

Opinion No. 2012-084

July 25, 2012

The Honorable Steve Harrelson
State Senator
300 North State Line Avenue
Texarkana, Arkansas 71854

Dear Senator Harrelson:

You have requested my opinion on a matter that was brought to your attention by the City of Ashdown, a city of the first class that has a mayor-council form of government and no civil service commission. You have asked “whether the Ashdown City Council has the authority to override disciplinary action handed down by a city agency?” Although you pose the question generally, you add that “[i]n this particular case, the Ashdown chief of police suspended an hourly city police officer without pay in a disciplinary scenario[,]” and that “the Ashdown City Council overturned that suspension.” I will therefore address the question in the specific context of a city police department.

RESPONSE

In my opinion, this question cannot be answered without taking into account all of the surrounding facts, including the terms of any city ordinances bearing on the question. It appears from the materials attached to your request that there is a dispute in the specific case at issue regarding the respective authority of the mayor and city council. I am unable to resolve that dispute. Its resolution likely depends to some extent upon the particular facts surrounding the council’s action, including the specific basis for that action in local legislation. Although I am charged with the duty to issue formal opinions on questions of state law posed by enumerated officials,¹ this office is not authorized or equipped to construe local ordinances or

¹ A.C.A. § 25-16-706 (Repl. 2002).

to otherwise engage in fact finding.² My opinion must therefore be limited to a discussion of pertinent state law bearing on the respective authority of the officials involved.

As an initial matter, it seems clear that a city council has general authority to establish employment policies respecting city agencies. My predecessors have opined, and I agree, that this authority derives from the state law authorizing the city to direct “municipal affairs,” which are defined as “all matters and affairs of government germane to, affecting, or concerning the municipality or its government,” except for certain matters that are “state affairs.”³ A city may “perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs....”⁴ This office has therefore opined that matters of employee discipline in a city that does not have a civil service commission fall within the city council’s general authority to direct municipal affairs.⁵

However, when considering the council’s authority to address matters of discipline specifically with respect to a police department, it is also necessary to recognize certain authority granted to the mayor under state law. A city council of course cannot pass any laws contrary to the general laws of the state.⁶ The relevant state law provides for the mayor’s “general superintendence” of the police department:

The city council shall have power to establish a city police department, to *organize it under the general superintendence of the mayor*, and to prescribe its duties and define its powers in such

² See Op. Att’y Gen. 2004-235 (noting that the opinion rendering function of this office is not an appropriate vehicle for interpreting local ordinances).

³ A.C.A. § 14-43-601(a)(1) (Supp. 2011).

⁴ A.C.A. § 14-43-602(a) (Supp. 2011). See also A.C.A. § 14-43-502(a) (Supp. 2011) (“The city council shall possess all the legislative powers granted by this subtitle and other corporate powers of the city not prohibited in it or by some ordinance of the city council....”); A.C.A. § 14-55-101 (Repl. 1998) (“Municipal corporations shall have the power to make and publish from time to time bylaws or ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers or duties conferred by the provisions of this subtitle.”).

⁵ Op. Att’y Gen. 2000-283. See also Op. Att’y Gen. 2006-112 (opining that the Bryant City Council has the power “to establish employment policies respecting deputy district court clerks for the Bryant department of the Saline County District Court.”).

⁶ Ark. Const. art. 12, § 4; *Nahlen v. Woods*, 255 Ark. 974, 504 S.W.2d 749 (1974).

manner as will most effectually preserve the peace of the city, secure the citizens thereof from personal violence, and safeguard their property from fire and unlawful depredations.⁷

The mayor's management of the police department is also reflected in the following statute, which identifies the mayor as the one who directs police officers' duties:

In cities of the first class, the duty of the chief of police and other officers of the police department shall be under the direction of the mayor.⁸

State law further designates the mayor as the "chief executive officer" who shall "[s]upervise the conduct of all the officers of the city:"

(a) *The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.*

(b) The mayor shall:

(1) *Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction[.]*⁹

In addressing the mayor's supervisory authority under these statutes, my immediate predecessor aptly observed that the mayor does not necessarily have "plenary authority to make all employment decisions:"

At issue is whether the term "general superintendence" vests in the mayor the exclusive power to hire and fire police officers, who are

⁷ A.C.A. § 14-52-101 (Repl. 1998) (emphasis added).

⁸ *Id.* at -203(a).

⁹ A.C.A. § 14-43-504 (Supp. 2011) (emphasis added). Consistent with previous opinions of this office, I view police officers as likely included within this reference to "officers of the city." *See* Op. Att'y Gen. 2007-235; 2004-050; 2000-319; 2000-283.

municipal employees as opposed to department heads.^[10] Subsection 14-43-504(b)(1) of the Arkansas Code provides that the mayor will “[s]upervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction.” *In acknowledging that the mayor might need to refer officers for discipline, this statute recognizes that the mayor’s supervisory power does not necessarily amount to plenary authority to make all employment decisions — or, stated differently, that the term “general superintendence” does not imply total autonomy in matters of hiring and firing.*¹¹

I agree with this analysis. I believe it reasonably follows, as a general proposition, that a city council might, in the exercise of its authority over municipal affairs, legislate in this area and enact an ordinance that would create a council role respecting the disciplining of police officers. One of my predecessors similarly opined that while members of a police department in a city with no civil service commission are subject to discipline by the mayor, a city ordinance could provide for the council’s review of those disciplinary decisions.¹² My predecessor also opined, however, that in the absence of such an ordinance, the police officer’s remedy lies with the courts.¹³ Inherent in this statement is the view that absent such an ordinance, a city council likely lacks authority to intervene in the disciplining of subordinate officers within the police department. I agree, particularly given the mayor’s clear statutory authority to direct the department.

I cannot offer a more definitive opinion regarding a city council’s authority to override the disciplining of a subordinate police officer. Nor, for the reasons stated above, can I resolve the specific dispute that prompted your inquiry. The foregoing may be of some assistance in identifying the relevant law when evaluating that particular case. But the exact resolution of that case remains with the city attorney or other local counsel, who is best positioned to render advice

¹⁰ In cities with no civil service commission, department heads are appointed and removed by the mayor, subject to override by a two-thirds vote of the city council. A.C.A. § 14-42-110(a) (Repl. 1998).

¹¹ Op. Att’y Gen. 2000-319 (addressing the question whether the city council was justified in rehiring the police chief as a patrolman, following his termination by the mayor.)

¹² Op. Att’y Gen. 2000-283.

¹³ *Id.*

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based on a full understanding of the underlying facts, rather than my office, which is not charged with the duty of providing legal counsel to cities.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh