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OPINION 24-0109

77 OFFICERS – Local & Municipal; Selection, Qualifications & Tenure;
vacancies

The Honorable William Scott, III
Mayor, Town of Cottonport
Post Office Box 479
Cottonport, LA 71327

La. R.S. 33:423	La. R.S. 39:1309
La. R.S. 33:462	La. R.S. 39:1310
La. R.S. 33:404	La. R.S. 39:1311

Addresses several questions posed by the mayor of the Town of Cottonport concerning the authority and responsibilities of an elected chief of police, particularly regarding officer pay, budget amendments, and the involvement of the mayor and board of aldermen in these matters.

Dear Mayor Scott:

You raise several questions concerning the authority and responsibilities of an elected chief of police, particularly regarding officer pay, budget amendments, and the involvement of the mayor and board of aldermen in these matters. We are responding to your inquiries as follows.

Question 1: What authority do the mayor and board of aldermen have regarding police officer pay under La. R.S. 33:423 when there is an elected chief of police, and can these duties be expanded by ordinance?

Conclusion: The mayor and board of aldermen in a Lawrason Act municipality have the authority to set the police department's budget, including setting officer salaries, but they cannot pass ordinances that limit or expand the chief's statutory and inherent authority to manage the day-to-day operation of the department.

Under La. R.S. 33:423, when there is an elected chief of police, the authority to control and supervise the police department, including personnel matters such as assignments and general oversight, rests primarily with the chief. This includes the inherent authority to manage the day-to-day operations of the department and its personnel. However, the chief's authority is subject to the municipal budget set by the mayor and board of aldermen. The authority to determine the total budget, including funding for police officers' salaries, rests with the mayor and board of aldermen.

Our office specifically addressed the question of increasing the salary of police personnel in La. Atty. Gen. Op. No. 00-366 where we opined that increasing the salaries of police personnel is a power vested in the mayor and board of aldermen subject to the recommendation of the chief of police. We concluded that the chief of police could not unilaterally increase the salaries of his employees. Rather, he can only recommend salary increases to the mayor and board of aldermen who could, by ordinance, effectuate a salary increase.

Pursuant to La. R.S. 33:423, the elected chief of police has inherent authority over the day-to-day operations of the police department, including personnel decisions, and this authority cannot be infringed upon or expanded by local ordinance. Louisiana Attorney General Opinion Number 93-666 clarifies that while the mayor and board control the budget, they cannot pass ordinances that limit or expand the chief's statutory authority.

Question 2: Does a change in officer pay made by an elected police chief, outside the approved budget, qualify as an operational change requiring notice and approval from the board of aldermen under La. R.S. 39:1310?

Conclusion: The elected police chief cannot unilaterally decide to change officer pay outside of the approved budget. Louisiana Revised Statutes 39:1310 and 39:1311(E) require that if expenditures, including those related to officer pay, exceed the budget by five percent or more, the chief must provide written notice to the governing authority and make recommendations for responsive action.

As the Town of Cottonport's code of ordinances do not contain specific provisions or requirements for making budget amendments, we address the issue using the relevant statutory provisions, including La. R.S. 39:1310 and 39:1311(E), which govern budget amendments and the process for handling expenditure overages by municipal departments.

Louisiana Revised Statute 39:1311(E) provides that "the elected chief of police in a municipality shall advise the municipal governing authority in writing when total actual expenditures plus projected expenditures for the remainder of the year within the police department exceed the total budgeted expenditures by five percent or more, and shall make recommendations in writing to the governing authority for responsive action." Once the governing authority receives this notice the governing authority shall adopt a budget amendment in an open meeting to reflect such change, provided such an amendment does not exceed the total estimated funds available for the fiscal year. La. R.S. 39:1310.

In La. Atty. Gen. Op. No. 17-0112, our office stated that "[i]n passing a budget amendment, the governing authority may choose to allocate additional funds to the police department or they may take action to reduce expenditures by the police department." Our office acknowledged that the chief of police should be given the opportunity to submit input for purposes of the budget amendment and that the chief of police is required by La. R.S. 39:1311(E) to make recommendations for responsive action when he concludes that actual and anticipated expenditures would exceed budgeted amounts by more than five percent. Nevertheless, our office concluded that the ultimate authority to adopt and amend the budget is vested exclusively with the mayor and town council.

Based on the statutes and the decisions of this office, the elected police chief cannot unilaterally decide to change officer pay outside of the approved budget.

Question 3: Does La. R.S. 33:462 require an elected chief of police to provide notice to the board of aldermen for expenditures outside of a line item but within the overall budget?

Conclusion: La. R.S. 33:462 does not require an elected chief of police to provide notice to the board of aldermen for expenditures outside of a specific line item but within the overall budget. The chief of police has inherent authority to control the day-to-day operations of the department, including the allocation of funds within the department's budget, as long as the expenditures remain within the total budget appropriated by the mayor and the board of aldermen.

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 elected chief of police. *Doyle v. City of Harahan*, 610 So.2d 272, 273 (La. App. 5 Cir. 1992). In La. Atty. Gen. Op. No. 86-589, this office addressed the mayor's authority to control the expenditures of the police department or use of police department funds. We concluded that the elected chief of police had inherent authority to operate, control, and administer police department property and personnel. However, the police chief's inherent authority is limited by La. R.S. 33:462 requiring that all expenditures of municipal funds be made pursuant to a specific appropriation authorized by a municipal ordinance, typically, the municipality's budget ordinance. We observed, "[a]ll warrants drawn on the treasury should express on its face to whom it was issued and for what purpose. The warrant must also cite, by minute book and page, the ordinance authorizing the issuance of the warrant."

Louisiana Revised Statutes 33:462 does not require an elected chief of police to provide notice to the board of aldermen for expenditures outside of a specific line item but rather, within the overall budget. The elected chief of police has inherent authority to control the day-to-day operations of the police department, including the allocation of police department funds, as long as expenditures are made in accordance with the budget appropriated by the mayor and board of aldermen. As stated in La. Atty. Gen. Op. No. 01-216, the board of aldermen cannot impede the expenditure of a valid expense within the appropriated budget.

However, while the chief has discretion within the budget, La. Atty. Gen. Op. No. 93-580 clarifies that all expenditures must be made pursuant to a specific appropriation authorized by ordinance, in compliance with La. R.S. 33:462, including adherence to procedures for issuing purchase orders and warrants.

Question 4: If an elected chief of police fails to comply with La. R.S. 39:1311, what authority do the mayor and Board of Aldermen have to fulfill their fiduciary duties in accordance with the statute?

Conclusion: When the elected chief of police fails to comply with La. R.S. 39:1311, the mayor and Board of Aldermen have the authority to amend the budget and ensure proper oversight of municipal funds, fulfilling their fiduciary duties under

the statute. They can take corrective action through open meetings and judicial remedies as needed.

If an elected chief of police fails to comply with La. R.S. 39:1311, the mayor and the board of aldermen have the authority and responsibility to ensure that expenditures are made in accordance with the law. Under La. R.S. 33:404, the mayor has the authority to oversee the administration of municipal departments, including ensuring that budgetary practices conform to statutory requirements. If the chief fails to provide notice when expenditures exceed the budget by five percent or more, as required by La. R.S. 39:1311(E), the mayor and board of aldermen may take corrective action by amending the budget as outlined in La. R.S. 39:1309.

Additionally, the governing authority is responsible for adopting budget amendments in an open meeting where there is a change in operations that impacts the budget. If the chief of police does not comply with La. R.S. 33:1311, the governing authority may initiate such an amendment process, ensuring that the municipality's financial obligations are met and fiduciary duties are fulfilled. The refusal to pay an expenditure or failure to adhere to budgetary protocols could result in further action, including judicial remedies, if necessary. Judicial remedies may include a writ of mandamus, compelling the chief of police to comply with the statutory requirements of La. R.S. 39:1311.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

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BY: _____


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