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State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
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September 22, 2017
OPINION 16-0088

90-A-1 PUBLIC FUNDS & CONTRACTS

Honorable Amy Matirne Patin
Clerk of Court
Iberville Parish
P.O. Box 423
Plaquemine, Louisiana 70764

La. Const. art. V, § 28
La. Const. art. VII, § 14
La. R.S. 43:111.1

Public funds may be used to purchase customized uniforms for employees of the clerk of court's office as long as the uniforms are worn pursuant to an official office policy and remain the property of the clerk of court's office. However, including a clerk of court's name on a uniform shirt would be considered advertisement since the purpose of such does not fall under one of the exceptions provided for in La. R.S. 43:111.1.

Dear Ms. Patin:

You have requested an opinion of the Attorney General regarding the legality of placing your name along with the state seal on uniform shirts for employees of the Iberville Parish Clerk of Court's Office. Your request has been assigned to me for research and reply.

It is our understanding from the information you have provided, that the state seal would be customized for your office to include the addition of your name and placed on the uniforms of office personnel to be worn while they are engaging in official duties. Because your request essentially concerns the use of public funds, it must be addressed in light of La. Const. art. VII, § 14, which provides, in pertinent part, as follows:

(A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

The Louisiana Supreme Court has determined that this constitutional provision is violated when public funds are gratuitously alienated. *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales*, (La. 9/6/06), 938 So.2d 11 (the "Cabela's case"). In light of the Cabela's case, it is the opinion of this office that in order for an expenditure or transfer of public funds to be permissible under Art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.

This office has consistently stated that uniforms may be purchased with public funds and given to the staff as long as they remain the property of the public entity and are worn pursuant to an official policy that requires wearing of the uniform. See, La. Atty. Gen. Op. Nos. 11-0141, 10-0078; La. Atty. Gen. Op. Nos. 02-0476 (opining that "providing uniforms to Town employees was a donation of public funds and such is prohibited by Article 7, Section 14 of the Louisiana Constitution. But if the uniforms remain the Town's property and are worn pursuant to a formal policy, the Town may do so."); and La. Atty. Gen. Op. No. 08-0311 (stating that "items given by a police department to an officer for the purpose of performing his duties as an officer constitutes police equipment and public property. Because public funds are used to purchase police equipment all equipment issued to an officer is the public property of the police department and must be returned when the employee ceases employment."). Therefore, it is the opinion of this office that your office may purchase uniforms for staff with public funds as long as the uniforms remain the property of the office and are worn pursuant to an official policy which requires office personnel to wear the uniform.

However, please note that La. R.S. 43:111.1 applies to advertisements paid with public funds and states as follows:

No public funds shall be used in whole or in part for the payment of the cost of any advertisement containing therein the name of any public official whether elected or appointed; provided, however that the provisions of this section shall in no case be construed to apply to advertisements or notices required or authorized by law to be published or to any advertisements placed by any public agency or body authorized by law to advertise in the furtherance of its functions and duties.

The plain wording of La. R.S. 43:111.1 clearly prohibits using public funds to purchase advertisements containing the name of a public official except when it is so authorized by law or in furtherance of her functions and duties. Additionally, our office has previously addressed the issue of using public funds for advertisements of public officials. In La. Atty. Gen. Op. No. 98-0201, this office addressed whether public funds could be used on business cards, office stationary, and lapel pins that included a public official's name. This office concluded that ordinary business cards and office stationary do not constitute advertisements as they serve a primary function of providing information to the recipient and identifying the sender. The function of business cards and stationary is well-recognized and common in the ordinary conduct of business affairs. However, lapel pins given out at conventions and other events, on the other hand, fall more in the nature of advertising.

Based on the foregoing, it is the opinion of this Office that the Iberville Clerk of Court's Office may use public funds to purchase customized uniforms as long as the uniforms are worn pursuant to an official court policy and remain the property of the Clerk of Court's Office. However, including a clerk of court's name on a shirt would be

considered advertisement since the purpose of doing so does not fall under one of the exceptions provided for in La. R.S. 43:111.1.

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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