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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
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BATON ROUGE  
70804-9005

September 16, 2016  
OPINION 16-0089

Hon. Darnell Waites  
Mayor, City of Baker  
P. O. Box 707  
Baker, LA 70704

71 Municipalities  
71-1-B Municipalities-Home Rule Charter  
77 Officers

L.a. Const. art. VI, §12

Addresses the establishment of the chief of police's salary.

Dear Hon. Waites:

The former Mayor of the City of Baker, Harold M. Rideau, requested an opinion on what provisions govern the fixing of the compensation of the elected chief of police for the City of Baker and whether the pay plan that has been adopted in the annual budget ordinances of the City of Baker effectively determines the police chief's compensation.

The City of Baker operates pursuant to a Home Rule Charter effective 1972.<sup>1</sup> Baker is governed by the mayor-council form of government, consisting of an elected council that constitutes the legislative branch of the government and an elected mayor who is the chief executive and administrative officer and head of the executive branch. See Charter, Art. I, section 1-02. Article II, section 2-01 provides that the Council is the governing authority for Baker: "The council shall be the governing authority of the city for purposes of legislation and policy making."

The chief of police of the City of Baker is an elected official: "[t]he head of the department of police shall be the chief of police, who shall be elected by the voters of the city at the same election and for the same term as mayor and councilmen." Article IV, section 4-17 of the Charter.

The Louisiana Constitution of 1974, Art. VI, section 12, provides that:

The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected.

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<sup>1</sup> See, City of Baker Charter, Art. X, section 10-2.

Art. II, section 2-17 of the Charter requires certain acts of the Council to be by ordinance:

All actions having the force and effect of law; creating an obligation on the part of the city, fiscal or otherwise; appropriating money; levying a tax or other revenue measure; concerning a franchise; creating or modifying debt; or concerning a special district shall be by ordinance.

Article III, section 3-01 provides that the mayor shall be the executive officer of the city and that all executive and administrative authority shall be exercised by and through the mayor except as otherwise set forth in the Charter. Furthermore, Article IV, section 4-01 provides that the administrative branch of the government shall be under the direction, control and supervision of the mayor and the mayor shall execute the policy direction of the council and shall be responsible for the enforcement of the law.

Regarding the budget, the Charter sets forth the following pertinent provisions:

Article VI, section 6-02

The operating budget form shall be a modified lump sum budget of expenditures and a detailed budget form of revenues. The operating budget *shall be supplemented by a detailed schedule of personnel and a detail of such other budget classifications as the mayor deems advisable.* (Emphasis added.)

Article VI, section 6-03

The mayor shall consolidate all departmental requests and make his recommendations of the operating budget to the council by May fifteenth of each year.

Article VI, section 6-04

After such public hearings as the council deems necessary, the budget shall be adopted no later than June fifteenth. If the council shall fail to have adopted a budget by that date, it shall be presumed to have adopted the budget submitted by the mayor.

Article VI, section 6-12

The mayor shall submit to the council by May fifteenth his recommendations for the capital budget and program. The recommendations shall be in the form of a proposed capital budget ordinance, a capital program, and a capital budget message in support of his proposals.

Article VI, section 6-13

After such public hearings as the council deems necessary, the capital budget shall be approved as an ordinance and the capital program adopted

by June fifteenth of each year. Passage of the capital budget ordinance shall constitute an appropriation of the funds provided for therein, except that prior appropriations of all capital funds not encumbered shall lapse at the end of the fiscal year.

The Mayor has the responsibility, among others, to “prepare and submit to the council the pay plan, the operating and capital budgets, the capital plan, and all other planning and programming documents as require council approval.” See Charter, Article III, section 3-07. The Council, as the governing authority of the City of Baker, is responsible for adoption of the proposed budget ordinance of the City which is to be supplemented by a detailed schedule of personnel and a detail of such other budget classifications as the mayor deems advisable. See Charter, Article VI, section 6-02, 6-04, 6-12 and 6-13. Furthermore, political subdivisions operating under a home rule charter form of government are subject to the minimum standards established in the Local Government Budget Act.<sup>2</sup>

Based upon the information provided to us, the Council of the City of Baker passed an ordinance in 2001 adopting a pay plan that covers the police department employees and provides a pay scale for determination of salaries. That pay plan has been included in the annual budget ordinances for the City of Baker since 2009.<sup>3</sup> With your opinion request, we were provided with what you have advised is the pay plan for the police department. This pay plan is a graduated pay scale for various police ranks/positions including the “Chief/Marshal,” with the compensation scale varying according to years, presumably of service in that position. We have also been informed that the newly elected police chief’s compensation, determined in accordance with the pay plan, is less than the former police chief’s pay that was also determined in accordance with the same pay plan because of the former police chief’s greater years of service.

It is the opinion of this office that, in accordance with the provisions cited herein, such a pay plan (a pay schedule that is a method of fixing compensation) incorporated into a budget ordinance duly passed by the Council may be used to effectively fix the compensation of the chief of police. La. Const. Art. VI, § 12 dictates that the compensation of a local official, such as a local elected chief of police, shall not be reduced during the term for which he is elected.<sup>4</sup> Although the compensation of the newly elected police chief of the City of Baker may be less than the former police chief’s pay, it is the opinion of this office that the difference in pay would not constitute a violation

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<sup>2</sup> See La. R.S. 39:1301 *et seq.*

<sup>3</sup> We note that your request for an opinion included a copy of the pay scale, but not of any particular ordinance of the Council.

<sup>4</sup> See e.g., La. Atty. Gen. Op. No. 88-170 (noting that if a reduction of compensation becomes effective at the beginning or during a term of office which has not begun, it is within the power of the governing authority to make such a reduction); see also, *Avoyelles Par. Justice of the Peace v. Avoyelles Par. Police Jury*, 98-543 (La. App. 3 Cir. 6/23/99), 758 So. 2d 161, 167-68, as amended on *reh'g* (Oct. 27, 1999), writ denied, 99-2210 (La. 12/17/99), 754 So. 2d 217 (finding that a Police Jury’s reduction in pay of certain public officials after election but before term began was unconstitutional).

of La. Const. Art. VI, §12 where the compensation has been determined in accordance with a pay plan in effect before the newly elected police chief's term of office begins.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY:

  
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JL:DJS