

LAW OFFICE OF
DOUGLAS L. STOKES

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Phone 318-259-4164
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January 24, 2012

Hon. Leslie Thompson <via hand delivery>
Town of Jonesboro
128 Allen Avenue
Jonesboro, LA 71251

re: police officer termination

Dear Mayor Thompson:

In accordance with the request contained in your letter of January 23, 2012 I have researched Louisiana law to determine the answers to the three questions propounded in that letter.

Your first question is answered by Louisiana Revised Statute 33:423(A), a copy of which I enclose. That statute provides that a chief of police elected by the qualified voters of the Town "...shall make recommendations to the mayor and board of aldermen for appointment of police personnel, for the promotion of officers, to effect disciplinary action **and for dismissal of police personnel.**" (emphasis supplied). That being the case the answer to your first question is "Yes" as the statute uses the word "shall".

Your second question concerns the "enforcement rights" of the Board of Aldermen if it disagrees with the recommendation of the Chief of Police. This question assumes a situation which, for the reasons set forth hereinafter, will not arise. Up until 2004 the prior jurisprudence of this state held that an individual could not be hired or fired as a police officer, where there was an elected Chief of Police but not civil service system, without the recommendation of the Chief of Police. However, in 2004 the Louisiana Supreme Court handed down the decision of *Grant vs. Grace et al*". I enclose a copy of that decision which, it appears to me, has not been overruled.

As you can see from the opinion in *Grant* it dealt with the reverse of the Town's current situation, in that in that case the Chief of Police wanted to continue to employ an officer who was not POST certified but simply move him to an administrative position. The Board of Alderman wanted to fire the officer. Although the lower courts held that the officer could not be fired unless the Chief of Police recommended termination the Louisiana Supreme Court ruled otherwise. It basically said that while the Board of Aldermen was required to consider the recommendation of the Chief of Police regarding hiring or firing of a police officer it was not bound to follow that recommendation.

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Based upon the decision in *Grant* it would appear to me that the Board of Alderman of the Town of Jonesboro, while required to consider the Chief of Police's recommendation that a particular police officer be terminated, would not have to follow the recommendation.

You should note however that the decision in *Grant* does not remove the statutory authority an elected Chief of Police to generally administer the affairs of the Police Department. How that authority can be exercised in a manner consistent with the decision in *Grant* has caused, and will almost certainly continue to cause, problems. In addition, as I have previously discussed with you I see possible liability problems for the Town were it to permit an individual to serve as a police officer who was not POST certified within the time delay fixed by law.

Your third question again assumes the existence of a situation which will not arise as the officer could not be fired without the concurrence of the Board of Aldermen. Nevertheless, as we have discussed many times anyone can file suit against the Town for anything.


If you would prefer to seek an opinion from Attorney General Caldwell on these issues you could, of course, do so. However, based on past experience it is my opinion that he would require the opinion request directly from either you or the Board of Aldermen, rather than from me.

As an aside what it appears to me could possibly arise in this situation is a "Mexican standoff", where the Board of Aldermen require the individual to remain employed (and drawing a paycheck) but the Chief of Police, exercising his administrative authority, refuses to allow the individual to work as a police officer. This would, of course, be a no-win situation for anyone, except possibly the employee who would be paid for doing nothing, unless the Chief of Police assigned him other duties.

In accordance with normal procedure I am, by copy of this letter, sending my statement for the rendition of this opinion to Mrs. Holland and asking that it be placed in line for payment.

With kindest personal regards,

Yours truly,


Douglas L. Stokes

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DLS/cg
encl.
cc: Mrs. Melba Holland

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LSA-R.S. 33:423

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West's Louisiana Statutes Annotated Currentness
Louisiana Revised Statutes
Title 33. Municipalities and Parishes (Refs & Annos)
Chapter 2. Local Government (Refs & Annos)
▣ Part I. Mayor and Board of Aldermen
▣ Subpart F. Functions of Other Municipal Officials
→ → **§ 423. Duties of marshal**

A. The marshal shall be the chief of police and shall be ex officio a constable. He shall have general responsibility for law enforcement in the municipality, and shall be charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance. In those municipalities governed by the provisions of this Part, R.S. 33:321 et seq., which have a chief of police elected by the qualified voters thereof, he shall make recommendations to the mayor and board of aldermen for appointment of police personnel, for the promotion of officers, to effect disciplinary action, and for dismissal of police personnel. Such nominations or recommendations are to be made regardless of race, color, disability, as defined in R.S. 51:2232(11), or creed.

B. The provisions of Subsection A of this Section shall not be construed to limit or restrict the provisions of R.S. 33:423.3.

C. (1)(a) Notwithstanding the provisions of Subsection A of this Section or any other law to the contrary, the elected chief of police of any municipality governed by the provisions of this Part is authorized to immediately effect disciplinary action on police personnel and to dismiss any such personnel subject to the approval of the governing authority of the municipality. Any such disciplinary action or dismissal shall be deliberated by the governing authority at the first special or regular meeting of the governing authority after any such determination has been made by the chief of police.

(b) Notwithstanding any other provision of law to the contrary, the elected chief of police in any municipality with a population of not less than one thousand persons and not more than one thousand five persons as of the latest federal decennial census is authorized to effect disciplinary action on police personnel without the approval of the governing authority of the municipality.

(2)(a) The chief of police is additionally authorized to make a provisional appointment to immediately fill any vacancy in the police department occurring by reason of death, resignation, termination, or otherwise subject to the approval of the mayor of the municipality. Any such action taken by the chief of police shall be deliberated at the first special or regular meeting of the governing authority of the municipality after any such provisional appointment has been approved by the mayor. Any such provisional appointment shall remain in effect unless rejected by the governing authority of the municipality.

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870 So.2d 1011, 2003-2021 (La. 4/14/04)
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Supreme Court of Louisiana.
 Michael GRANT
 v.
 Mayor George GRACE and City Council of St.
 Gabriel, La.

No. 2003-C-2021.
 April 14, 2004.

Background: Police officer brought action against city, alleging that the city wrongfully terminated him. The District Court, Iberville Parish, No. 57,250, J. Robin Free, J., granted officer summary judgment. City appealed. The Court of Appeal, 858 So2d. 542, affirmed.

Holding: On grant of certiorari, the Supreme Court, Traylor, J., held that city council was authorized to terminate the employment of unqualified police officer.

Reversed.

West Headnotes

[1] Constitutional Law 92 ⇨ 2457

92 Constitutional Law
 92XX Separation of Powers
 92XX(C) Judicial Powers and Functions
 92XX(C)1 In General
 92k2457 k. Interpretation of Statutes.
 Most Cited Cases
 (Formerly 92k67)

The function of statutory interpretation and the construction to be given to legislative acts rests with the judicial branch of the government.

[2] Statutes 361 ⇨ 223.2(.5)

361 Statutes
 361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k223 Construction with Reference to

Other Statutes
 361k223.2 Statutes Relating to the
 Same Subject Matter in General
 361k223.2(.5) k. In General. Most
 Cited Cases

Meaning of ambiguous text in a statute may be sought by consulting other laws on the same subject matter.

[3] Statutes 361 ⇨ 181(1)

361 Statutes
 361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k180 Intention of Legislature
 361k181 In General
 361k181(1) k. In General. Most
 Cited Cases

Statutes 361 ⇨ 184

361 Statutes
 361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k180 Intention of Legislature
 361k184 k. Policy and Purpose of Act.
 Most Cited Cases

Paramount consideration in interpreting a statute is ascertaining the legislature's intent and the reasons that prompted the legislature to enact the law.

[4] Statutes 361 ⇨ 212.1

361 Statutes
 361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k212 Presumptions to Aid Construction
 361k212.1 k. Knowledge of Legislature. Most Cited Cases

Laws are presumed to be passed with delibera-

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tion and with full knowledge of all existing ones on the same subject.

[5] Statutes 361 ↪ 223.2(.5)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to Other Statutes

361k223.2 Statutes Relating to the Same Subject Matter in General

361k223.2(.5) k. In General. Most Cited Cases

In construing a statute, court gives harmonious effect to all acts on a subject when reasonably possible.

[6] Municipal Corporations 268 ↪ 185(5)

268 Municipal Corporations

268V Officers, Agents, and Employees

268V(B) Municipal Departments and Officers Thereof

268k179 Police

268k185 Suspension and Removal of Policemen

268k185(5) k. Authority to Remove, Take Evidence, or Conduct Hearing. Most Cited Cases

City council was authorized to terminate employment of police officer who failed to complete mandatory training program within one year from his date of employment, even though police chief recommended transfer of officer to administrative position; statute governing peace officer training did not guarantee an administrative position to an unqualified peace officer, and statute requiring police chief recommendations on personnel decisions did not mandate that city council adopt recommendation, inherent in the advisory position of any advocate is the option of the receiving party to comply with or reject the recommendation. LSA-R.S. 33:423, subd. A, 40:2405.

*1012 L. Phillip Canova, Jr., Louis W. Delahaye, Canova & Delahaye, Plaquemine, for applicant.

Victor J. Woods, Jr., Woods Holloway, for respondent.

**1 TRAYLOR, Justice.

Michael Grant, the plaintiff, was hired as a law enforcement officer for the St. Gabriel Police Department on May 17, 2001, but failed to obtain training and certification within one year as required by La.Rev.Stat. 40:2405(A)(1). Contrary to the recommendation of the Chief of Police, the City Council voted unanimously to terminate Plaintiff's employment.

Plaintiff sought to enjoin the City Council from interfering with or terminating his employment. The trial court granted a Temporary Restraining Order and later granted a Preliminary Injunction. Thereafter, the trial court granted Plaintiff's Motion for Summary Judgment, declaring Plaintiff to be wrongfully terminated and ordering his employment and compensation to be reinstated. The court of appeal affirmed the decisions of the trial court. 2002-2098 (La.App. 1 Cir. 6/27/03), 858 So.2d 542.

We granted writs to determine whether La.Rev.Stat. 33:423, which mandates that a police chief make recommendations with respect to the termination of police personnel, further mandates that the mayor or aldermen must adopt the recommendations of the police chief or if the city may take its own action after considering the police chief's recommendations.

****2 FACTS AND PROCEDURAL HISTORY**

Michael Grant, the plaintiff, was hired as a law enforcement officer for the St. Gabriel Police Department on May 17, 2001. On May 23, 2002, the Mayor and City Council, in a public meeting, asked Plaintiff to produce a certificate that he had successfully completed the statutorily required Police Officers Standards and Training Academy (POST).

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At the meeting, Plaintiff explained that he was unable to obtain his POST certificate. Patrick Nelson, the Chief of Police for St. Gabriel, recommended to the City Council that Plaintiff be placed in an "administrative" position until he successfully completed POST training. The City Council rejected the Police Chief's recommendation and voted unanimously to terminate Plaintiff's employment.

On June 13, 2002, Plaintiff filed a Petition for Damages and sought a Temporary Restraining Order (TRO) prohibiting Mayor George Grace and the City Council of St. Gabriel from interfering and terminating Plaintiff's employment with the Police Department. The trial court signed a Temporary Restraining Order on June 13, 2002 and a hearing on the Preliminary Injunction was scheduled for July 18, 2002. On June 17, 2002, the City filed a Motion Objecting to the Temporary Restraining Order, alleging that Plaintiff failed to demonstrate his efforts to notify the City prior to the filing of the pleading seeking the TRO and also filed its Answer and Discovery request on Plaintiff.

Thereafter, on June 25, 2002, the City of St. Gabriel, through its Mayor and City Council (collectively, the City), adopted its budget for the fiscal year 2002-2003. The 2002-2003 budget reduced appropriations from \$515,000 to \$449,500 including a reduction of funds allocated for "officers" positions. The funding was reduced from seven to six positions for the 2002-2003 fiscal year.

On June 27, 2002, plaintiff filed a motion urging the trial court to grant a TRO **3 prohibiting the City from interfering *1013 and/or terminating plaintiff's employment with St. Gabriel. On July 1, 2002, the trial court issued plaintiff a TRO prohibiting the City from interfering with and or terminating his employment. On July 18, 2002, the trial court granted plaintiff's request for the Preliminary Injunction. On August 15, 2002, pursuant to cross Motions for Summary Judgment filed by plaintiff and St. Gabriel, the trial court granted plaintiff's Motion for Summary Judgment, declaring Plaintiff to be wrongfully terminated, reinstat-

ing his employment and all compensation, and denying the City's Motion for Summary Judgment. The trial court signed Plaintiff's request for a Writ of Mandamus that the City pay Plaintiff "for all hours worked previously and any in the future."

The City suspensively appealed all three decisions of the trial court. On June 27, 2003, the court of appeal considered the extent to which La.Rev.Stat. 33:423 impedes the authority of the council to deny Plaintiff an administrative position as contemplated under La.Rev.Stat. 40:2405 and affirmed the decisions of the trial court. In so ruling, the court of appeal stated:

"[T]he state legislature has expressly vested the authority and discretion in the chief of police to transfer the peace officer to administrative duties. It has, moreover, divested the council of its authority to terminate a police officer without the prior recommendation of the chief of police. As such, the council exceeded its authority when it ignored the recommendation of the chief of police and unilaterally terminated Grant."

Upon the application of the City, we granted certiorari to review the correctness of that decision. Specifically, we are called to resolve whether La.Rev.Stat. 33:423, which mandates that a police chief make recommendations with respect to the termination of police personnel, further mandates that the mayor or aldermen adopt the recommendations of the police chief or if the city may take its own action after considering the police chief's recommendations as they relate to the peace officer **4 training and certification requirements set forth in La.Rev.Stat. 40:2405.

Plaintiff herein argues that such an officer must be given an administrative position under La.Rev.Stat. 40:2405 until he can complete his certification requirements. Plaintiff further asserts that La.Rev.Stat. 33:423, entitled "Duties of a marshal," clearly states that a municipality cannot terminate law enforcement personnel without the police chief's recommendation.

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The City counters that plaintiff's failure to complete certification within one year of his employment was due to his own fault and that he violated the terms of his employment agreement with the City, which thereafter authorized the City to terminate his employment. Moreover, the City submits that La.Rev.Stat. 33:423 does not require a municipality to accept the recommendation of the Chief of Police on discipline, hiring or termination of police department personnel. The City argues that under the last clause of 40:2405, an officer who does not comply with the Certification requirements may serve in an administrative capacity, however, the municipality is not precluded from also terminating such a person.

In determining which party is correct, we analyze both statutes in relation to the situation at hand.

DISCUSSION

[1][2] The function of statutory interpretation and the construction to be given to legislative acts rests with the judicial branch of the government. *Theriot v. Midland Risk Ins. Co.*, 95-2895 (La.5/20/97), 694 So.2d 184; *Touchard v. *1014 Williams*, 617 So.2d 885 (La.1993). The starting point in the interpretation of any statute is the language of the statute itself. *Theriot*, 694 So.2d at 186; *Touchard*, 617 So.2d at 888. Ambiguous text is to be interpreted according to the generally prevailing meaning of the words employed. La. Civ.Code art. 11. Their meaning may be sought by **5 consulting other laws on the same subject matter. *Theriot*, 694 So.2d at 186; *Succession of Baker*, 129 La. 74, 55 So. 714 (1911).

[3][4][5] As we stated in *Theriot*,

We have long held that the paramount consideration in interpreting a statute is ascertaining the legislature's intent and the reasons that prompted the legislature to enact the law. Legislative intent is the fundamental question in all cases of statutory interpretation; rules of statutory construction are designed to ascertain and enforce the in-

tent of the statute.

One particularly helpful guide in ascertaining the intent of the legislature is the legislative history of the statute in question and related legislation. Laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the same subject. We give harmonious effect to all acts on a subject when reasonably possible. (Citations omitted).

Theriot, 694 So.2d at 186. With these principles in mind, our analysis begins with the Certification requirements set forth in La.Rev.Stat. 40:2405.

La.Rev.Stat. 40:2405

At the time Plaintiff was hired as a police officer for the St. Gabriel Police Department, he was subject to the statutory requisites of La.Rev.Stat. 40:2405, which state in pertinent part:

A. (1) Notwithstanding any other provision of law to the contrary, any person who begins employment as a peace officer in Louisiana subsequent to January 1, 1986, must successfully complete a certified training program approved by the council and successfully pass a council-approved comprehensive examination within one calendar year from the date of initial employment. *Any person who fails to comply with this requirement shall be prohibited from exercising the authority of a peace officer; however, such persons shall not be prohibited from performing administrative duties.* (Emphasis added.)

Because plaintiff did not comply with La.Rev.Stat. 40:2405 within one year of his employment, he was in violation of La.Rev.Stat. 40:2405. As a result, his employment was discussed at a City Council meeting on May 23, 2002, and after **6 hearing the Chief of Police's recommendation, the Council unanimously decided to terminate Plaintiff's employment.

In analyzing the propriety of the City's termina-

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tion of Plaintiff under La.Rev.Stat. 40:2405, we focus first on the plain wording of the statute. Clearly under La.Rev.Stat. 40:2405, a peace officer must complete a certified training program and pass an examination within one calendar year from the date of initial employment. Indeed, any officer who fails to do so “shall be prohibited from exercising the authority of a peace officer.” *Id.* However, the last clause of Subsection A of La.Rev.Stat. 40:2405 which states, “such persons shall not be prohibited from performing administrative duties,” seems less clear.

Because we find some confusion as to the last clause of Subsection A of La.Rev.Stat. 40:2405, we now turn to the legislative history of the Act and the purpose for the statute's enactment. In so doing, we view with particular interest the legislative revisions made to the statute over the *1015 years. The original 1976 version of La.Rev.Stat. 40:2405 read:

A. Every peace officer, not later than one year after accepting employment as a peace officer or within one year after the effective date of this Chapter, whichever is later, shall successfully complete a basic law enforcement training course conducted by a training center accredited by the council....

The 1982 amendment, rewrote the Section as follows:

A. Notwithstanding any other provision of law to the contrary, any person who begins employment as a peace officer in Louisiana subsequent to January 1, 1986, must successfully complete a certified training program approved by the council and successfully pass a council-approved comprehensive examination within one calendar year from the date of initial employment. *Failure to comply with this requirement will be grounds for the council to seek an injunction prohibiting such an individual from exercising the authority of a peace officer.* (Emphasis added.)

**7 The next amendment under Act 1998, 1st Ex.Sess., No. 108, of the Louisiana Legislature was

identical to the 1982 amendment with the exception of a re-designated the text of Subsection A as paragraph A(1) and rewriting of the second sentence as follows (in italics):

A. (1) Notwithstanding any other provision of law to the contrary, any person who begins employment as a peace officer in Louisiana subsequent to January 1, 1986, must successfully complete a certified training program approved by the council and successfully pass a council-approved comprehensive examination within one calendar year from the date of initial employment. *Any person who fails to comply with this requirement shall be prohibited from exercising the authority of a peace officer; however, such persons shall not be prohibited from performing administrative duties.*

Subsection A(1) has not been changed by subsequent amendments or acts.

The original 1976 version left uncertain what ramifications would occur where a peace officer failed to meet the training and certification requirements of La.Rev.Stat. 40:2405. In an apparent attempt to supply the effects stemming from such an officer's failure, the legislature, in the 1982 amendment, provided the council with the option of seeking an injunction. Act 1998, 1st Ex.Sess., No. 108 added language to clarify that the failure to comply with La.Rev.Stat. 40:2405 would result in a strict prohibition of any person “from exercising the authority of a peace officer.” With the 1998 amendment, the legislature no longer required the municipality to seek an injunction, rather it forbade such a person from acting as a peace officer. All parties herein agree as to this interpretation.

That aside, the parties herein do not agree as to meaning or aim of the last clause of Subsection A(1), which reads: “*however, such persons shall not be prohibited from performing administrative duties.*” Plaintiff submits that, considering the language of the Statute, any attempt by the City to control the assignment of the police **8 department's personnel is invalid. This includes, accord-

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ployment decisions made by the police chief and would render the recommendation requirement of La.Rev.Stat. 33:423 useless step to be taken by both the Chief of Police and the municipality.

END OF DOCUMENT

FN1. We note that the police chiefs in both *Thibodeaux* and *Lee* deliberately chose not to recommend the dismissal of the officers who were later terminated by the respective municipalities.

Under La.Rev.Stat. 33:423, a police chief must make recommendations with respect to any of the employment actions enumerated therein to the municipality. However, the municipality need not adopt such recommendation and may, after the recommendation, take its own action as relates to the peace officer training and certification requirements set forth in La.Rev.Stat. 40:2405.

CONCLUSION

Our interpretation of the two statutes is in harmony with the plain meaning of the statutes and the intent evidenced by the legislature in enacting and amending both statutes. For the foregoing reasons, we reverse the decisions of the lower courts and grant the City's Motion for Summary Judgment.

KIMBALL, J., concurs in the result and assign reasons.

KNOLL, Justice, concurs in the result.

JOHNSON, Justice, concurs.

KIMBALL, Justice, concurring in result.

I concur in the result reached by the majority in this case. The legislature has excepted certain cities, villages, and towns from the "recommendation" procedure provided by La. R.S. 33:423. See La. R.S. 33:423.2-33:423.13. However, these exceptions, which generally provide that the chief of police may act directly with respect to police personnel, do not apply to the town of St. Gabriel.

La.,2004.

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