

July 28, 2000
OPINION 00-242

Charles W. Ipes
Chief of Police
P.O. Box 1707
Iowa, Louisiana 70647

La. Const. Art. 10, §30
LA R.S. 14:134

A Town Council member may vote on issues pertaining to the police department while under criminal investigation by that same police department.

Dear Chief Ipes:

We are in receipt of your request for an Attorney General's Opinion concerning the voting rights of a Town Council member who is under criminal investigation. Specifically, you ask whether a Town Council member may vote on issues pertaining to the police department while under criminal investigation by that same police department.

There is no statute on point preventing the council member from participating in such a vote. Statutes exist that prevent a council member from voting on an ordinance in which he has a personal economic gain. There is no personal economic gain at stake in the situation presented. Therefore, this council member's abstention is unnecessary.

Upon assuming the duties of the office of council member, each member is required to take an oath of office. All public officials and employees must take this oath of office. The oath, as prescribed in La. Const. Art. 10, §30, obligates the individual to "faithfully and impartially discharge and perform all duties incumbent upon [him or her]." Failure to conform to this oath may result in that individual committing malfeasance in office. LA R.S. 14:134 states:

Malfeasance in office is committed when a public officer or public employee shall:

- (1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
- (2) Intentionally perform any such duty in an unlawful manner.

Therefore, in the event that a council member's actions are viewed as less than honorable, action could be taken against the member for not carrying out his or her lawful duty.

We hope this opinion addresses all of your concerns. If we can be of further assistance, please advise.

Very truly yours,

RICHARD P. IEYOUB
Attorney General

BY:

ANDREW D. BENTON
Assistant Attorney General

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Date Received:

Date Released: July 28, 2000

Andrew D. Benton
Assistant Attorney General