

INTRODUCTION

On August 7, 2006, Weber County Attorney Mark R. DeCaria received a telephone call from Ogden City Mayor Matthew Godfrey requesting that the County Attorney's Office investigate and review the actions of the Mayor and Ogden City Police Chief Jon Greiner in certain personnel decisions involving Ogden City Police Officer Matt Jones. On July 27, 2006, Chief Greiner placed Officer Jones on Administrative Leave with pay pending completion of internal affairs investigations.

Public interest in the chief's decision began when a bob-tail cargo truck was seen parked around the city bearing placards critical of an Ogden City performance evaluation policy whereby the writing of traffic tickets was used as one of many measures of performance for uniformed officers. On July 27, 2006, it was determined that Officer Jones' wife was operating the placard truck and on at least one occasion after she parked the placard vehicle, she was picked-up by Officer Jones. Officer Jones was shortly thereafter placed on leave. We were asked to address the propriety of actions taken by the Mayor and Chief Greiner in relation to Officer Jones.

The Weber County Attorney agreed to assign investigators from the Weber County Attorney's Office to determine the facts underpinning Chief Greiner's decision. The assigned investigators have spent significant time conducting interviews and gathering evidence. The conclusions in this report are based only on the information we were able to obtain through our investigation.

It is important that the involved parties and the public understand what this office is and is not doing in this report. From our perspective and from our investigation, we intend to answer the following questions:

1. Did Mayor Godfrey do anything illegal in following the van, recording the license plate and conveying it to Chief Greiner?
2. Did Chief Greiner do anything illegal in asking dispatch to identify the registered owner of the private vehicle that picked up the driver of the van?
3. Was there sufficient information known to Chief Greiner to put Officer Jones on Administrative Leave as of July 27, 2006?
4. Can criminal charges be filed against Officer Matt Jones for any alleged actions as known to the County Attorney's Office?
5. Is there a clear violation of Officer Jones' constitutional free speech rights?

We are not in the position to answer any other questions. Remedies and procedures are in place for those very purposes. We do not answer (as some have asked us to do) whether behavior is ethical, whether Ogden City policies are fair or whether anyone has a civil cause of action. This situation places this office in the unprecedented position of being commentators on conduct where, ultimately, we have no power to provide a remedy. Ogden City personnel policies and procedures provide remedies for both the City and Officer Jones.

The following is a summary of facts as determined by the investigators:

FACTS

Starting around July 19, 2006, a rental van had been seen in and around Ogden City displaying a banner stating: "Welcome to Ogden City. Home of Godfrey's ticket quota. If you disagree, call your city councilman."

On July 27, 2006, at about 7:15 P.M. Mayor Matthew Godfrey was driving home on 26th Street near Monroe Blvd. when he saw the van heading west. Mayor Godfrey believed he recognized the driver

of the van as a female officer. Mayor Godfrey turned around, followed the van, passed it and determined he did not recognize the driver after all.

Mayor Godfrey saw another car following the van, which pulled into the municipal parking lot southwest of the municipal building. The female van driver got into the private vehicle, which drove away. Mayor Godfrey followed that car and believed the male driver of the car was a police officer. Mayor Godfrey recorded the license plate number of the car.

With this information, Mayor Godfrey called Chief Jon Greiner on his cell phone at 7:26 P.M. Chief Greiner was at a social function with his wife. The Mayor called Chief Greiner because the Chief had previously told Mayor Godfrey that Ogden City Police officers were not involved with the van. Mayor Godfrey told Chief Greiner that he believed the driver of the car was a police officer but did not know his name. Mayor Godfrey gave Chief Greiner the license plate number. Chief Greiner said that "he would take care of it" and ended the call.

Chief Greiner called Weber Consolidated dispatch and asked them to determine who was the registered owner of the car. The dispatch operator clarified who Chief Greiner was and asked for clarification of why he wanted the information. Chief Greiner told the operator that he wanted the vehicle information because "I have a complaint on it. Somebody said it was one of my officers."

The dispatch operator reported that the registered owner was a Matthew Jones of Plain City. When asked if he wanted the registered owner's address, Chief Greiner declined.

After receiving this information, the Chief attempted to call Lt. Scott Sangberg on his cell phone. Lt. Sangberg was off duty and did not hear his phone ring. Chief Greiner left a message. Chief Greiner then called the Duty Lieutenant, Mark Acker. Chief Greiner told Lt. Acker to find Lt. Sangberg and Lt. John Stubbs and to have them call him immediately. Lt. Acker was unable to find either of them.

At about 8:30 P.M. Chief Greiner called Lt. Acker again and told him he wanted him to find another ranking officer and to locate Matt Jones, get all of his city issued equipment and place him on administrative leave for "conduct unbecoming an officer." Chief Greiner also instructed Lt. Acker to notify Officer Jones' sergeant, Troy Burnett and notify him of the administrative action.

Between 8:15-8:30, Chief Greiner called the home of Jerry Burnett, owner of BRB Security, a local private security business that contracts with several OPD officers for part-time security work. Chief Greiner told Mr. Burnett that Officer Jones did not have the ability to work part-time because he was on administrative leave.

At 8:30 P.M., Chief Greiner placed a 4 minute call to Mayor Godfrey to tell him that the officer had been placed on Administrative Leave.

Lt. Sangberg received the message left by Chief Greiner and called Chief Greiner on his cell phone at about 8:45 P.M. Chief Greiner told Lt. Sangberg that the Mayor had seen Matt Jones' wife driving the van and the Chief wanted Officer Jones placed on Administrative leave. Lt. Sangberg expressed concern over Officer Jones' First Amendment rights to Chief Greiner. Chief Greiner's response was "I don't want to hear it."

Lt. Sangberg then called Lt. Acker, who also expressed concern about the administrative action against Officer Jones. After discussing it, Lt. Sangberg and Lt. Acker agreed to follow the Chief's instructions and place Jones on Administrative leave.

That evening, Officer Jones was off duty and on his way to work a shift at BRB. He had heard from Sgt. Burnett that Lt. Acker wanted to speak with him. Officer Jones called Lt. Acker and agreed to meet him at OPD and give him the equipment he had with him, including his gun and patrol car. Officer Jones did not have his OPD badge with him. Lt. Acker and another ranking officer followed him to his house to retrieve his badge, gun belt and radio equipment.

In response to public questions regarding the timing of Officer Jones' administrative leave, Chief Greiner stated that the van incident and Mayor Godfrey's involvement had nothing to do with his decision. In a written statement on August 7, 2006, Chief Greiner stated that he decided to place Officer Jones on leave earlier in the day on July, 27th but forgot to make the request to the duty lieutenant before he went home.

In fact, Chief Greiner and Lt. Sangberg had discussed on the morning of July 27, 2006, an

allegation of theft that had been reported on July 18, 2006, by two Hispanic men, Joel Prado and Marco Cuellar. The allegation was that on July 15, 2006, an OPD officer took Mr. Prado's wallet from Mr. Cuellar's car during a traffic stop. At that time of the alleged theft, there were 7 patrol officer, 2 traffic officers and 1 sergeant on duty on a scheduled shift. This was the date of the horse parade, a part of the 24th of July celebrations. At least 50 other uniformed officers and reserves were working in different functions pertaining to the parade. Officer Jones was one of the regularly scheduled patrol officers on duty. That was the only information known about this incident on July 27, 2006.

The discussion between Greiner and Sangberg also referenced another alleged theft of a wallet by an OPD officer from earlier in the year. In that situation, another Hispanic, Samuel Martinez reported that on February 19, 2006, his wallet was taken by an OPD officer during a traffic stop. During the time of this incident, three squads of OPD officers were on duty, a total of 25 uniformed officers. Mr. Martinez was shown photos of all OPD officers, including those on duty. Mr. Martinez eliminated all but three officers, but could not positively identify any of the three as the officer that took his wallet. Officer Jones was one of the remaining three. This case was closed by the investigating detective on March 2, 2006. No personnel action or criminal charges resulted from this investigation prior to July 27, 2006.

This situation was discussed by Chief Greiner and Lt. Sangberg on July 27, 2006, because of the similarities between the two allegations. Lt. Sangberg told Chief Greiner that Officer Jones was on duty both times. Lt. Sangberg told Chief Greiner that he would like to assign an investigator to the July 15, 2006 incident. Lt. Sangberg told Chief Greiner that there was insufficient evidence to place Officer Jones (or anyone) on administrative leave and that more time was needed to investigate. Chief Greiner made no objection to this course of action nor did he give Lt. Sangberg any instructions to the contrary.

Additionally, about the first or second week of July 2006, an internal investigation was initiated to determine whether Officer Jones and other OPD officers, violated department policies for writing citations to citizens and telling them the police could not give them warnings or the police would not get raises. Officer Jones admitted making statements to a ticket recipient. Officer Jones had been questioned by a ranking officer two weeks before the van incident and no personnel action had been taken.

In summary, when Chief Greiner placed Officer Jones on administrative leave, the Chief was aware that Officer Jones was on duty during the two alleged thefts and that a separate IA had been conducted on the ticket-writing matter. That is the same information Chief Greiner knew earlier in the afternoon during his discussion with Lt. Sangberg.

Subsequent to July 27, OPD administration provided information to the County Attorney's Office regarding Officer Jones, including another allegation of theft of a wallet during a search warrant. That information was not known to Chief Greiner at the time he placed Officer Jones on administrative leave, making it irrelevant in reviewing the Chief's decision of July 27. In an effort to be thorough, however, the County Attorney's Office investigated those allegations and we conclude they are not helpful in our overall determinations.

Based on the above facts we state the following:

FINDINGS AND CONCLUSIONS

1. Did Mayor Godfrey do anything illegal in following the van, recording the license plate and conveying it to Chief Greiner?

No. While some may question the Mayor's motives, ultimately, following a private vehicle is not a criminal violation under these circumstances. Additionally, license plate information as displayed on a vehicle, is public information and can be seen, recorded and conveyed by any individual. Mayor Godfrey did not commit any criminal violation by following the van, following Officer Jones' personal vehicle, recording the license plate number or by telling Chief Greiner the license plate number.

2. Did Chief Greiner do anything illegal in asking dispatch to provide information which identified the registered owner as Matthew Jones of Plain City?

Probably no. Dispatch has access to the information generated and maintained by the State of Utah Bureau of Criminal Identification (BCI which includes motor vehicle registration information). Each agency (including OPD) that has access to Dispatch, must conform to the privacy and security standards established by BCI. In general, motor vehicle registration files are maintained by the Motor Vehicle Division (MVD). When accessed through dispatch, however, the MVD records are subject to the BCI standards.

The BCI privacy and security standards state that each agency agrees to comply with all state and federal statutes and regulations and to use the information received for “criminal justice and criminal justice employment purposes” only. The phrase “criminal justice purposes” applies to any circumstance within a criminal investigation and is further defined in U.C.A. 53-10-102(1).

The phrase “criminal justice employment” is not defined. While the common usage would imply it is being used for background checks for potential employees, we are unable to say that a supervisor may not use this information for other legitimate employment purposes.

Therefore, without a more specific definition, we are unable to find a clear violation of these standards.

3. Was there sufficient information known to Chief Greiner to put Officer Jones on Administrative Leave as of July 27, 2006?

Probably yes. OPD personnel policy states “An employee may be suspended by the police chief or the fire chief, as appropriate, pending the investigation or hearing of any charges against such employee. The suspension shall be with pay unless substantial grounds for suspension without pay is justified.” The purpose of an underlying investigation would be to determine if a crime was committed or whether a violation of departmental policy occurred and to identify a suspect if possible. Otherwise, an investigation would be closed on insufficient evidence.

During the early discussion with Lt. Sangberg on July 27, 2006, Chief Greiner was informed that Officer Jones was the common denominator in two alleged wallet thefts. Greiner also knew there was another ongoing IA involving Officer Jones on the ticket writing issue. Based on the language of the OPD personnel policy, that is probably sufficient for Greiner’s decision. Lt. Sangberg’s advice, however, was that there was insufficient evidence to put anyone on administrative leave. Ultimately, Chief Greiner has the power to make the final decision. It would have been a simple matter to immediately place Officer Jones on leave by directing Lt. Sangberg to do so.

What gives rise to the controversy here is that Chief Greiner declined to place Officer Jones on leave during the day when the information was presented to him and did so only after Mayor Godfrey called him regarding the van. At the time he placed Officer Jones on leave, there was no new information regarding the thefts or other matters known to Chief Greiner that warranted immediate action

Assuming Chief Greiner possessed sufficient information earlier in the day, he was in the same position that evening. But because he made the decision to place Officer Jones on leave after the call from the Mayor, the implication is that he did so solely based on the van information. It is reasonable to assume that absent Mayor Godfrey’s phone call, Officer Jones would not have been placed on leave on July 27, 2006.

Chief Greiner’s explanation for the timing is that he intended to place Officer

Jones on administrative leave earlier in the day but was distracted and forgot to do so. He further asserts that when given the name Matthew Jones from Dispatch, he merely implemented his earlier decision.

If the County Attorney's Office had been advising on this issue that night, we would have recommended the leave decision be delayed for two reasons: First, to ensure that there was no connection between the decision and the van controversy and Second, to provide time for an investigation to determine if a crime or policy violation had been committed and if a reasonable connection existed implicating Officer Jones.

4. Can criminal charges be filed against Officer Matt Jones for any alleged actions as known to the County Attorney's Office?

No. The results of the investigations into the alleged thefts from Mr. Martinez in February 2006 and Mr. Prado/Mr. Cuellar in July 2006 and any other investigations at this time provide insufficient evidence to prosecute Officer Jones for any crime. As with any criminal investigation, other information may be discovered which requires reevaluation for purposes of prosecution. With more concrete evidence connecting any individual, including Officer Jones, to these wallet thefts, a prosecution may result.

5. Is there a clear violation of Officer Jones' constitutional free speech rights?

In order to make a determination as to whether the banner on the side of the van constituted protected speech and whether or not placing Officer Jones on administrative leave violated his right to free speech, we must apply the following analysis. The First Amendment protects all public employees, including Officer Jones' right to speak on matters of public concern, not purely private matters. That right to speak must then be balanced against the Ogden City or any public employer's right to promote efficiency in the public services it performs through its employees. If this balance tips in favor of Officer Jones, he must then demonstrate that the speech was a substantial and motivating factor in placing him on administrative leave. If the speech was a factor, OPD may demonstrate that they would have taken the same action absent the protected speech.

Also relevant is the disruption caused by the speech. The balance tips in favor of the Ogden City, for instance, if it can prove the speech impaired discipline by superiors or harmony among co-workers, whether it had a detrimental impact on close working relationships for which personal loyalty and confidence are necessary or whether it impeded the performance of Officer Jones' duties or interfered with the regular operation of Ogden City.

The Weber County Attorney's Office is not in a position to answer this ultimate question. Officer Jones may have a legitimate claim to which Ogden City may have a legitimate defense. While the response to this question may be unsatisfactory to some, it would be inappropriate for this office to speculate as to the ultimate conclusion a jury may make.

Submitted this 1st day of November, 2006

Mark R. DeCaria

Weber County Attorney