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OPINION NUMBER 02-0030

3 APPROPRIATIONS

Mr. Mark C. Drennen
Commissioner of Administration
P. O. Box 94095
Baton Rouge, LA 70804

La. Const. Art. VII, §11; La. Const. Art. III, §16; La.
Const. Art. VII, §10; Act 32 of 2001

An advance of funds from the Ancillary Appropriations Act may not be made to a state agency to support a cooperative endeavor agreement between the agency and a non-profit corporation to support non-operational activities to be repaid over a period of more than one year.

Dear Commissioner Drennen:

You requested the opinion of this office concerning whether an advance of funds from the advance appropriation contained in the Ancillary Appropriations Act may be made to a state agency to support a cooperative endeavor agreement between the agency and a non-profit corporation to support non-operational activities (capital construction) to be repaid over a period of more than one year.

The appropriation to which you are referring is found in Section 8 of the 2001-2002 Ancillary Appropriation Act, Act 32 of the 2001 Regular Session ("Act 32"), and states as follows:

"Section 8. **Auxiliary Funds.** These funds are for the establishment of an Auxiliary Fund to finance the operation of a subsidiary support activity and properly reported as a governmental fund type under generally accepted accounting principles.

DEPARTMENT OF THE TREASURY

For providing monies to establish petty cash, travel imprest funds and "seeding" of appropriations as authorized and approved by the commissioner of administration

Payable from:

State General Fund be it more or less estimated at: \$1,000,000"

Section 1 of Act 32 provides that the appropriations in the Act are for the establishment and reestablishment of agency ancillary funds, the money in which shall be used for working capital in the conduct of business enterprises rendering public service, auxiliary service and interagency service. Act 32 clearly contemplates that the appropriated funds are to be used for operational purposes, not for non-operational activities, such as capital

outlay. Capital outlay projects are properly included in the capital budget not in an operating budget. See La.Const. Art. VII, Sec. 11.

A seed is an advance on an appropriation. Appropriation acts are only valid for one year. La. Const. Art. III, Sec. 16; Art. VII, Sec. 10. If a seed could be repaid over a period of more than one year, the appropriation which was seeded would have expired and could not be repaid. This is contrary to the concept of a seed or advance of an appropriation. Seeds must be repaid within the same fiscal year in which the appropriation is made.

It could also be argued that seeding a cooperative endeavor between a state agency and a non-profit corporation is a loan of public funds in violation of La.Const. Art. VII, Sec. 14.

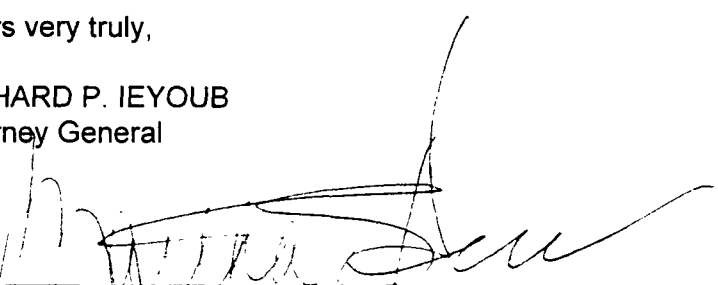
Based upon the foregoing, it is the opinion of this office that an advance of funds from the advance appropriation contained in the Ancillary Appropriations Act may not be made to a state agency to support a cooperative endeavor agreement between the agency and a non-profit corporation to support non-operational activities (capital construction) to be repaid over a period of more than one year.

Trusting this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY:



MARTHA S. HESS
Assistant Attorney General

RPI/MSH