VII, Sec. 14 of the Louisiana Constitution.

Chief Loupe:

On behalf of the Norco Area Volunteer Fire Department, Inc. ("Fire Department"), you have requested an opinion of this office regarding the legality of the use of certain fire department vehicles purchased by the Fire Department and provided to the Fire Chief and Assistant Fire Chiefs. Specifically, you ask whether vehicles assigned by the Fire Department to the Fire Chief and the three (3) Assistant Fire Chiefs, all of whom are on 24-hour call to respond to emergencies, can be used for non-fire department business by the person assigned to the particular vehicle.

The Norco Area Volunteer Fire Department, Inc. is an all volunteer fire department located in Norco, La., and is one of nine such fire departments located in St. Charles Parish. Each fire department has contracted with the parish to provide fire protection within the fire protection district created by the parish pursuant to R.S. 40:1492. St. Charles Parish has the authority pursuant to La. R.S.33:2101 to "enter into a contract with a private entity for the provision of fire protection services." According to your request, funding for the Fire Department comes from a 1/8 cent parish sales tax dedicated to the parish fire departments and from parish ad valorem taxes.

The issue presented by your request must be addressed in light of the provisions of La. Const. (1974) Art. VII, Sec. 14, and which contain the constitutional standard for the lawful use of public funds and property. La. Const. Art. VII, Sec. 14(A) generally prohibits the state and its political subdivisions from loaning, pledging or donating public funds, assets or property to persons, associations or corporations, public or private.

This office has long recognized the caution which must be exercised in the expenditure of public funds and use of public property. Historically, the Attorney General has followed the Louisiana Supreme Court's interpretation of La. Const. Art. VII, Sec. 14, as set forth in *City of Port Allen v. Louisiana Mun. Risk*, 439 So.2d 399 (La. 1983), wherein the Court states: "...this Section is violated whenever the state or a political subdivision

seeks to give up something of value when it is under no legal obligation to do so.” The previous opinions of this office recognize that the requirement of a legal obligation to expend public funds or use public property is the threshold predicate for the constitutionality of an expenditure or use. However, this is not the only predicate. The expenditure or use must also be for a public purpose and create a public benefit proportionate to its cost. Attorney General’s Opinion No. 90-63. See also: Attorney General’s Opinions Nos. 02-0125; 01-0389; 95-141, 93-787, 92-722, 92-127 and 90-651.

As stated above, the threshold requirement is the presence of a legal obligation or duty by the public entity to alienate public funds or property. See *Beard-Poulan, Inc. v. Dept. of Highways*, 362 F. Supp. 547 (W.D. La. 1973); *Town of Brusly v. West Baton Rouge Parish Police Jury*, 283 So.2d 288 (La.App. 1st Cir. 1973). This prerequisite is satisfied by the presence of a valid statute, ordinance, charter or contract.

As noted above, La. R.S. 33:2101 authorizes parish fire protection districts to enter into contracts with private entities, such as the Norco Area Volunteer Fire Department, Inc., to provide for fire protection services within statutorily created fire protection districts. Clearly, this statutory framework constitutes valid legislation and, consequently, the presence of a legal obligation or duty on the part of the Parish Fire Protection District and the Norco Area Volunteer Fire Department, Inc., to enter into an agreement for the purpose of providing fire protection services and for the use of public funds to acquire vehicles to be used by the Fire Chief and Assistant Fire Chiefs.

It is also clear that a public purpose exists by providing 24-hour transportation for the Fire Chief and Assistant Fire Chiefs. According to your opinion request, the Fire Chief and Assistant Fire Chiefs are on 24-hour call to respond to incidents for the purpose of making an initial assessment of an emergency and establishing a command center. The requirement that the Fire Chief and Assistant Fire Chiefs be on 24-hour call serves a public purpose of providing for the prompt response of the Fire Chief and Assistant Fire Chiefs to emergency situations.

The fact that a vehicle might be used occasionally for some personal use does not render its cost to the public disproportionate to the public benefit realized in having rapid deployment of emergency decision-making personnel to an incident or emergency. Also see Atty. Gen. Op. No. 90-370. (Occasional personal use of public vehicle furnished to Hospital Administrator on 24-hour call does not constitute a prohibited donation of public property.)

Accordingly, it is the opinion of this office that the Fire Chief and Assistant Fire Chiefs of the Norco Area Volunteer Fire Department, Inc., all of whom are on 24-hour call, may use vehicles purchased with public funds and assigned to them for occasional personal use without violating Art. VII, Section 14 of the Louisiana Constitution.

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

With kindest regards,

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:

RICHARD L. MCGIMSEY
Assistant Attorney General

CCF/RLM/jav

Opinion Number 06-0124
Syllabus

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Date Received:

Date Released: August 4, 2006

Richard L. McGimsey
Assistant Attorney General