



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 22, 2021

Daniel J. Griffith, Esq.
Board Attorney, City of Cleveland
Post Office Box 1209
Cleveland, Mississippi 38732

Re: Alderman's Use of Police Radio and Separation of Powers Doctrine

Dear Mr. Griffith:

The Office of the Attorney General has received your request for an official opinion.

Background

In your request, you ask about a member of the board of aldermen using a police radio to monitor police radio traffic, stating specifically:

Prior to modern high band radio frequencies, any citizen could monitor radio traffic via a scanner. The modern communication system in use by the City of Cleveland makes that impossible. The alderman [in possession of the police radio] would not be acting in a supervisory capacity, would not make calls and would not become involved in the day-to-day operations of the Cleveland Police Department. The radio would be owned by the City and subject to its license. Access to radio traffic would be an aid to the alderman fulfilling his policy making role with the City.

Issues Presented

Within the mandate of Mississippi Code Annotated Section 21-3-15(2)(a), may the City of Cleveland allow a member of the Cleveland Board of Aldermen to use a police radio to monitor police radio traffic?

Brief Response

The city may allow an alderman to use a police radio to monitor police radio traffic without it being a *per se* violation of the separation of powers doctrine. However, the actions an alderman takes in response to what he or she hears on the police radio could easily become a violation if he or she gets involved in the daily operations of the police department.

Applicable Law and Discussion

The separation of powers doctrine prohibits an official exercising core powers within one branch of government from simultaneously exercising core powers in another branch of government. *See* MISS. CONST. art. 1, §§ 1–2. A board of aldermen exercises core powers within the legislative branch, while a police chief exercises core executive powers. MS AG Op., *Miller* at *2 (Jan. 21 2005) (“As the office of police chief of a municipality is a position which is in the executive branch of government and the office of alderman is in the legislative branch of government, one individual may not simultaneously serve in both positions.”); MS AG Op., *Beshears* at *1 (Jan. 18, 2013) (“Boards of aldermen exercise core powers of the legislative department of municipal government.”); MS AG Op., *O’Reilly* at *1 (May 19, 2006) (“A municipal police chief is also a position in the executive branch of government.”).

Section 21-3-15(2)(a), pertaining to the duties of aldermen, provides: “No member of the board of aldermen shall give orders to any employee or subordinate of a municipality other than the alderman's personal staff.” The code section pertaining to the duties of the police chief states that “[t]he marshal or chief of police shall be the chief law enforcement officer of the municipality and shall have control and supervision of all police officers employed by said municipality....” Miss. Code Ann. § 21-21-1.

Previous opinions issued by this office have maintained that the mayor and board of aldermen do not have authority to determine how police investigations should proceed and whether search warrants or arrest warrants will be obtained, because these are part of the daily operations of the police department and are, therefore, under the authority of the police chief. MS AG Op., *Jackson* at *1 (Feb. 19, 2016). Our office also has opined that a board of aldermen does not have authority to enact a policy specifying the location or duration of police checkpoints because this is a law enforcement decision under the purview of the police chief pursuant to Section 21-21-1. MS AG Op., *Crawford* at *2 (Oct. 28, 2011). Citing earlier opinions, we stated:

Neither the mayor nor the board of aldermen have the authority to become involved in the day to day operations of the police department. MS AG Op., *Parker* (February 29, 2008). While aldermen, as the legislative arm of the municipality, have the authority to observe the activities of the police department, create positions, fix salaries and appropriate funds to the police department, they may not make law enforcement decisions, as such functions are executive in nature and are solely within the purview of the police chief. MS AG Op., *Barton* (March 23, 2006); MS AG Op., *Nickles* (March 8, 2002); MS AG Op., *Phillips* (October 17, 1997).

Id. at *1.

This office is of the opinion that mere possession of a police radio by an alderman is not a violation of the separation of powers doctrine; however, the actions an alderman takes in response to what he or she hears on the police radio could easily become a violation if he or she gets involved in the daily operations of the police department. We caution any alderman with a police radio against any actions that could potentially compromise or interfere with law enforcement investigations or

Daniel J. Griffith, Esq.

June 22, 2021

Page 3

release confidential information regarding crime victims. If the alderman involves himself in a specific law enforcement matter as a result of his access to a police radio, such action could constitute involvement in the day-to-day activities of the police department and, in such case, would violate the separation of powers doctrine.

Your request, which references radio frequencies and police radio licenses, may be governed by federal laws and/or regulations, along with the provisions of any applicable licenses. Pursuant to Section 7-5-25, this office may only opine on matters of state law. Thus, we do not opine on federal laws or regulations. We suggest that you review the license to determine whether it restricts access to the subject radios. You may wish to consult with the Federal Communications Commission for any federal regulations that might also apply.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe
Special Assistant Attorney General

OFFICIAL OPINION