



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

APR 11 2013
OPINION 13-0026

Mr. John Lemoine
Mayor, City of Marksville
427 N. Washington Street
Marksville, Louisiana 71351

90 - A - 1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14

When a local public official is named individually in a civil lawsuit based on conduct or actions he took in the course and scope of his position, the local public entity may choose to use public funds to fund the litigation. Whether the actions alleged in the civil suit occurred in the course and scope of the public official carrying out his official duties is a factual determination that must be made by the local entity.

Dear Mayor Lemoine:

You have requested an opinion of this office regarding the use of public funds to pay attorney's fees associated with a lawsuit filed against you.

According to your request, a former employee of the City of Marksville has sued you, naming you as defendant in your individual capacity and not in your official capacity as the Mayor of the City of Marksville. Your request further states that the actions/conduct which are the basis for the lawsuit, were made while acting in your official capacity as mayor. Therefore, you have asked our office whether the City of Marksville must pay for or provide you legal representation to defend yourself in the lawsuit.

Our office has repeatedly opined that if a local public official or employee is sued for civil damages or charged with crime and is found not liable or not guilty 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 or reimburse the attorney's fees and expenses for the defense of the suit, provided the expenses were reasonable and necessary.¹ These opinions have also consistently stated that, if a local entity is legally able to reimburse legal fees and makes the choice to do so, the entity must also determine: (i) that the hourly rate charged by the attorney was reasonable; (ii) that the hours spent by the attorney were reasonable and necessary; and (iii) that any costs incurred by the attorney were reasonable and necessary. See La. Atty. Gen. Op. No. 07-0045.

¹ The following opinions address the use of public funds by a local entity for reimbursement of legal fees incurred when a public official has to defend himself against criminal, ethics, or civil charges brought against him: 77-1131, 77-1610, 79-349, 79-349A, 80-105A, 80-209, 83-475, 83-611, 85-412, 87-699, 87-744, 90-38, 90-490, 94-276, 94-384, 94-369, 94-369A, 96-152, 96-398, 97-369, 98-474, 99-27, 99-180, 99-356A, 00-157, 01-94, 02-0005, 02-0027, 03-0261, 04-0133, 05-0050, 05-0144, 05-0302, 05-0377, 07-0041, 07-0045, 07-0132, 08-0094, 08-0101, 09-0074, 09-0130, 09-0132, 09-0280, 10-0099, 10-0182, 10-0290, 11-0182, 12-0071, and 12-0080.

In response to your question of whether the City must pay for or provide you legal representation to defend yourself in a lawsuit filed against you in your individual capacity but based on actions/conduct which you undertook in your official capacity as mayor, we refer you to La. Atty. Gen. Op. No. 12-0085, which addressed the same question and is attached.

It is our opinion that when a local public official is named in a civil lawsuit because of actions he took in the course and scope of his position, the local public entity may choose to use public funds to fund the litigation. Whether the actions alleged in the civil suit occurred in the course and scope of the public official carrying out his official duties is a factual determination that must be made by the local entity. As a general rule, the our office refrains from making factual determinations. If civil charges are filed against a local public official and the local public entity makes a determination that the charges arise from the official's official actions, it is our opinion that public funds may be used to pay for his defense without the necessity of awaiting a final judgment. If at any point during the litigation it becomes apparent that the conduct of the public official occurred outside or beyond the course and scope of his public duties, then public funding of the defense must stop. We note that the fact that the caption of a civil lawsuit states that a public official is sued in his official and individual capacities does not necessarily mean that there is any merit to the allegations in the suit or that the actions alleged were in the public official's individual capacity.

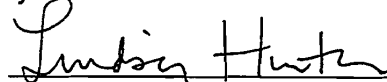
In summary, it remains the opinion of this office that when a public official is acting beyond the course and scope of his duties, he is not entitled to have public funds used to pay the legal fees for the defense of civil, criminal, or ethics charges brought against him. The fact that the caption to a lawsuit states that a public official is sued in his individual capacity only is not sufficient proof that the conduct complained of occurred outside or beyond the course and scope of his public duties. The determination of whether the actions of the local public official or employee are actions taken in the course of carrying out his or her official duties is a factual determination that must be made on a case by case basis.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

By:


Lindsey K. Hunter
Assistant Attorney General

Enclosure: La. Atty. Gen. Op. No. 12-0085