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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0052

77 OFFICERS - Local & Municipal
La. R.S. 33:423
La. R.S. 33:2211

Mr. Carroll Stelly
Chief of Police, City of Rayne
Post Office Box 69
Rayne, Louisiana 70578

Dear Chief Stelly:

It is permissible for the board of aldermen of a Lawrason Act municipality to pass an ordinance regulating the personal use of vehicles owned by the municipality; however, such an ordinance must not interfere with the inherent authority of the chief of police as set forth under the provisions of the Lawrason Act and must recognize that an officer who is "on call" and uses his police vehicle to travel to and from home is not using the vehicle for personal use. Under state law, a police officer in the City of Rayne may voluntarily elect to be paid for twenty hours per week and volunteer for the other twenty hours per week without pay, but the City should consider whether federal wage and hour laws might be implicated by such an arrangement.

As Chief of Police for the City of Rayne ("City"), a municipality governed by the provisions of the Lawrason Act, La. R.S. 33:321-463, you have requested an opinion of this office regarding the use of City owned vehicles by police officers and regarding whether an officer may choose to work twenty hours per week without pay.

More specifically, your first question asks whether the mayor and board of aldermen may pass an ordinance that "prevents a police chief who is on call 24 hours a day from using his take home unit." Our office has several previous opinions regarding the ability of a board of alderman operating under the Lawrason Act to regulate the use of vehicles by the police department, examining whether such a regulation infringes upon the inherent authority of the chief of police to manage the police department.¹

In La. Atty. Gen. Op. No. 07-0165, our office stated the Town of Welsh could enact an ordinance to restrict the use of police vehicles to official business, but must recognize that those officers who are designated as "on call" and using the vehicle to travel to and from home are not using the vehicle for personal use. See *also* La. Atty. Gen. Op. No. 05-0224. This office reached the same conclusion in La. Atty. Gen. Op. No. 00-504 (opining that "interference with the inherent authority of the Chief of Police would arise if the ordinance is applied to negate the instruction of the Chief of Police where he has authorized the use of police vehicles to and from work for those officers who are 'on call'").

¹ La. R.S. 33:423(A) sets forth the duties of a chief of police in a Lawrason Act municipality and 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." This office has long recognized that an elected chief of police has the inherent power and authority to supervise and direct his office, equipment, and personnel on a day-to-day basis and to assign its personnel and equipment. See La. Atty. Gen. Op. Nos. 09-0013, 02-56, 02-39, and 98-460.

status"); La. Atty. Gen. Op. No. 99-27 (opining that the chief of police is authorized to assign himself and his personnel a vehicle for use in twenty-four hour tours of duty). Similarly, in Atty. Gen. Op. 00-389, this office stated, "[i]t is an established principle that the mayor and alderman may not revoke the 'inherent powers' of an elected Chief of Police of a Lawrason Act municipality to operate, control and administer police department personnel. This inherent authority, however, applies only to the official law enforcement use of municipal police vehicles." See *also* La. Atty. Gen. Op. No. 80-1280 (the chief of police has the inherent authority to control police vehicles, which includes the authority to assign a police department vehicle to himself for police work, however, such vehicle may not be used for personal use unless such has been authorized by the mayor and board of aldermen); and La. Atty. Gen. Op. No. 02-77 (an ordinance may regulate the personal use of a municipal vehicle by police officers).

Based upon the opinions cited above, it remains the opinion of this office that it is permissible for the board of aldermen of a Lawrason Act municipality to pass an ordinance regulating the personal use of vehicles owned by the municipality; however, such an ordinance must not interfere with the inherent authority of the chief of police to operate the police department and allocate its resources and personnel as set forth under the provisions of the Lawrason Act and must recognize that an officer who is on call and uses his police vehicle to travel to and from home is not using the vehicle for personal use.

Your second question asks whether it is permissible for a reserve officer who is scheduled to work forty hours per week to agree to be paid for twenty of those hours and volunteer for the other twenty hours without pay. Our research has revealed nothing which would prohibit an officer from voluntarily electing to be paid for twenty hours per week and volunteering for the other twenty hours per week. See La. Atty. Gen. Op. No. 11-0029 (opining "our research reflects nothing in the law which would prohibit volunteer police assistance for the Village of Natchez").² La. R.S. 33:2211 defines an "employee of a police department" for purposes of minimum wages and maximum working hours, but only applies to municipalities having a population of not less than twelve thousand nor more than two hundred fifty thousand. Therefore, La. R.S. 33:2211, *et seq.* is inapplicable to the City of Rayne, which has a population of approximately 8,000. As noted in La. Atty. Gen. Op. No. 11-0029, we remind you that a volunteer police officer must be properly commissioned to perform the duties of a police officer.

While it is the policy of this office to decline to give opinions on the application of federal law, be advised that there may be some effects of the split paid/volunteer arrangement that you reference that might have implications under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* The FLSA contains the minimum wage and

² Please note that the employee choosing to forego payment and serve as a volunteer should be made aware of how this may affect his other benefits, including but not limited to, insurance and eligibility in the applicable retirement system.

maximum hour (overtime) requirements of federal law. For compliance purposes, the Department of Labor has issued regulations providing that a public employee may not "perform volunteer services for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency." 29 C.F.R. § 553.102(a). Similarly, under these regulations, a person "shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same types of services as those for which the individual proposes to volunteer." 29 C.F.R. § 553.101(d). Depending on the nature of the work to be performed and considering that the wages would be paid for only part of the time worked, there may be a minimum wage (or overtime wage) issue if paid and unpaid hours worked are considered to arrive at an effective hourly rate of pay, regardless of the employee's consent to the arrangement. We suggest that you consult with local counsel or seek an advisory opinion from the U.S. Department of Labor to address this concern.

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,

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JDC/LKH/chb