

March 5, 2001
OPINION NUMBER 01-42

3 Appropriations

Senator Jay Dardenne, Chairman
Joint Legislative Committee on the Budget
State Capitol
P. O. Box 44294, Capitol Station
Baton Rouge, LA 70804

R.S. 46:2662

La. Const. Art. VII, §9

Monies in the state treasury cannot be withdrawn without an appropriation; however, the Capital Area Human Service District, a political subdivision, is not required to be deposited into the state treasury.

Dear Senator Dardenne:

You requested the opinion of this office concerning the right of the Capital Area Human Service District (the "District") to utilize Medicaid revenue collected in current or prior years in excess of the appropriated level for the existing operating budget of the District. You advised that the District is of the opinion that such funds may be expended without the approval of a formal budget adjustment ("BA-7").

The District was created pursuant to R.S. 46:2662, et seq., as a special district within the meaning of Article VI, Section 19 of the Louisiana Constitution and as a political subdivision of the State, to direct the operation and management of community-based programs and services relative to public health, mental health, developmental disabilities and substance abuse services in five parishes in the Baton Rouge area. The District's board is authorized to:

... collect or cause to be collected all monies due the district for the provision of services pursuant to statutory requirements, and any other form of contract or agreement by which the district provides services and levies charges therefor. **The district may retain all federal funds, self-generated funds, and any funds collected under the Medical Assistance Program** (Title XIX of the Social Security Act) in excess of funds provided in the general appropriations act which are collected for the provision of services.
(Emphasis added)

As the District was created as a special district and a political subdivision of the State, it is not a State agency; accordingly, Article VII, Section 9 of the Louisiana Constitution would not require the District to deposit its money in the State treasury. That constitutional provision requires the State or any state board, agency, or commission to immediately deposit all money received into the State treasury. However, that provision does not apply to the funds of a political subdivision. See Atty.Gen.Op. 94-432. Of course, if the over-collected funds have been deposited into the State treasury, they cannot be withdrawn from the treasury without an appropriation. Article III, Section 16 and Article VII, Section 10 of the Louisiana Constitution. Accordingly, if the over-collected monies are in the State treasury, action of the legislation or the Joint Legislative Committee on the Budget would be required.

Trusting this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUB
Attorney General

OPINION NUMBER 01-42
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Page -2-

BY: _____
MARTHA S. HESS
Assistant Attorney General

RPI/MSH

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Syllabus

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Date Received:

Date Released: March 5, 2001

Martha S. Hess
Assistant Attorney General