

January 29, 2009  
OPINION 08-0291

47-A-1- FIRE PROTECTION DISTRICTS

59 LAW OFFICERS – AUTHORITY & JURISDICTION

R.S. 40:2531; R.S. 33:2181

Mr. Ron Melton, Chairman  
Winnfield Municipal Fire and Police Civil  
Service Board  
311 N. Jones St.  
Winnfield, LA 71483

An investigation of a fire employee or a municipal law enforcement officer, where the end result is disciplinary action, demotion or dismissal, must be concluded sixty days from the day an authorized person begins to make inquiry or collect evidence regarding that fire employee or municipal law enforcement officer. Where an investigation of a municipal law enforcement officer is prompted by a formal written complaint, the chief of police must initiate the investigation within fourteen days of the department's receipt of the written complaint.

Dear Mr. Melton:

As chairman of the Winnfield Municipal Fire and Police Civil Service Board, you ask this office to answer the following questions: (1) does the sixty-day limitation of R.S. 40:2531(B)(7) apply to all investigations of municipal law enforcement officers, or only those initiated by written complaint; and (2) what act or incident triggers the sixty-day limitation of R.S. 33:2181 regarding investigations of fire employees.

#### I. POLICE OFFICER'S BILL OF RIGHTS

Chapter 25 of Title 40 of the Louisiana Revised Statutes is entitled "Rights of Law Enforcement Officers While Under Investigation"; the statutes within Chapter 25, R.S. 40:2531-2535, provide for mandatory minimum standards which must be followed during the investigation of a municipal law enforcement officer.<sup>1</sup> The *type* of investigation to which the minimum standards are applicable are those investigations

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<sup>1</sup> R.S. 40:2531(A) states:

A. The provisions of this Chapter shall only apply to police employees as defined by R.S. 40:1372(5) and to those law enforcement officers employed by any municipality and campus police employed at any state-supported college or university who are under investigation with a view to possible disciplinary action, demotion, or dismissal.

conducted with “a view to possible disciplinary action, demotion, or dismissal”. See R.S. 40:2531(A).

Minimum standards applicable during an investigation of a municipal law enforcement officer include the following: a law enforcement officer being investigated must be informed, at the commencement of interrogation, of the nature of the investigation and the identity and authority of the person conducting such investigation; a law enforcement officer must be allowed to make notes during the interrogation; the interrogation of a law enforcement officer must be for a reasonable period of time and must allow for reasonable periods of rest and attendance to personal necessities; all interrogations of a law enforcement officer conducted in connection with the investigation must be recorded in full; a law enforcement officer must be provided a copy of the recording or transcript of the recording of his statements upon his written request; a law enforcement officer being questioned, whether as a target or as a witness in an administrative investigation, has the right to be represented by counsel, other representative, or both, of the officer’s choice; a law enforcement officer must be granted up to thirty days to secure such representation, during which time all questioning must be suspended; a law enforcement officer’s representative or counsel must be allowed to offer advice to a police employee and make statements on the record regarding any question asked of the law enforcement officer at any interrogation, interview, or hearing in the course of the investigation; and statements made by a law enforcement officer during the course of an administrative investigation are inadmissible in a criminal proceeding. See R.S. 40:2531(B)(1)-(5).

R.S. 40:2531(B)(7) states “each investigation of a...law enforcement officer which is conducted under the provisions of this Chapter shall be completed within sixty days” unless the local municipal police civil service board grants a police department’s application for an extension of the time in which to complete the investigation, or unless a law enforcement officer enters into a written agreement with the appointing authority to extend the time allotted the investigation.

The failure of the police department to comply with the minimum standards expressed or the time limitations of the statute results in the following penalties under R.S. R.S. 40:2531(C):

C. There shall be no discipline, demotion, dismissal, or adverse action of any sort taken against a police employee or law enforcement officer unless the investigation is conducted in accordance with the minimum standards provided for in this Section. *Any discipline, demotion, dismissal, or adverse action of any sort whatsoever taken against a police employee or law enforcement officer without complete compliance with the foregoing minimum standards is an absolute nullity.* (Emphasis added).

The filing of a “formal and written complaint” against a municipal law enforcement officer compels the chief of police (or his authorized representative), under), to “initiate an

investigation within fourteen days of the date the complaint is made". See R.S. 40:2531(B)(7)<sup>2</sup>. In other words, the chief of police must initiate the investigation within fourteen days of the receipt of the written complaint by his office. In the case of a written complaint, the day the chief of police initiates the investigation, within the mandatory fourteen days, is the day which starts the sixty-day time limitation.

If the chief of police proceeds with an investigation of a law enforcement officer without a written complaint, the sixty-day limitation remains applicable, as R.S. 40:2531(B)(7) *mandates* that each investigation of a police employee "shall be completed within sixty days", whether or not such investigation is prompted by a written complaint. Where R.S. 40:2531 makes the initiation date of the sixty-day cycle more definitive regarding written complaints, the statute does not address the question of *when* an investigation begins in the absence of a written complaint. However, this office answered this question in Opinion 93-52, in which we concluded:

R.S. 40:2531 does not specifically provide for a definition of 'investigation'. However, Black's Law Dictionary defines the term as the process of inquiring into or tracking down through inquiry. Black's further defines the term 'investigate' as follows:

'To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry.'

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<sup>2</sup>R.S. 40:2531(B)(7) states:

(7) When a formal and written complaint is made against any police employee or law enforcement officer, the superintendent of state police or the chief of police or his authorized representative shall initiate an investigation within fourteen days of the date the complaint is made. Except as otherwise provided in this Paragraph, each investigation of a police employee or law enforcement officer which is conducted under the provisions of this Chapter shall be completed within sixty days. However, in each municipality which is subject to a Municipal Fire and Police Civil Service law, the municipal police department may petition the Municipal Fire and Police Civil Service Board for an extension of the time within which to complete the investigation. The board shall set the matter for hearing and shall provide notice of the hearing to the police employee or law enforcement officer who is under investigation. The police employee or law enforcement officer who is under investigation shall have the right to attend the hearing and to present evidence and arguments against the extension. If the board finds that the municipal police department has shown good cause for the granting of an extension of time within which to complete the investigation, the board shall grant an extension of up to sixty days. Nothing contained in this Paragraph shall be construed to prohibit the police employee or law enforcement officer under investigation and the appointing authority from entering into a written agreement extending the investigation for up to an additional sixty days. The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint. Further, nothing in this Paragraph shall limit any investigation of alleged criminal activity.

*From this definition, it is our opinion that if the investigation requires a close study or systematic inquiry into a situation, the protections afforded an officer under R.S. 40:2531 apply. Moreover, one must not overlook the express language of the statute. The term 'investigation' is modified by the phrase 'with a view to possible disciplinary action, demotion, or dismissal.' Therefore, if any of the three results are possible, then the officer is afforded the protections of R.S. 40:2531. (Emphasis added).*

In accord with the reasoning expressed in Opinion 93-52, our interpretation of R.S. 40:2531 reflects that, in the absence of a written complaint, an investigation begins when an authorized person within the police department begins to make inquiry or collect evidence concerning a situation with a law enforcement officer where the end result is "with a view to possible disciplinary action, demotion, or dismissal" under R.S. 40:2531(A).

To summarize, our response to your first question is: the sixty-day time limitation of R.S. 40:2531(B)(7) applies to *all* investigations of municipal law enforcement officers. In the instance of a written complaint, the investigation must be concluded sixty days from the day the chief of police initiates the investigation, his "initiation day" falling within fourteen days of the receipt of the written complaint. In the absence of a written complaint, the investigation must be concluded sixty days from the day the chief of police, or authorized person, begins to make inquiry or collect evidence regarding a law enforcement officer, where the end result could be disciplinary action, demotion or dismissal.

## FIRE EMPLOYEES' RIGHTS

Chapter 4, Part II, Subpart H of Title 33 of the Louisiana Revised Statutes is entitled "Fire Employee's Rights"; the statutes within Chapter 4, R.S. 33:2181-2186, provide for mandatory minimum standards which must be adhered to by the fire department during the investigation of a fire employee.<sup>3</sup> These statutes are similar to those pertaining to

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<sup>3</sup> R.S. 33:2181 (A) defines "fire employee" and R.S. 33:2181(B) provides for minimum standards afforded a fire employee during an investigation:

A. "Fire employee" as used in this Subpart includes any person employed in the fire department of any municipality, parish, or fire protection district maintaining a full-time regularly paid fire department, regardless of the specific duties of such person within the fire department, and who is under investigation with a view to possible disciplinary action, demotion, or dismissal. B. Whenever a fire employee is under investigation, the following minimum standards shall apply:

(1) The fire employee being investigated shall be informed, at the commencement of interrogation, of the nature of the investigation, of the identity and authority of the person conducting such investigation, and of the identity of all persons present during such interrogation. The fire employee shall be allowed to make notes.

municipal law enforcement officers, and govern those fire employees who are “under investigation with a view to possible disciplinary action, demotion, or dismissal”. See R.S. 33:2181(A).

There also exists a sixty-day limitation upon the investigation of a fire employee, as R.S. 33:2186(A) requires, in part, that “any investigation of a fire employee which is conducted pursuant to this Subpart shall be completed within sixty days, including the conducting of any pre-disciplinary hearing or conference.” The statutes governing investigations of fire employees make no reference to the filing of a written complaint; further, there is no definition of “investigation” provided within these provisions. Thus, the same question of *when* an investigation of a fire employee begins must again be answered.

The reasoning expressed in Opinion 93-52 is also applicable to fire employees: if circumstances concerning the conduct of a fire employee “require a close study or systematic inquiry into a situation”, the protections afforded a fire employee under R.S. 33:2181 apply. As we concluded in Opinion 08-0052, an investigation of a fire employee begins when an authorized person starts to make inquiries or collect evidence concerning a fire employee where the end result is “with a view to possible disciplinary action, demotion, or dismissal.” In further accord is Opinion 04-0180, in which this office concluded that “any action taken by formal investigating authorities...which could possibly affect the job status (of a fire employee)” requires that the minimum standards of R.S. 33:2181 apply.

The failure of the fire department to comply with the minimum standards of R.S. 33:2181(A) and (B) or the time limitations imposed by R.S. 33:2186(A) results in the following penalties under R.S. 33:2181(C):

C. No fire employee shall be disciplined, demoted, dismissed or be subject to any adverse action unless the investigation is conducted in accordance with this Subpart. Any discipline, demotion, dismissal or adverse action of any sort taken against a fire employee without complete compliance with the provisions of this Subpart is an absolute nullity.

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(2) Any interrogation of a fire employee in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of such fire employee.

(3) All interrogations of any fire employee in connection with the investigation shall be recorded in full. The fire employee shall not be prohibited from obtaining a copy of the recording or transcript of the recording of his or her statements, upon request.

(4) The fire employee shall be entitled to the presence of his or her counsel or representative, or both, at the interrogation in connection with the investigation.

(5) The counsel or representative for the fire employee under investigation may call witnesses to testify on the employee's behalf.

(6) No statement made by a fire employee during the course of an administrative investigation shall be admissible in a criminal proceeding.

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Thus, our response to your second question is: the investigation of a fire employee (whether or not prompted by a written complaint) must be concluded sixty days from the day the fire department begins to make inquiry or collect evidence regarding a fire employee, where the end result is disciplinary action, demotion or dismissal.

We hope the foregoing is helpful to you. Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY: \_\_\_\_\_  
KERRY L. KILPATRICK  
ASSISTANT ATTORNEY GENERAL

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SYLLABUS

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Date Received:

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