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OPINION NUMBER 02-0041

FEB 26 2002

Ernie Roberson
Registrar of Voters
Caddo Parish
525 Marshall Street, Suite 103
Shreveport, LA 71101-3515

31 ELECTIONS – Registration of Voters
41 ELECTIONS – Reapportionment
90-B-3(a) PUBLIC LANDS - Boundaries; extent ownership
Answers questions regarding elections and voting for
Caddo and Bossier parishes, where the two parishes have
entered into a boundary agreement. Section 5 of the 1965
Voting Rights Act requires approval of any change with
respect to voting prior to the implementation of said
change.

Dear Mr. Roberson:

Your request for an Attorney General's opinion regarding the boundaries of Caddo and Bossier parishes and their affect on voting in Caddo Parish has been assigned to me for research and reply. You seek our opinion on the following questions:

1. Should the 'census' precincts be used as boundaries for the April 6th election?
2. Should voters in the 'census' precincts who reside WITHIN the area claimed by Bossier Parish and included in the homologation agreement be allowed to vote in the parish wide election on April 6th?
3. Should the precincts used when the School Board District #2 was originally elected in 1998 be used?
4. Should the precincts used when the parish Commission #8 was originally elected in the fall of 1999 be used?
5. Since the homologation was signed in April of 1999 prior to the Commission election but never submitted to the U.S. Justice Department, should the precincts be used that were in place and used in the original 1999 election which allowed Caddo voters in the disputed area of Caddo to vote in District #8 (Landing, Williamsburg II & Champion Lake Apartments)?
6. How does La. R.S. 33:141 affect this matter since Bossier parish did pass an ordinance asking for certain territory in Caddo Parish?

We will summarize the statements from your letter in the next three paragraphs for the reader of this opinion to have a better understanding of the facts you have presented and the questions and issues to be addressed.

Caddo and Bossier Parishes were both created from parishes that existed prior to 1835. The parish boundary of both parishes was established as the bank or side of the Red River. The actual river and river bottoms were not included in the

description of either parish. Caddo and Bossier parishes entered into a homologation agreement [hereinafter "agreement"] in April of 1999, in an attempt to fix a boundary between the two parishes using the center line of the Red River, which has changed course over the last 160 years. This agreement was filed with both the Caddo and Bossier Parish Clerks of Court offices after determination by the First District and Twenty Sixth Judicial District Courts. The agreement included an ordinance by the Bossier Parish Police Jury though no action is referenced by the governing authority of Caddo Parish, which is the Caddo Parish Commission. No election by the general public was held in either parish.

The boundaries submitted to the U.S. Census Bureau by the Caddo Parish Commission for use as "census" precincts in 1999 did NOT include the agreement boundaries, but rather the precincts were drawn using the pre-homologation boundaries, referred to here as the "historic" boundaries. The 2000 Census was conducted in Caddo Parish on the historic boundaries. Parish governing authorities are charged by law with the establishment of the geography of precincts and the polling location for those precincts. The areas in question involve the Cherokee Park neighborhood, the Landing, Williamsburg II and Champion Lake Apartments. Those areas were included in the official results of population inside Caddo Parish during the 2000 Census. Caddo parish did obtain U.S. Justice Department approval for the census precincts' geography, which are the historic boundaries. Those approved precincts and block boundaries were used by the state legislature in their reapportionment plans. To the requestor's knowledge, the homologation agreement boundaries will not be used during the reapportionment of the Caddo Parish Commission.

The April 6th election in Caddo Parish will include special elections to fill vacancies for Caddo School Board, District #2 which was elected in 1998 and the Caddo Parish Commission, District #8, which was elected in the fall of 1999. Both of those areas have voters who could be affected by the homologation agreement. Both of those elections would normally use the historic boundaries in place when the original elections were held. A parish wide election has been called by Law Enforcement District One for the April 6th election date. This election would normally use the census precinct geography [historic boundaries] and new polling places determined by the Caddo Commission. To the requestor's knowledge, the homologation agreement was never submitted to the U.S. Justice Department for approval, nor have precinct maps for the homologation agreement boundaries been produced by either parish.

In general, our initial response is that under federal law, 42 U.S.C. 1973c, any change with respect to the parishes' boundaries which would affect voting must be approved by the United States Department of Justice under Section 5 of the Voting Rights Act or by the United States District Court for the District of

Columbia. Your letter states that the historic census boundaries have received this approval, but that the homologation agreement boundaries have not even been submitted for approval. Therefore, it has been and remains our opinion that elections may only be conducted using precincts that have received approval under the 1965 Voting Rights Act, which in this case would be the "historic" census precinct boundaries.

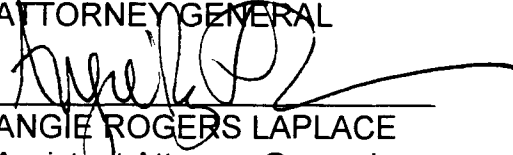
Our specific response to your questions are as follows:

1. The "historic" census precinct boundaries which you state have received Section 5 approval are thus the only precleared boundaries which may be implemented under federal law.
2. Only those voters within the "historic" census precinct boundaries which you state have received Section 5 approval should be allowed to vote on an election within that boundary, regardless of whether or not they are included in the homologation agreement.
3. The last precleared boundaries for the School Board should be used in an election to fill a vacancy in that office.
4. The last precleared boundaries for the Parish Commission should be used in an election to fill a vacancy in that office.
5. The homologation agreement may not be implemented under federal law for the purposes of elections and voting, and therefore, the last precleared boundaries for the Parish Commission should be used in an election to fill a vacancy in that office.
6. We do not render opinions on factual issues and thus, do not have an opinion on whether or not R.S. 33:141 was the appropriate law for the parishes to follow in creating the homologation agreement. However, we are aware of alternative methods of establishing parish boundaries, which was discussed in Atty.Gen.Op.No. 96-37, copy enclosed herein for your information and review.

Trusting that this opinion is responsive to your request, we remain

Yours very truly,

RICHARD P. IEYOUNG
ATTORNEY GENERAL



ANGIE ROGERS LAPLACE
Assistant Attorney General

RPI/ARL;mjb
Enclosure



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90-B-3 PUBLIC LANDS - Public & Private domains, distinctions
90-B-3(a) PUBLIC LANDS - Boundaries; extent ownership
114-B SURVEYS - State and parish boundary lines

Art. VI, §1, La. Const. 1974; La. R.S. 50:121, R.S. 50:123, 50:151, 50:221

Art. VI, §1 of the 1974 La. Constitution provides that parishes and their boundaries established on the date of the Constitution are recognized and ratified, and the legislature by law may establish and organize new parishes and change parish boundaries if approved by two-third of the electors in each parish. There are three (3) alternative methods of establishing parish boundaries. Once the survey procedure has been established, the methodology for the survey must be agreed upon among the parish authorities, there being at least three (3) methods available.

Honorable Jerry A. Thomas
State Representative
District 75
828 Main Street
Franklinton, LA 70438

Dear Representative Thomas:

This is in response to your request for an opinion of this office relative to the appropriate method to be followed for the determination of parish boundary lines.

You state that some of your constituents own property on the Washington/Tangipahoa Parish boundary line, and that there are apparently conflicting legal descriptions for this line.

Your query is stated as follows:

In light of the fact that the Louisiana Constitution of 1974 ratified all parish boundary lines as they existed at that time and the fact that these two parishes have conflicting boundary descriptions, is it the responsibility of the parish governing bodies to determine the correct parish boundary lines pursuant to R.S. 50:221 et seq. or should the Legislature act pursuant to its constitutional authority to change parish boundary lines with approval of two thirds of the electors in each parish?

We commenced our research by contacting the State Land Office to acquire and review all known information pertaining to the various boundary descriptions. State Land Office personnel were most cooperative and supportive and researched all available historic records that could be found in the State Land Office, the offices of the Clerks of Court for both parishes, and the official minutes of the Police Jury meetings from both parishes from 1869 forward. The effort was to locate any document that would clarify the conflicting boundary descriptions between Tangipahoa and Washington Parish, particularly in light of the fact that a reference from a study by the former State Department of Public Works¹ noted that the boundary description "was presumably revised later on by agreement between the Police Juries of Tangipahoa and Washington Parishes * * *".

¹ Lombard, Gervais, R.E., 1942, Study of Parish Boundaries, State Department of Public Works

The agreement referred to in this study could not be found after a comprehensive search of all available records by State Land Office personnel. Therefore, it appears that there are actually three (3) conflicting boundary descriptions.

As pointed out in your request, Article VI, §1 of the Louisiana Constitution of 1974 provides that the parishes and their boundaries as established on the effective date of the Constitution are recognized and ratified.

Pursuant to these provisions, the Legislature may establish and organize new parishes, dissolve and merge them, and change parish boundaries if approved by two-thirds of the voters in each affected parish².

The Louisiana Revised Statutes also provide several alternative methods for surveys, re-surveys and the establishment of parish boundaries. For instance, La. R.S. 50:121 authorizes the State Land Office to conduct surveys to re-establish township, range, and section lines, corners and half-mile stations.³ This furnishes sufficient authority for the Land Office, particularly with the consent of the landowner(s), to conduct a re-survey of the conflicting boundary descriptions.

In order to accomplish this work, the Land Office may employ surveyors and helpers to make any survey or re-survey authorized by law and, upon petition of any individual owning land in any township or section which has never been surveyed or which has been only partially

² The pertinent provisions of Article VI, §1 read as follows:

Section 1. **(A) Parishes and Boundaries Ratified.** Parishes and their boundaries as established on the effective date of this constitution are recognized and ratified.

(B) Creation; Dissolution; Merger; Boundaries. The legislature by law may establish and organize new parishes, dissolve and merge parishes, and change parish boundaries if approved by two-thirds of the electors in each parish affected voting thereon at an election held for that purpose.

³ La. R.S. 50:121 reads as follows:

§121. Reasons for surveys

The Register of the State Land Office may cause surveys and resurveys to be made, in order to establish or re-establish township lines, section lines, corners, and half-mile stations, while the original monuments have been destroyed or lost or are uncertain, or where the lines, corners, or stations were never actually established.

surveyed or in which the lines or corners have become obliterated or which are uncertain, the Land Office shall proceed with the survey or re-survey work, provided that the landowner petitioning for the survey is required to bear the expenses. La. R.S. 50:123.⁴

Another alternative provision is found in La. R.S. 50:151⁵, authorizing any parish, except the Parish of Orleans, to conduct surveys in the same manner as the State Land Office by La. R.S. 50:121, above, costs to be paid from funds appropriated by the parish. La. R.S. 50:153.

La. R.S. 50:152 also provides that upon the petition of landowners owning more than fifty (50%) percent of the land in a township which has never been wholly surveyed or the lines of which are obliterated or destroyed, the governing authority of the parish in which the township is situated shall immediately have the township surveyed and a map made thereof, costs to be paid by the landowners petitioning for the survey.⁶

⁴ La. R.S. 50:123 reads as follows:

§123. Petition for survey; notice; survey and map; cost

Upon petition of any individual owning land in any township, or section thereof, which has never been surveyed or which has been only partially surveyed or in which the lines or corners have been obliterated or are uncertain, in whole or part, the Register of the State Land Office shall, after giving written notice to the other record owners of land in the area in need of surveying so that they may attend if they desire, proceed without delay to have the township surveyed or re-surveyed and a map made showing township and section lines and corners and half-mile stations. The landowner petitioning for the survey shall bear the expense thereof.

⁵ La. R.S. 50:151 reads as follows:

§151. Authorization to hire surveyors, procure field notes, and make surveys

Any parish, except the Parish of Orleans, may procure necessary field notes from any previous survey and may employ one or more competent surveyors to survey or re-survey and establish or re-establish township lines, range lines, section corners, and half-mile stations where these have never been surveyed or established or where the original witness trees have been destroyed or lost.

⁶ La. R.S. 50:153 reads as follows:

§153. Cost of survey or re-survey

Except in the situation referred to in R.S. 50:152, the governing authority of the parish

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Honorable Jerry A. Thomas

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A third alternative provision, referred to in your original request, is at found in La. R.S. 50:221, authorizing a parish governing authority to fix the boundary line of any adjoining parish by the passage of an ordinance to that effect fixing the time and place for starting the running of the boundary.⁷ The parishes are free to pursue any of these several alternatives and may use either private surveyors, parish surveyors, or surveyors provided by the State Land Office.

Once the procedure for the survey has been established, the survey technique to be employed or methodology for the survey would be a subject for discussion among the parish authorities, as there are several possible methods available under the circumstances. For instance, the survey might follow any one of the following survey lines: 1) a re-survey of the section, quarter-section and sixteenth section lines; 2) the diagonal method which was followed by Chamberlin on the Tangipahoa Survey; 3) a line of boundary drawn in the middle of the main downstream track or flow of navigation in a stream which serves as a natural boundary to divide the parishes; and 4) a new line to be agreed upon by the parishes.

There are advantages and disadvantages to each method, and agreement between the parishes would be essential to the establishment of a legal and enforceable boundary.

may appropriate money out of the general fund of the parish to defray the expenses of the survey or resurvey and of the establishing or re-establishing of the lines, corners, and half-mile stations with cement, cast iron, or other permanent material. In the situation, set out in R.S. 50:152, the landowners petitioning for the survey shall bear its cost.

⁷ La. R.S. 50:221 reads as follows:

§221. Fixing parish boundary

Whenever the governing authority of any parish desires to ascertain the fix the boundary line of any adjoining parish, it shall pass an ordinance to that effect fixing a time and place for starting the running of the boundary. It shall then serve the presiding officer of the governing authority of the adjoining parish with a copy of the ordinance and with notice, at least six months in advance, of the time and place of starting the running of the boundary.

The surveyors appointed for that purpose, or, if there were none specifically appointed, the parish surveyors of both parishes shall, at the time fixed, proceed to the running and marking of the boundary line. If the surveyor of either parish falls to attend at the time and place fixed, the other surveyor shall wait two days and if the first does not arrive within that time shall proceed to the running and marking of the boundary line.

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We hope this opinion is of benefit and if we may of further help, please call upon us at any time.

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY: 
GARY L. KEYSER
Assistant Attorney General

RPI/GLK/bb