



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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47 FINES, FORFEITURES & PENALTIES
90-A-1 PUBLIC FUNDS & CONTRACTS
19-A CRIMINAL LAW – Evidence

Mr. Marcus L. Crochet
Chief of Police
Welsh Police Department
201 W. South Street
Welsh, LA 70591

The funds generated by the Welsh Police Department from its Traffic Enforcement Detail must be deposited into the Town's general fund which is within the control of the Mayor, Town Clerk, and Treasurer. Pursuant to La. R.S. 40:2616, drug asset forfeiture funds must be kept separate from the Town's general fund. Such funds nevertheless constitute public funds of the municipality and must remain within the control of the Mayor, Town Clerk, and Treasurer, who shall allocate the funds to the police department to be used in accordance with statute. The authority to sign checks drawn on the municipal treasury is provided to the Mayor. However, the Mayor is authorized to require an additional signature on all checks drawn from the Traffic Enforcement Detail Account and Drug Asset/Forfeiture Account. The Inmate Account, Safe Keeping Account, and Evidence Account must be placed under the control of the Chief of Police and separate from the Town's general fund.

Dear Chief Crochet,

Your request for an Attorney General's Opinion has been assigned to me for research and reply. As Chief of Police for the Town of Welsh ("Town"), you have asked our opinion regarding the control of bank accounts dedicated to the Welsh Police Department. You have described the specific accounts as follows:

Inmate Account: used to deposit cash funds from inmates' personal property upon arrest and returned by check to subject when released from custody.

Safe Keeping Account: used to deposit cash funds found and turned in to our agency and only returned to owner by check when money is claimed and ownership is proven.

Drug Asset/Forfeiture Account: monies derived from drug asset forfeiture funds seized and relinquished to Welsh Police Department through court proceedings. Spending such funds is strictly mandated by the state to only allow purchases made toward narcotics enforcement.

Traffic Enforcement Detail Account: funds derived from interstate traffic enforcement and spending is stipulated for purchases by Welsh Police Department outside the realm of fiscal budget expenses.

Evidence Account: funds derived from the seizure of evidence in a criminal investigation and/or arrest. Chain of custody to prevent compromise of evidence is crucial. Once evidence is submitted, it is only to be accessed by evidence custodian who is only allowed to release the funds by order of release from district attorney or magistrate.

Currently, only the Mayor and Town Clerk are authorized to sign checks and access the funds in the aforementioned accounts. Your request letter takes the position that this procedure prevents you, as Chief of Police, from accessing the accounts in order to maintain accountability, inhibits your knowledge of any unapproved spending, and compromises the chain of custody of evidence. You ask whether the Chief of Police is permitted to take over these accounts.

The Town operates under a mayor-board of aldermen form of government and is governed by the provisions of the Lawrason Act (La. R.S. 33:321 *et seq.*). The Town's police department is headed by an elected chief of police.

La. R.S. 33:404 sets forth the mandatory duties, powers and responsibilities of the mayor. It provides, in pertinent part:

A. The mayor shall have the following powers, duties and responsibilities:

* * *

(8) To sign warrants drawn on the treasury for money, to require that the municipal clerk attest to such warrants, to affix the municipal seal thereto, and to keep an accurate and complete record of all such warrants.

The duties of a chief of police are set forth in La. R.S. 33:423, which provides, in part, as follows:

A. 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. He shall perform all other duties required by him by ordinance. In those municipalities governed by the provisions of this Part, R.S. 33:321 *et seq.*, which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel, for the promotion of officers, to effect disciplinary action, and for dismissal of police personnel.

La. R.S. 33:422 states the duties of the clerk:

The clerk shall be the auditor of the municipality. He shall keep a book in which he shall enter and preserve accounts of each particular fund, and the accounts of each municipal officer. The treasurer shall not receive money from any source until the same has been reported to the clerk and audited, and a receipt warrant issued therefor. All fines and forfeitures shall be reported by the officer collecting the same, immediately after such collection, and be paid into the treasury. The books of the auditor shall be subject to inspection by the taxpayers of the municipality at any time during business hours.

Additionally, La. R.S. 33:425 provides the following duties of the treasurer:

The treasurer shall receive, safely keep, and pay out according to law, all monies belonging to the municipality. He shall keep accurate accounts of all receipts and disbursements, and shall make report, in writing to the mayor and board of aldermen, at each regular meeting, of the finances of the municipality; shall perform all other duties that may be prescribed by ordinance; and shall pay out money only on the warrant issued by the order of the mayor and board of aldermen.

It has been the consistent opinion of this office that, pursuant to La. R.S. 33:423, a chief of police has the inherent authority to supervise and control his office, equipment, and personnel on a day-to-day operational basis. This authority includes the ability to control and administer police department property and personnel, and the funds appropriated for such property and personnel by a municipal ordinance enacted by the board of aldermen. La. R.S. 33:406 and La. Atty. Gen. Op. Nos. 89-0589, 93-0438, 93-0666, 98-0469, and 05-0096. See also *Cogswell v. Town of Logansport*, 321 So.2d 774, 779 (La.App. 2 Cir. 1975) and *Doyle v. City of Harahan*, 610 So.2d 272 (La. App. 5th Cir. 1992).

A chief of police, therefore, has operational control over an account containing public funds appropriated to the police department by the Town. Once the mayor and aldermen have budgeted and appropriated money for the police department, the authority to allocate the expenditure of these funds rests with the chief of police. While this operational control allows a chief of police to determine how the funds allocated to a police department by the Town are spent, the authority to sign checks and access funds deposited in the municipal treasury is provided to the mayor, clerk, and treasurer pursuant to La. R.S. 33:404, 422, and 425. However, accounts containing funds which are held by a police department as a fiduciary are properly placed under the control of a chief of police. La. Atty. Gen. Op. Nos. 94-0170, 09-0156, and 10-0074.

Thus, the ability of a Chief of Police to supervise and control the bank accounts described above will depend on the classification of the funds contained in the account. Each type of account will be addressed in turn below.

Traffic Enforcement Detail Account:

This office has previously concluded that a police department is not permitted to establish a separate fund for the deposit of money generated from traffic tickets. La. R.S. 33:422 requires that the fines collected from tickets issued by a police officer in a Lawrason Act municipality be deposited into the municipal treasury and, thus, within the control of the mayor, clerk, and treasurer. La. Atty. Gen. Op. Nos. 95-0118, 97-0431, 98-0469, 00-0205, 05-0096 and 13-0229. Notwithstanding, we have further opined that a municipality may, but is not required to, establish and administer a separate account within the general fund for money generated by a municipal police department. Such funds may be appropriated to the police department at the discretion of the board of alderman by ordinance. See La. R.S. 33:406 and La. Atty. Gen. Op. No. 00-0205.

It is, therefore, the opinion of this office that the funds generated by the Welsh Police Department from its traffic enforcement detail must be deposited into the Town's general fund and remain within the control of the Mayor, Town Clerk, and Treasurer. The Town may choose to establish a separate account within the general fund to hold these funds, but the Chief of Police would not be permitted to take control of such an account. However, the Mayor is not prohibited from authorizing the Chief of Police to be added as a signatory on all checks drawn from the account. See La. Atty. Gen. Op. No. 05-0003.

Drug Asset/Forfeiture Account:

The control of drug asset forfeiture accounts has been previously discussed by our office in La. Atty. Gen. Op. No. 94-0170. There, we noted that the distribution of such money is governed by La. R.S. 40:2616, which requires that the proceeds be used for drug law enforcement. In order to ensure that the drug asset forfeiture proceeds are not used for anything other than drug law enforcement, we opined that the forfeited money must be kept separate from the general fund of the municipality. See *also* La. Atty. Gen. Op. Nos. 03-0385 and 05-0329. Accordingly, the authority to make decisions concerning disbursement or use of such funds rests solely within the discretion of the chief of police for the municipality.

However, La. R.S. 33:422 requires all forfeitures to be paid into the treasury. It is the opinion of this office that drug asset forfeiture funds constitute public funds of the municipality and must remain within the control of the Mayor, Town Clerk, and Treasurer, who shall allocate the funds to the police department to be used in accordance with statute. As noted above, the authority to sign checks drawn on the municipal treasury is provided to the Mayor, who may authorize the Chief of Police as an additional signatory on all checks drawn from the account.

Evidence Account:

Our office has previously opined that cash money seized during a criminal investigation and stored in an evidence room does not constitute public funds. La. Atty. Gen. Op. No. 09-0156. Such seized funds are not required to be deposited in the municipal treasury and may be held by a police department in a separate evidence and property room. We have further recognized that the power of an elected chief of police to supervise the operation of the police department and control and administer police department property and personnel includes the ability to establish procedures for securing evidence. La. Atty. Gen. Op. No. 10-0074. It follows that the chief of police must have the final authority over decisions regarding money seized during a criminal investigation.

Therefore, it is the opinion of this office that the Chief of Police for the Town of Welsh would be permitted to control and administer an Evidence Account in order to maintain responsibility, documentation, accounting, and chain of command for evidence. It should be noted, however, that the above cited opinions concluded that the Legislative Auditor nevertheless has the authority to examine, audit, or review the books of a police department and make necessary and appropriate findings thereto.

Inmate and Safe Keeping Accounts:

A similar analysis would appear to apply to Inmate Accounts and Safe Keeping Accounts because these types of funds also do not constitute public funds. The police department has a duty to act as a fiduciary to ensure that the funds are used for their specified purposes. Therefore, similar to special asset forfeiture accounts and evidence accounts, these accounts may be kept separate from the Town's general fund and placed under the control of the Chief of Police in order to maintain responsibility, documentation, and accounting.

In summary, the funds generated by the Welsh Police Department from its Traffic Enforcement Detail must be deposited into the Town's general fund which is within the control of the Mayor, Town Clerk, and Treasurer. Pursuant to La. R.S. 40:2616, drug asset forfeiture funds must be kept separate from the Town's general fund. Such funds nevertheless constitute public funds of the municipality and must remain within the control of the Mayor, Town Clerk, and Treasurer, who shall allocate the funds to the police department to be used in accordance with statute. The authority to sign checks drawn on the municipal treasury is provided to the Mayor. However, the Mayor is authorized to require an additional signature on all checks drawn from the Traffic Enforcement Detail Account and Drug Asset/Forfeiture Account. The Inmate Account, Safe Keeping Account, and Evidence Account must be placed under the control of the Chief of Police and separate from the Town's general fund.

Included in your request are the following stipulations which you indicate would be applied to any account placed within the control of the Chief of Police:

1. All accounts are required to have 4 persons authorized on these accounts (Chief of Police, Assistant Chief of Police, Mayor, and Town Clerk);
2. Any outgoing check must have two signatures: one police department official and one city hall official per check, to provide knowledge, approval, and accountability of spending; and
3. Chief of Police must maintain all records and documentation of spending which may be audited at any time at the Mayor or Town Clerk's request.

Due to the fact that an elected Chief of Police has the final authority over police department property, which includes money held in a fiduciary capacity, we do not find the aforementioned stipulations to be necessary. Requiring additional persons to be authorized on the Inmate Account, Safe Keeping Account, and Evidence Account would interfere with the inherent and final authority of an elected Chief of Police to supervise and control his office, equipment, and personnel. As previously noted, these accounts are subject to discretionary review by the Legislative Auditor.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance, please do not hesitate to contact our office.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:



Andrea Barient
Assistant Attorney General