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ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

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OPINION 02-0001

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84 Parishes

The council of the Terrebonne Parish Consolidated Government remains generally empowered under the terms of its home rule charter to make decisions concerning the retention of legal counsel for the parish and its departments.

Dear Ms. McNabb:

You advise this office that a question has arisen concerning the authority of the Sales & Use Tax Advisory Board of Terrebonne Parish to retain separate legal counsel other than that provided by the parish attorney.

The Terrebonne Parish Consolidated Government is governed by the provisions of a home rule charter. The Sales and Use Tax Advisory Board is "a part of the sales and use tax department." See Section 25-98 of the home rule charter¹. The Sales and Use Tax Department operates "under the jurisdiction of the parish council." See Section 25-96². Thus, both the Department and its Advisory Board are subject to the authority of the parish council as dictated by the charter.

The parish council alone exercises authority with respect to the hiring of legal counsel to represent the parish government and its departments. Of particular import is Section 4-03 of the home rule charter, concerning the legal department, which provides:

¹ Section 25-98 is entitled "Advisory board" and provides:

Sec. 25-98. Advisory Board

(a) There is hereby created, as a part of the sales and use tax department, an eight-member sales and use tax advisory board, which shall be composed of the parish president, the council chairman, the parish finance committee chairman, the school board president, the school board vice-president, superintendent of schools, the parish sheriff and a member designated by the Terrebonne Parish Library Board of Control.

² Section 25-96 pertains to the Sales and Use Tax Department and provides:

Sec. 25-96. Created; purpose; composition.

There is hereby created a separate department of the parish to operate under the jurisdiction of the parish council, for the sole and exclusive purpose of administering and enforcing the collection and distribution of the sales and use tax imposed by this article, which shall be known and designated as the sales and use tax department. The department shall consist of a director, such employees as may be necessary to accomplish the functions and purposes thereof, and an advisory board to supervise and make recommendations to the director and the council for the proper administration and operation of the department, all as provided in this division.

Sec. 4-03. Legal department

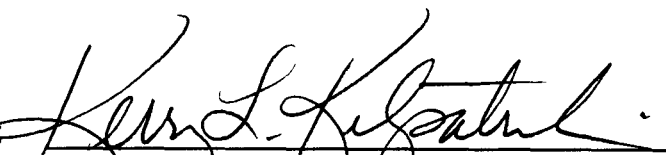
- (a) The head of the legal department shall be the parish attorney who shall be appointed by the president on an annual basis and such appointment shall be subject to approval by the council.
- (b) The parish attorney shall be an attorney licensed to practice in the courts of Louisiana and shall have at least five (5) years' continuous practice of law and shall be a resident of the parish for at least two (2) years prior to the date of appointment.
- (c) The parish attorney shall serve as chief legal adviser to the president, council and all departments, offices and agencies, shall represent the parish government in all legal proceedings and shall perform other duties prescribed by this charter or by ordinance.
- (d) Any assistant attorneys authorized by the council shall be appointed by the parish president subject to approval by the council and serve at the pleasure of the parish president.
- (e) No special legal counsel shall be employed by the parish government except by written contract and approval of the council.

The advisory board is without the unilateral authority to retain separate legal counsel. Currently, legal representation to the advisory board is properly provided by the parish attorney. However, as this office determined in Attorney General Opinion 00-189, which was addressed to you on the related issue of the council's authority to hire a separate attorney to represent the council, the parish council remains generally empowered to make decisions concerning the retention of legal counsel for the parish and its departments.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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