

December 13, 2000
OPINION 00-404

Honorable Peggy Choate
Mayor
P. O. Box 118
Saline, Louisiana 71070

77 OFFICERS
71 MUNICIPALITIES

R.S. 14:40.2

A chief of police cannot use a police vehicle for personal use without authority of the village council. Liability imposed upon the village for the tortious conduct of its municipal officers is a fact-sensitive question.

Dear Mayor Choate:

You have related to this office that certain council members of the Village of Saline and the Chief of Police of the Village are in disagreement regarding the issue of who has control over the police car utilized by the Chief.

The case of Cogswell vs. Town of Logansport, 321 So.2d 774 (La. App. 2d Cir. 1975) stands for the proposition that the general responsibility for law enforcement granted to a chief of police means the power to supervise the operation of the police department and assign its personnel and equipment. Thus, the chief of police has supervisory power over police property

In accord with the cited jurisprudence, it remains our opinion that the chief of police has the inherent authority to control city police vehicles. The Council may not dictate where he parks the car, as this would be an infringement on the police chief's inherent powers. See Attorney General Opinion 99-406, attached. However, the personal use of a police vehicle must be approved by the council members. In accord are Attorney General Opinions 99-27 and 96-475, copies attached.

Your second question concerns the conduct of a council member who allegedly follows the police chief and his family, keeping "watch" on the family residence. Note this conduct might subject this council member to the charge of stalking under R.S. 14:40.2, pertinently providing:

§ 40.2 Stalking

A. Stalking is the willful, malicious, and repeated following or harassing of another person with the intent to place that person in fear of death or bodily injury.

B. (1)(a) Whoever commits the crime of stalking may be imprisoned for not more than one year or fined not more than two thousand dollars, or both.

(b) Whoever commits the crime of stalking against a victim under the age of eighteen when the provisions of Paragraph (6) of this Subsection are not applicable shall be imprisoned for not more than one year, with or without hard labor, fined not more than two thousand dollars, or both.

Note that there are situations where the Village could be held responsible for the tortious conduct of its officers under the theory of respondent-supervisor. See Lamkin vs. Brooks, 498 So.2d 1068 (La. 1987). However, the question of liability of the Village for the conduct of this official is fact-sensitive, and cannot be answered directly.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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Date Received:

Date Released: December 13, 2000

KERRY L. KILPATRICK

ASSISTANT ATTORNEY GENERAL