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STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
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February 9, 2024
OPINION 23-0126

The Honorable Xanthe Y. Seals
Mayor of Homer
400 East Main Street
Homer, LA 71040

107 SHERIFFS – Constables & Marshals, including Ex-Officio Tax Collectors, rights, powers & duties, in general

La. Const. art. VII, § 14	La. Const. art. X, § 22
La. C.C. art. 1756	La. C.C. art. 1757
La. R.S. 33:423(A)	La. R.S. 42:61, et seq.
La. R.S. 42:66(A)(7)	

Pursuant to the Town of Homer's Charter, the position of Chief and position of Marshal are the same position. The Marshal is entitled to the compensation detailed in section 7 of the Charter if the Mayor and Council have fixed sums for these duties. If sums have not been fixed by the Mayor and Council, the Marshal is not due any additional compensation and cannot receive retroactive compensation should the Mayor and Council establish such sums going forward. Should the Mayor and Council fix sums going forward, those sums should be allocated to the Marshal in connection with the duties as they are performed, and he should receive them as compensation in addition to his salary. As the position of Chief and Marshal are the same position, it does not violate Dual Officeholding Law for the Chief to receive sums due to the Marshal pursuant to the Charter.

Dear Mayor Seals:

Our office received your request for an opinion regarding whether the Chief of Police (Chief) of the Town of Homer (Town) is entitled to the additional compensation of Marshal as contemplated by Section 7 of the Homer Legislative Charter (Charter). If the Chief is entitled to this compensation, you have requested that we consider additional questions including: whether that pay would be retroactive and, if so, to what date; if the sums should be paid per incident or monthly; whether the sums should be paid as additional compensation or placed in an account for the expenses of the Office of the Marshal; and whether it would be considered dual office holding for the Chief to receive the additional compensation of the Marshal.

The Town is a Lawrason Act¹ municipality, therefore, any issues that are not addressed by the Charter are governed by the Lawrason Act. Pursuant to Section 9 of the Charter, "[t]he marshal shall be chief of police". Further, Section 15 of the Charter provides: "[t]here shall be one (1) marshal for the Town of Homer, who shall be chief of police." Under the Charter, the positions are one and the same.² As such, for the duration of this opinion the position will be referred to as Marshal.

¹ La. R.S. 33:321, et seq.

² Likewise, though not governing here as the Charter is not silent on the issue, under the Lawrason Act, the position of chief and marshal are one. La. R.S. 33:423(A).

Because the positions of Chief and Marshal are one and the same under the Town Charter, we determine that the Chief of the Town is entitled to any additional compensation intended for the Marshal as contemplated by Section 7 of the Charter. However, before we can turn to the additional questions you posed, we address the question whether “additional compensation” has been established under the applicable provision of the Charter.

Section 7 of the Charter provides, in pertinent part:

The marshal, in addition to his salary, shall receive such compensation for removing nuisances, and for making arrests and summoning witnesses, as may be fixed by the mayor and selectmen; his fee for arrests and for summoning witnesses to be paid by the party convicted, shall not exceed the rates paid the sheriff for like services.

The language used regarding additional compensation to the marshal, “shall receive such compensation ...,” is mandatory in nature. However, the additional compensation must be fixed by action of the mayor and selectmen in their discretion. The term, “as may be fixed by the mayor and selectmen,” is permissive, not mandatory in nature. Therefore, the Marshal *shall* receive this compensation only *if* the Mayor and Council have fixed sums for these duties.

From a review of the Town’s Charter and published ordinances, we find no provision to fix the sums to be paid as contemplated by the Charter.³ Since the Mayor and Council have not fixed sums for this compensation, there is no additional compensation for the Marshal to receive under Section 7 of the Charter.

Worth noting is section 19-17(A) of the Town’s Code Enforcement Ordinances regarding the cost of removing nuisances. The Town Ordinances provide that the Town may cause such work to be performed by city resources or a private contractor, and in such event, *the Town shall be entitled to assess and collect* all costs incurred in performing such work, together with an administrative charge of \$150.00. The ordinance does not provide a *fixed* sum to be received by the Marshal should the Marshal perform the work that is done.

Should sums be fixed going forward, the Marshal would be entitled to receive that compensation. However, whether the Marshal may receive retroactive additional compensation for past services rendered must be analyzed under La. Const. art. VII, § 14. Article VII, Section 14(a) of the Louisiana Constitution of 1974 provides that: “[e]xcept 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.” Generally, retroactive

³ If there are other ordinances in addition to the ones published on the website of the Town they are not available to us. Accordingly, this opinion is limited in scope to the information available.

payment to a public employee for services already performed constitutes a prohibited donation if a public entity has not obliged itself to make such payments.⁴

Whether the Town would be obligated to pay the Marshal retroactively, we must determine whether this additional compensation issued to the Marshal would be considered "compensation for past services rendered" or "deemed salaries for services rendered but for which no salary was drawn when the services were rendered." *State v. Davis*, 539 So.2d 803, 811 (La. App. 3 Cir. 1989). This answer requires a "factual determination" which depends on the circumstances. *Id.* Louisiana courts have held that payments to public employees "in the form of ... extra compensation for past services rendered" is prohibited. *Id.* See also, *Varnado v. Hosp. Serv. Dist. No. 1*, 98-0468 (La. App. 1 Cir. 04/01/99); 730 So. 2d 1066, 1068. In this instance, because there were no ordinances fixing additional compensation at the time the past performances were rendered, the compensation was not due, and the Town was not obligated to pay the Marshal compensation that had not been fixed. Therefore, if the Marshal were to be retroactively paid for newly established fixed sums, it would be considered compensation for past services rendered and would be prohibited.

If such sums are fixed by the Mayor and Council going forward, the pay should be allocated in connection with the duties as they are performed, not as a fixed monthly sum. Were the Marshal to receive a fixed sum monthly and paid during months that no duties were performed, the additional compensation would likely violate La. Const. art. VII, § 14.

Additionally, if such sums are fixed by the Mayor and Council going forward, pursuant to the Charter, the Marshal shall receive the compensation in addition to his salary. As such, it should be paid to the Marshal as additional compensation and may not be deposited into an account for the exclusive use of expenses of the Office of Marshal.

Pursuant to La. Const. art. X, § 22, the legislature has enacted laws regulating dual employment and defining, regulating, and prohibiting dual office holding in state and local government. The statutory provisions of the Dual Officeholding and Employment Law are found at La. R.S. 42:61, et seq. Because the position of Chief and of Marshal are the same position under the Charter, Chief and Marshal is but a single office and does not violate the Dual Officeholding laws.

Considering the above, it is the opinion of this office that: pursuant to the Town of Homer's Charter, the position of Chief and position of Marshal are the same position; the Marshal is entitled to the compensation detailed in section 7 of the Charter if the Mayor and Council have fixed sums for these duties; if sums have not been fixed by the Mayor and Council, the Marshal is not due any additional compensation and cannot receive retroactive compensation should the Mayor and Council establish such sums going forward; should the Mayor and Council fix sums going forward, those sums should be allocated to the Marshal in connection with the duties as they are performed, and he should receive those sums as compensation in addition to his salary; and, as the position of Chief and Marshal

⁴ See Attorney General Opinion Nos. 18-0015, 09-0260, 05-0223, 05-0060.

are the same position, it does not violate Dual Officeholding Law for the Chief to receive sums due to the Marshal pursuant to the Charter.

We trust that this opinion of the Attorney General adequately responds to your inquiry. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

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