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71 MUNICIPALITIES

77 OFFICERS

La. R.S. 33:423

Chief Johnny Gales
Chief of Police
Newellton Police Department
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Newellton, LA 71357

The chief of police of a Lawrason Act municipality must be allowed the opportunity to make a recommendation with regard to police personnel before the council and mayor make a decision to hire a police officer.

Dear Mr. Gales:

Your request for an Attorney General's opinion has been forwarded to me for research and reply. You ask whether the chief of police of a Lawrason Act municipality is required to make recommendations with regard to police personnel decisions before the council and mayor can hire a police officer.

You advise that you are the elected Chief of Police for the Town of Newellton ("town"), which is a Lawrason Act municipality.¹ You indicate that a police officer for the town recently quit. Subsequently, at a town council meeting, the council voted to re-hire the police officer. You further indicate that you were not in attendance at the meeting, you did not make a recommendation as to the re-hiring of the police officer, and you would not have recommended to the council that the officer be re-hired.

La. R.S. 33:423 controls the hiring of police department employees. It prescribes a procedure that imposes a mandatory obligation on the chief of police to make a recommendation to the mayor and council with respect to all police personnel matters.

Previously, this office has interpreted the mandatory language of La. R.S. 33:423 to mean that the mayor and council must follow whatever recommendation was made by the chief of police regarding employment matters. See La. Atty. Gen. Op. Nos. 01-07, 01-07A, 98-0241, 98-460, and 82-613. This conclusion was consistent with past jurisprudence of the First and Third Circuit Court of Appeal. See *Thibodeaux v.*

¹ The Lawrason Act is the general municipal incorporation law of Louisiana which classifies and bestows powers and privileges upon municipalities according to population.

Hernandez, 97-602 (La.App. 3 Cir. 10/29/97), 702 So.2d 1157; See also *Lee v. Grimmer*, 99-2196 (La.App. 1 Cir. 12/22/00), 775 So.2d 1223.

However, the Louisiana Supreme Court's decision in *Grant v. Grace, et al.*, 03-2021 (La. 4/14/04), 870 So.2d 1011, expressly overruled the *Thibodeaux* and *Lee* decisions, leaving the conclusions reached in our previous opinions on the subject in question. The more recent opinions of this office follow this holding of *Grant*, confirming that while a recommendation of the chief is necessary for a police personnel action, the governing authority need not follow that recommendation. See La. Atty. Gen. Op. Nos. 10-0052, 07-0048 and 05-0401.

The recommendation requirement of La. R.S. 33:423 and whether or not a local governing authority can proceed to hire or fire police officers without the approval of an elected chief of police are issues which were discussed by the Supreme Court in *Grant*. The *Grant* decision held that prior to making police employment decisions in the absence of a civil service requirement, the local governing authority must allow the elected chief of police the opportunity "to make recommendations before the municipality acts" However, the municipality need not adopt such recommendation and may take a different course of action. *Grant*, 870 So.2d at 1016-17.

In light of *Grant*, the council was required to receive a recommendation from the police chief prior to re-hiring the police officer. Therefore, it is the opinion of this office that the decision to re-hire a police officer prior to giving the police chief an opportunity to offer a recommendation to the council was premature. The council should schedule a meeting to reconsider the hiring and allow the police chief the opportunity to make a recommendation that the council should consider prior to taking any action.

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: 
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JDC: ADF