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OCTOBER 07 1998

OPINION NUMBER 98-382

Mr. Joe Vidrine
Chief of Police
Sunset Police Department
P.O. Box 6
Sunset, LA 70584

36 - Elections
77 - Officers - Local & Municipal; Selection, Qualification and Tenure;
Vacancies
78 - Officers - Dual Officeholding
LSA-R.S. 18:465
LSA-R.S. 42:61, et seq.
Article XI, §4 (La. 1974)

Dear Chief Vidrine:

An active police officer does not have to take a leave of absence when qualifying and preparing for election for Chief of Police.

Your opinion request directed to our office has been referred to me for response. As Chief of Police of Sunset, Louisiana, you ask the following questions in your letter:

- (1) Can a municipal police officer under the Lawrason Act qualify as a candidate for Chief of Police?
- (2) Would that person be able to retain his position as police officer while running for Chief of Police, or would he have to resign?

LSA-R.S. 42:61, et seq., discusses the topic of dual officeholding. The statutes do not mention pre-election activities. They provide certain prohibitions for dual officeholding after one has been elected and/or appointed to an office. My research revealed no statutes dealing with pre-election activities and the requirement for a leave of absence. Therefore, it is our opinion that a police officer would not be required to take a leave of absence to prepare for the election for such position of chief of police. Assuming that the candidate for chief of police meets the qualifications for office, he may in fact qualify as a candidate for chief of police. Please see Attorney General Opinions Nos. 92-256 and 86-405 (attached hereto).

It should be noted that the candidate for chief of police, as an active police officer, should take care to prevent any campaign activities from interfering with the fulfillment of his job or office responsibilities. Article XI, §4 of the 1974 Louisiana Constitution provides:

No public funds shall be used to urge an elector to vote for or against any candidate or proposition, or to be appropriated to a candidate or political organization.

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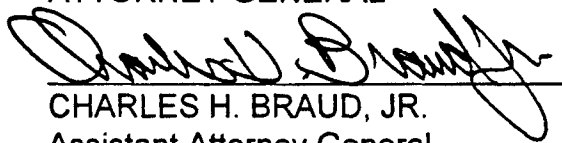
The above cited provision is identical to that contained in LSA-R.S. 18:1465. The police officer must fulfill the duties and responsibilities of his job during working hours. It is our opinion that a police officer may be a candidate for chief of police and need not necessarily resign or take a leave of absence in order to campaign for the office. The decision to take a leave of absence depends on whether the candidate's political activities would impair or prevent him from properly performing his duties.

I trust this fully answers your concerns. If our office may be of further assistance, please do not hesitate to contact us.

Yours very truly,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

By:



CHARLES H. BRAUD, JR.
Assistant Attorney General

RPI:CHB:glb



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

June 20, 1987

OPINION NO. 86-405

Rel. 6-24-86

78 - Officers - Dual Office Holding
77 - Officers - Local & Municipal;
Selection, qualifications &
tenure; vacancies.

La. R.S. 42:61. et seq.

Active duty officers and/or city
employees do not have to take leave of
absence when qualifying and preparing
for election for chief of police.

Mr. Frank J. Cali
5th Ward Justice
St. Mary Parish
Post Office Box 279
Patterson, Louisiana 70392

Dear Mr. Cali:

In your letter of June 12, 1986, you requested an opinion regarding the question of whether active duty officers and/or city employees planning to qualify for chief of police should take a leave of absence to seek the position.

La. R.S. 42:61 et seq. discusses the topic of Dual Office Holding. The statutes do not mention pre-election activities. They provide certain prohibitions for dual office holding after one has been elected or appointed to an office.

A general research of the law reveals no statutes dealing with pre-election activities and the requirement of a leave of absence. Therefore, neither the active duty officer, nor the city employee would be required to take a leave of absence to prepare for the election for such position.

Of course, the active duty officer and/or city employee should take care to prevent any campaign activities from interfering with the fulfillment of their job or office responsibilities.

Mr. Frank J. Cali
OPINION NO. 86-405
June 20, 1986
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Therefore, it is the opinion of this office that leave of absence is not required when an active duty officer and/or city employee seeks the position of chief of police.

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

BY: *L. Adrienne Dupont*
L. ADRIENNE DUPONT
Staff Attorney

LAD/JE/cnw



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JULY 28 1992
OPINION NUMBER 92-256

Mr. Louis J. Berthelot
Chief of Police
Brusly Police Department
P.O. Drawer A
150 East St. Francis
Brusly, LA 70719

Dear Chief Berthelot:

36 - Elections
77 - Officers Local & Municipal; Selection,
Qualification & Tenure; Vacancies

La. Const. Art. X Sec. 23
LSA R.S. 33:362A(3)

A police officer in a non civil service position may run for chief of police; without taking a leave of absence as long as his duties are fulfilled and he campaigns on off duty hours; only the Board of Aldermen may fire a police officer; the Chief of Police's salary may be reduced for an upcoming term but not while the official is in office.

Your opinion request directed to our office has been referred to me for answer. As the elected police chief of the Town of Brusly, a "Lawrason Act" municipality, you ask the following questions:

1. If an employee of the police department runs for the office of Chief, does the employee have to take a leave of absence while running for the office?
2. If you are re-elected, do you have to reappoint this officer at the beginning of the next term?
3. Can the Board of Alderman freeze your salary for the next term of office of the police chief? This would be a reduction from your present salary.

Your questions will be answered in the same order.

1. A non-civil service employee of the police department may run for chief of police without taking a leave of absence from his job or resigning as long as he fulfills his job duties and does not use official time for election activities. He must campaign on off-duty hours. See prior opinions of this office No. 83-559 and 86-405.
2. This question asks, if you are re-elected do you have to re-appoint your opponent?

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Under the "Lawrason Act", the Board of Alderman has the authority to hire and fire police officers, See LSA R.S. 33:362A(3) which states as follows:

(3) Subject to law, including R.S. 33:423.2 and 423.3 and applicable civil service rules and regulations, the Board of Alderman shall, by ordinance, provide policies and procedures regulating the employment of municipal employees including the hiring and firing of such employees.

In accord with the above, the Chief of Police does not have the authority to discharge the officer. See Opinion Number 90-237.

3. You next ask if the Board of Alderman may place the Chief's salary at the Board's level for the next term? This would amount to a reduction in your salary. La. Const. Art. X Sec. 23 states:

The compensation of an elected public official shall not be reduced during the term for which he is elected.

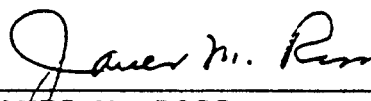
There are no restrictions on reducing the compensation for the position for the upcoming term. Therefore it is the opinion of this office that the Board of Alderman may reduce the salary for the position of Chief of Police for a term subsequent to the present one. This does not reduce the salary of an elected public official during his term of office.

Trusting the above answers your questions, we remain

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY:



JAMES M. ROSS
Assistant Attorney General