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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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OPINION 13-0162

77-Officers-Local and Municipal

La. R.S. 33:321, *et seq.*; La. R.S.39:1305

Mr. Michael R. Baker
Chief of Police
Dodson Police Department
112 North 6th Street
Dodson, LA 71422

The annual budget for the Village of Dodson must include an operating budget for the Police Department. It is not permissible for the Board of Aldermen for the Village of Dodson to enact an ordinance that prohibits the elected Chief of Police or any of the certified police officers, while on duty, from carrying a taser or any other electrical device on their person. The elected Chief of Police for the Village of Dodson is not required to inform the Mayor when he leaves town to attend mandatory police training

Dear Chief Baker:

As the elected Chief of Police for the Village of Dodson (Dodson), you have requested an opinion of the Attorney General addressing the following questions:

- (1) Whether the annual budget for Dodson must include an operating budget for the Police Department?
- (2) Whether it is permissible for the Board of Aldermen for Dodson to enact an ordinance that prohibits the elected Chief of Police or any of the certified police officers, while on duty, from carrying a taser or any other electrical device on their person?
- (3) Whether the elected Chief of Police for Dodson is required to inform the Mayor when he leaves town to attend mandatory police training.

Dodson is a political subdivision of the State of Louisiana operating under and governed by the provisions of the Lawrason Act, La. R.S. 33:321 *et seq.* The officers of every Lawrason Act municipality are the Mayor, Board of Aldermen, Chief of Police, Tax Collector and Clerk. See La. R.S. 33:381(A). The Mayor is the chief executive officer. See La. R.S. 33:362(B). The Board of Aldermen exercises the legislative powers within the municipality. See La. R.S. 33:362(A)(1). The Chief of Police is responsible for law enforcement in the municipality, enforcement of all ordinances and state laws in the municipality, and all other duties required by ordinance. See La. R.S. 33:423(A).

In speaking to this office, you indicated that after you were elected Chief of Police, you were informed that there was no budget for the Police Department; however, you have since been provided with a copy of the budget for your department.

The Mayor is required to prepare and submit an annual budget, which must include recommended expenditures for all agencies and departments, to the Board of Aldermen. See La. R.S. 33:404(5) and La. R.S. 39:1301, *et seq.* According to the provisions of La. R.S. 33:404(5) and La. R.S. 39:1301, *et seq.*, the expenditures of the Police Department must be included in the annual budget.

Further, in La. Atty. Gen. Op. No. 93-666, this office opined that in preparation of a comprehensive budget for a municipality, the expenditures and proposed appropriations for the police department should be indicated and designated as a line item in the municipal budget. Additionally, our office has consistently concluded that a Chief of Police is in the best position to determine his department needs. See La. Atty. Gen. Op. No. 98-469. Our office has also recognized an elected Chief of Police should be given the opportunity to submit input for the purposes of budget preparation. See La. Atty. Gen. Op. No. 93-666. Considering this authority, it is the opinion of this office that the annual budget for Dodson must include an operating budget for the Police Department.

It should be noted that once the Mayor and the Board of Aldermen have budgeted and appropriated funds for the Police Department, the authority to allocate the expenditure of the funds rests with the elected Chief of Police. See *Doyle v. City of Harahan*, 610 So.2d 272 (La.App. 5 Cir. 1992). However, the Chief of Police's inherent authority to allocate the expenditure of Police Department funds must be pursuant to and in accordance with specific appropriations from the budget and the use of purchase orders and warrants under La. R.S. 33:462. See La. Atty. Gen. Op. Nos. 03-0052, 02-450, and 01-216.

Your second question asks whether it is permissible for the Board of Aldermen for Dodson to enact an ordinance that prohibits the elected Chief of Police or any of the certified police officers, while on duty, from carrying a taser or any other electrical device on their person. It has consistently been the opinion of this office that an elected Chief of Police has the inherent authority to operate, control and administer his office, office equipment and office personnel. See La. Atty. Gen. Op. Nos. 13-0052, 09-0013, 02-56, and 98-483. However, the Mayor and Board of Aldermen may exercise authority over an elected Chief of Police and his department as a function necessary, requisite or proper for the management of its affairs not denied by law. See La. R.S. 33:361. In *Cogswell v. Town of Logansport*, 321 So.2d 774, 780 (La. App. 2 Cir. 1975), the court stated as follows:

[T]he Mayor and Aldermen of a Lawrason municipality may exercise 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.

As stated earlier, the Chief of Police is responsible for law enforcement in the municipality and enforcement of all ordinances and state laws in the municipality. See La. R.S. 33:423(A). You indicated that your department has a long standing written policy concerning the use of weapons by officers of the Dodson Police Department and that you require all officers to be trained in the use of the weapons. You also indicated that, subject to your approval and supervision, officers are currently carrying firearms, aerosols, and batons. It is clear that any decision relating to the type of weapons officers carry and the supervision over the use of those weapons by officers is part of the inherent authority of a Chief of Police to administer his office, equipment and personnel.

An ordinance prohibiting the type of weapons officers are allowed to carry revokes, limits and restricts the inherent authority of an elected Chief of Police over the operation of his department and personnel. Therefore, it is the opinion of this office that it is not permissible for the Board of Aldermen to enact an ordinance that prohibits the elected Chief of Police or any of the certified police officers, while on duty, from carrying a taser or any other electrical device on their person.

You indicated that the Mayor has requested that you inform him if you leave town to attend mandatory police training. It has been the opinion of this office that an elected Chief of Police should serve on a full time basis, but is not required to establish or set specific working hours for himself. See La. Atty. Gen. Ops. 11-0025, 98-469, 95-13, and 87-696.

Based on prior opinions of this office, an elected Chief of Police is not required to report his work schedule to the Mayor. Therefore, it is the opinion of this office that the elected Chief of Police for Dodson is not required to inform the Mayor when he leaves town to attend mandatory police training.

In conclusion, it is the opinion of this office that the annual budget for the Village of Dodson must include an operating budget for the Police Department. It is the further opinion of this office that it is not permissible for the Board of Aldermen for the Village of Dodson to enact an ordinance that prohibits the elected Chief of Police or any of the certified police officers, while on duty, from carrying a taser or any other electrical device on their person. It is also the opinion of this office that the elected Chief of Police for the Village of Dodson is not required to inform the Mayor when he leaves town to attend mandatory police training.

We hope that this opinion adequately addresses 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: Madeline S. Carbonette
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JDC:MSC:jv