



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 685
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PETER C. HARVEY
Attorney General

VAUGHN L. McKoy
Director

September 15, 2003

Hon. Kevin Sanders, Mayor
City of Asbury Park
One Municipal Plaza
Asbury Park, New Jersey 07712

Re: *Police Director L. Louis Jordan*

Dear Mayor Sanders:

Recently, the Monmouth County Prosecutor referred a criminal complaint concerning Police Director Jordan of the City of Asbury Park to this office for review. The primary purpose of our review was to determine whether the complaint against Mr. Jordan could be properly investigated and prosecuted by the county prosecutor. However, our review also led us to examine Mr. Jordan's duties and responsibilities and whether he was acting in a manner beyond the scope of his lawful authority as police director. Of particular concern to this office is the fact that Mr. Jordan has, as police director, arrested several individuals. Of further concern to this office is the fact that Mr. Jordan has conducted motor vehicle stops, responded to calls for service, signed juvenile delinquency and criminal complaints and directed the investigation of criminal activity by Asbury Park police officers.

In conducting our review, we took the opportunity to discuss this matter with the county prosecutor and your municipal attorney. We have also reviewed the relevant State statutes, case law and Asbury Park Ordinance No. 2616 [adopted October 16, 2002]. Based on our review, we have determined that Mr. Jordan has acted in a manner contrary to the applicable State statutes and case law. More specifically, Mr. Jordan has engaged in activities for which he has no lawful authority and are limited by statute to sworn police officers. Thus, Mr. Jordan must immediately cease and desist from exercising powers and performing duties which are beyond his lawful authority.



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Municipalities are authorized under the provisions of *N.J.S.A. 40A:14-118* to create and maintain a police force. Municipalities are not required to create a police force, but having once done so, there are several statutory requirements that must be satisfied by the ordinance creating the police force. The ordinance must designate an appropriate authority, provide for the adoption by the appropriate authority of rules and regulations for the government and discipline of the force, establish the ranks or positions within the force and fix the number of police officers to be employed. *N.J.S.A. 40A:14-118*; *Marjarum v. Township of Hamilton*, 336 N.J.Super. 85, 98-99 (App. Div. 2000); *Reuter v. Borough Council of Borough of Fort Lee*, 328 N.J.Super. 547, 556-557 (App. Div. 2000); *aff'd*, 167 N.J. 38 (2001).

Having once established a police force, a municipality has several options with respect to the supervision of the force. *N.J.S.A. 40A:14-118* mandates the designation of an appropriate authority which is defined as "the mayor, manager, or such other appropriate executive or administrative officer, such as a full-time public safety director." The appropriate authority is responsible for the adoption of rules and regulations governing the police force and for the establishment of policies for the operation and administration of the force. *Policemen's Benevolent Association, North Brunswick, Local 160 v. Township of North Brunswick*, 318 N.J.Super. 544, 552 (App. Div. 1999). The appropriate authority is a civilian position. *Ibid*.

While the designation of an appropriate authority is mandatory, the appointment of a police chief is discretionary. Should a municipality choose to appoint a police chief, he or she shall exercise powers and duties that are exclusively reserved to the chief by statute. *N.J.S.A. 40A:14-118*. In the alternative, a municipality may choose to forego the appointment of a police chief and rely on some other executive or administrative officer, including a police director, to supervise the operation and administration of the police force. *Policemen's Benevolent Association, North Brunswick, Local 160 v. Township of North Brunswick*, 314 N.J.Super. at 552-553.

However, vesting supervision of the police force in a police director or some other administrative or executive officer does not vest in that individual the authority to exercise police powers and or to perform police duties. State statutes clearly distinguish between police officers and other municipal employees who may be employed by or exercise supervision of the police force. Specific State statutes provide for the appointment of regular police officers and special police officers and establish qualifications for their appointment. *N.J.S.A. 40A:14-122 and -146.10*. Regular police officers and special police

officers must attend and successfully complete a basic training course approved by the Police Training Commission. *N.J.S.A. 52:17B-68 and 40A:14-146.11*. With or without a police chief, regular police officers and special police officers exercise certain powers and duties that are reserved to them by statute. *N.J.S.A. 40A:14-152; -152.1 and -146.11*. In addition, these officers are authorized to carry firearms in the performance of their duties. *N.J.S.A. 2C:39-6; 40A:14-146.11 and -146.14*.

The preceding citations indicate that the State has extensively regulated the appointment of police officers and the exercise of police powers. It is a well settled principle of municipal law that extensive State regulation of a particular issue preempts municipal action on the same issue. *Overlook Ter. Manage. v. Rent Control Bd. of W. New York, 71 N.J. 451, 461 (1976)*. The factors to be considered in determining whether State preemption exists include the pervasiveness of the State regulation and whether the issue subject to regulation would benefit from Statewide uniformity. *Overlook Ter. Manage. v. Rent Control Board of W. New York, 71 N.J. at 461-462*. Given the extensive regulation enacted by the State concerning the exercise of police authority and the performance of police duties, and the need for uniformity among the State's multitude of police agencies, one can only conclude that the State has preempted municipal action on this topic. Thus, a municipality cannot confer police powers on anyone but a sworn police officer nor can a municipality authorize anyone but a sworn police officer to perform police duties.

We would further note that there are no State statutes which authorize the appointment of a police director or which set forth the powers and duties of the position. This is not to say that a municipality cannot appoint a police director or set forth a director's supervisory responsibilities with respect to the police force. However, there is absolutely no statutory authority for the proposition that a police director may exercise police powers, perform police duties or carry a firearm without a permit. Furthermore, there is no statutory authority to suggest that a municipality may vest in a police director the powers and duties outlined above. Thus, while a police director may be appointed to supervise a police force, there is no doubt that the director's supervisory authority does not include the ability to exercise police powers, perform police duties or carry a firearm. In fact, given the extensive State regulation of this topic, the only conclusion that can be drawn is that the Legislature intended for the exercise of police powers and the performance of police duties to be strictly limited to sworn police officers.

Given the above, and in view of the fact that Mr. Jordan is not a sworn

police officer appointed in accordance with the applicable State statutes or Department of Personnel rules and regulations, this office must conclude the following with respect to his activities as police director in Asbury Park:

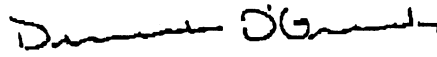
1. While Mr. Jordan holds the position of police director, he is a civilian who has no authority to exercise police powers.
2. Mr. Jordan cannot perform police duties including conducting motor vehicle stops, engaging in patrol activities, answering calls for service and stopping or detaining individuals.
3. Mr. Jordan does not have the authority to arrest individuals as a police officer. Should Mr. Jordan persist in arresting individuals or signing juvenile delinquency and/or criminal complaints, he should be advised that he is doing so as a private citizen with the commensurate liability for himself and the City of Asbury Park.
4. Mr. Jordan shall not wear a uniform which will lead the public to believe that he is a police officer. Nor shall he operate a motor vehicle which is equipped as a police car including police band radios.
5. Mr. Jordan shall not have access to criminal investigative reports without the express permission of the county prosecutor nor shall Mr. Jordan have access to criminal history record information. Mr. Jordan shall also refrain, unless otherwise directed by the county prosecutor, from directing the investigation of criminal activity.
6. The position of police director does not confer the authority to carry a firearm without a permit. Thus, Mr. Jordan is subject to the provisions of *N.J.S.A. 2C:39-5*. As a result, before he can continue to carry a firearm, Mr. Jordan shall apply for a permit to carry a firearm under the provisions of *N.J.S.A. 2C:58-4* and demonstrate a justifiable need for the permit. Furthermore, should Mr. Jordan obtain a permit to carry a firearm, the City of Asbury Park should determine whether Mr. Jordan will be permitted to carry that firearm while performing his duties as police director. In making its determination, the City of Asbury Park shall consider whether the possession of a firearm is essential to the performance of Mr. Jordan's supervisory and administrative duties.

You should be aware that our position in this matter is consistent with our position in numerous other jurisdictions where a police director or public

safety director has exceeded the bounds of his or her authority. We have uniformly determined that a police director or public safety director has no statutory authority to exercise police powers or perform police duties. Based on the State statutes governing this issue, we can come to no other conclusion.

We trust that the foregoing has adequately explained our position with respect to Mr. Jordan's activities. As always, we are available to discuss this matter and explore proposals to improve the delivery of police services to the citizens of Asbury Park. In addition, we look forward to your anticipated cooperation with the conclusions set forth in this letter.

Very truly yours,



Dermot P. O'Grady
Deputy Attorney General

c: AAG Vaughn McKoy, Director
Division of Criminal Justice
DAG Jessica Oppenheim, Chief
Prosecutors Supervision and Coordination
Hon. John Kaye,
Monmouth County Prosecutor
Frederick C. Raffetto, Esq.
Brian W. Kronick, Esq.