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ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
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**APR 29 2015**  
**OPINION 14-0175**

Amber Lynne Amore  
General Counsel  
Town of Independence  
500 East Morris Avenue  
Hammond, LA 70403

90-A-2 – PUBLIC FUNDS – Loan, Pledge, or Grants  
46-A Fees & Costs  
La. Const. art. VII, §14  
La. R.S. 42:1123

Police officers may use vehicles owned by the Town of Independence Police Department to accompany local school athletic teams to athletic events outside the Town of Independence, as long as the police officers are performing an authorized off-duty detail in accordance with the requirements of La. R.S. 42:1123(15).

Dear Ms. Amore:

On behalf of the Town of Independence and its Mayor, Michael A. Ragusa, you have requested an opinion from this office concerning the authorized use of vehicles owned by the Town of Independence Police Department. You have indicated that Independence Police Department vehicles are used to escort the football teams of local Independence schools to their away games. Your request notes that some of these away games are held outside of the limits of the Town of Independence and even outside the Parish of Tangipahoa, where the Town of Independence is located. Although not specifically stated in your request, you explained in a telephone conversation that on-duty police officers paid by the Independence Police Department are currently performing these escorting services; however, you also noted that you are considering using off-duty police officers to perform these escort activities. Specifically, you have asked this office whether on-duty or off-duty Town of Independence police officers may escort the local school athletic teams to and from away games.

The activities you have described are essentially security details. Paying on-duty police officers to perform these security details concerns the use of public funds, and both on-duty and off-duty police officers would be using public vehicles in the performance of the security details. As the security details involve the use of public funds and property, the actions must be analyzed under the provisions of Louisiana Constitution Article VII, Section 14. La. Const. art. VII, § 14, provides, in pertinent part:

A. 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...

The seminal case interpreting La. Const. art. VII, § 14, and explaining its applicable exceptions, is *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”). In light of the Louisiana Supreme Court’s decision in *Cabela’s*, this office has consistently opined that in order for an expenditure of public funds to be permissible under La. Const. art. VII, § 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose of 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. See, e.g., La. Atty. Gen. Op. Nos. 10-0299, 10-0171, 09-0271, and 09-0260. In order to answer your question, we must determine whether La. Const. art. VII, § 14 is violated by using on-duty and off-duty officers to perform the escort details.

### **ON-DUTY OFFICERS**

The wages of on-duty police officers performing these security/escort details are paid by the Town of Independence with public funds. The Town of Independence is incorporated under the Lawrason Act (La. R.S. 33:321 *et seq.*), and its authority is governed by the applicable statutes. The general powers of a Lawrason Act municipality are set forth in La. R.S. 33:361, which states that a municipality is “authorized to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied by law.” Schools located in the Town of Independence, both private and public, are not operated, controlled, or supervised by the Town of Independence. Rather, public schools are likely governed by the Parish of Tangipahoa school board, and private schools by the private entity that controls them. Paying police officers to escort local school teams to athletic events is not necessary or proper for the management of its affairs, as the Town of Independence has no authority over the schools. La. R.S. 33:361 does not authorize the Town of Independence to make such an expenditure, and no other provisions in the Lawrason Act grant that authority.

Since the Town of Independence must have legal authority to pay its officers to escort local school teams to away athletic events in order to be allowed under La. Const. art. VII, § 14, and, as no such authority exists, this office is of the opinion that on-duty police officers may not perform these security/escort details.

### **OFF-DUTY OFFICERS**

Police officers performing off-duty security details would not be paid by the Town of Independence, but rather, they would be paid by the local schools employing their services. While these officers would be using Independence Police Department vehicles for these off-duty details, Louisiana law allows police officers to perform off-

duty security details and use police vehicles as long as certain criteria are met. Specifically, La. R.S. 42:1123(15) authorizes an off-duty police officer to use police Department-owned vehicles when "such use is approved by and in accordance with the policy of the law enforcement officer's public employer, which policy shall be published in the official journal of the parish prior to becoming effective and shall provide for appropriate charges for the use of public vehicles for private employment." Thus, in order for Town of Independence police officers to use Independence Police Department vehicles for off-duty assignments, the Police Department would need to:

1. Have a policy for off-duty or private employment in place;
2. Publish that policy in an official journal of Tangipahoa Parish;
3. Receive appropriate charges for the use of the Police Department vehicles.

Accordingly, it is the opinion of this office that the Town of Independence may allow its off-duty officers to escort local school teams to away athletic events and use Police Department vehicles during these off-duty details, as long as the conditions set forth in La. R.S. 42:1123(15) are met and the officers' wages are paid directly by the school employing their services. Such actions would not violate La. Const. art. VII, § 14.

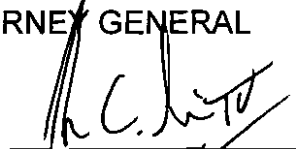
It is also the opinion of this office that vehicles owned by the Independence Police Department may be used to accompany local school athletic teams to their athletic events if the officers are performing off-duty details in accordance with La. R.S. 42:1123(15).

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:

  
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JDC/JCMIV