



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

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OPINION 13-0117

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

La. Const. art. VII, § 14 La. R.S. 40:2405

Mr. Charlie Caldwell, Jr.
City Marshal
City Court Building
1244 Texas Avenue
Shreveport, Louisiana 71101

Whether the Shreveport City Marshal's Office can allow its non-POST certified deputy marshals to drive vehicles owned by the Marshal's Office home on a daily basis depends on if it can be shown that the Marshal's Office is likely to receive an equivalent value for the benefit given to its deputies. If such a determination cannot be proven, then allowing the deputies to take home vehicles would be a prohibited donation of public property in violation of La. Const. Art. VII, § 14.

Dear Marshal Caldwell:

Our office received your opinion request regarding the Shreveport City Marshal's Office ("Marshal's Office") deputy marshals. Specifically, you have asked: Whether non-POST certified¹ deputy marshals can drive vehicles of the Marshal's Office home on a daily basis.

As your request deals with the use of public property, it is necessary to address it in light of Article VII, § 14 of the Louisiana Constitution which prohibits the donation, loan or pledge of public funds or property. It provides, in pertinent part:

Prohibited Uses. 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

La. Const. art. VII, § 14(A).

In *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So.2d 11 ("Cabela's" case), the Louisiana Supreme Court abandoned its prior analysis in *City of Port Allen v. Louisiana Mun. Risk Mgmt. Agency, Inc.*, 439 So.2d 399 (La.1983), and articulated a new standard of review governing La. Const. art. VII, § 14(A). The court in the *Cabela's* case stated that La.

¹ La. R.S. 40:2405 details the requirements for post certification for peace officers.

Const. art. VII, § 14(A) "is violated when public funds or property are gratuitously alienated." *Cabela's*, 938 So.2d at 20.

In light of the *Cabela's* case, it is the opinion of this office that in order for an expenditure or transfer of public funds or property to be permissible under Article VII, § 14(A), the public entity must have the legal authority to make the expenditure or transfer and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds. The *Cabela's* standard places a strong emphasis on the reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds.

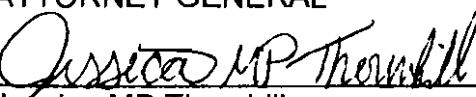
The vehicles in question, according to the information you provided, are owned and maintained by the Marshal's Office. Our Office has previously opined that employees who are on call or considered on duty 24 hours a day may use public vehicles to travel to and from work without violating Article VII, §14 of the Louisiana Constitution. La. Atty. Gen. Op. Nos.10-0250 and 07-0180.

Your request asks whether deputy marshals, who are not considered on duty or on call 24 hours a day, can utilize marshal vehicles to travel to and from work. Allowing these non-POST certified deputy marshals to use these vehicles would be tantamount to a prohibited public donation if the deputy marshals are given a benefit at a cost to the Marshal's Office without an equal benefit in value returned. In order for such a benefit to not be in violation of Article VII, § 14 of the Louisiana Constitution, it would require the Marshal's Office to show that the use of the public vehicle is for a public purpose and that the Office has a reasonable expectation of getting at least the equivalent value in exchange for this benefit. Without such a showing, allowing the non-POST certified deputy marshals to travel to and from work in the Marshal's Office vehicles would be a violation of the Louisiana Constitution.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: 
Jessica MP Thornhill
Assistant Attorney General