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OPINION NUMBER 02-0127
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3 APPROPRIATIONS
90-A-2 PUBLIC FUNDS - Loan, Pledge or Grants

R.S. 47:302.36; R.S. 47:322.7; R.S. 47:322.28

Honorable Herman Ray Hill
State Representative
District 32
529 Tramel Road
Dry Creek, Louisiana 70637

Funds in Allen Parish Capital Improvements Fund are a portion of the State sales tax collected in Allen Parish and are only to be used for capital improvements as determined by the Allen Parish Capital Improvement Board.

Dear Rep. Hill:

You requested the opinion of this office concerning several questions arising from Act No. 800 of the 1997 Regular Session of the Louisiana Legislature ("Act 800"). As you noted, Act 800 contains provisions which apply to Allen Parish and to Beauregard Parish. Your questions, and our answers, only pertain to Allen Parish.

Act 800 enacted R.S. 47:302.31, 47:322.1 and 47:322.25 relative to the state sales tax on hotel occupancy. Pursuant to its authority, the Louisiana State Law Institute redesignated the statutes amended in Act 800 and R.S. 47:302.31 is now R.S. 47:302.36, R.S. 47:322.1 is now R.S. 47:322.7 and R.S. 47:322.25 is now R.S. 47:322.28. Those statutes, as amended by Act 800, provide as follows:

§ 302.36. Disposition of certain collections in Allen Parish

A. **The avails of the tax imposed by this Chapter from the sale of services as defined in R.S. 47:301(14)(a) in Allen Parish under the provisions of R.S. 47:302(C) shall be credited to the Bond Security and Redemption Fund, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay the remainder of such funds into a special fund which is hereby created in the state treasury and designated as the "Allen Parish Capital Improvements Fund".**

B. The monies in the Allen Parish Capital Improvements Fund shall be subject to annual appropriation by the legislature. **The monies in the fund shall be used solely and exclusively in Allen Parish first for capital improvements to the parish courthouse and then for capital improvements to public property in Allen Parish. All unexpended and**

unencumbered monies in the fund at the end of any fiscal year shall remain in the fund. Monies in the fund shall be invested by the treasurer in the same manner as the monies in the state general fund, and all interest earned shall be deposited in the state general fund.

C. For the purposes of this Section, **"capital improvements" shall mean expenditures for the renovation of the Allen Parish courthouse and for acquiring lands, buildings, equipment, or other permanent properties, or for their construction, renovation, preservation, maintenance, or improvement, or for payment of principal, interest, or premium, if any, and other obligations incident to the issuance, security, and payment of bonds or other evidences of indebtedness associated therewith.**

D. **The monies paid into the Allen Parish Capital Improvements Fund shall be administered and distributed by the Allen Parish Capital Improvement Board which is hereby created. The monies shall be distributed as provided by the board for furtherance of the purposes of this Section.** The Allen Parish Capital Improvement Board shall consist of the state senators and representatives who represent all or a portion of Allen Parish, the president of the Allen Parish Police Jury, director of the Allen Parish Tourist Commission, and the Allen Parish sheriff. (Emphasis added)

§ 322.7. Disposition of certain collections in Allen Parish

The avails of the tax imposed by R.S. 47:321 from the sale of services as defined in R.S. 47:301(14)(a) in Allen Parish under the provisions of R.S. 47:321(C) and 322 shall be credited to the Bond Security and Redemption Fund and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay the remainder of such monies into the Allen Parish Capital Improvements Fund created pursuant to R.S. 47:302.36. The monies in the fund shall be used in accordance with the provisions of R.S. 47:302.36. (Emphasis added)

§ 332.28. Disposition of certain collections in Allen Parish

The avails of the tax imposed by R.S. 47:331 from the sale of services as defined in R.S. 47:301(14)(a) in Allen Parish under the provisions of R.S. 47:331(C) and 332 shall be credited to the Bond Security and Redemption

Fund and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay the remainder of such monies **into the Allen Parish Capital Improvements Fund created pursuant to R.S. 47:302.36. The monies in the fund shall be used in accordance with the provisions of R.S. 47:302.36.** (Emphasis added)

Your first question is: Is the revenue raised under the provisions of Act No. 800 raised under the authority of a state law or is that revenue raised under the authority of a parish ordinance?

As quoted above, the statutes enacted by Act 800 refer to the taxes imposed pursuant to R.S. 47:302(C), R.S. 47:321 and R.S. 47:331. These three statutes are the statutory citations for the imposition of sales taxes by the State of Louisiana. Under Act 800, the amount of State sales taxes derived from the sale of services in Allen Parish collected pursuant to R.S. 47:302(C), R.S. 47:321(C) and 322 and R.S. 47:331(C) and 332 are deposited into a special fund created in the state treasury and designated as the "Allen Parish Capital Improvements Fund" (the "Fund"). No action is required or necessary by the Allen Parish Police Jury in order for the State sales taxes to be deposited into the Fund.

Your second question is "What are the purposes for which that revenue may be expended?"

As stated above in R.S. 47:302.36(B), the monies in the Fund are subject to legislative appropriation only for the following purposes:

"The monies in the fund shall be used solely and exclusively in Allen Parish first for capital improvements to the parish courthouse and then for capital improvements to public property in Allen Parish.

"Capital improvements" is defined in R.S. 47:302.36(C) to mean: "expenditures for the renovation of the Allen Parish courthouse and for acquiring lands, buildings, equipment, or other permanent properties, or for their construction, renovation, preservation, maintenance, or improvement, or for payment of principal, interest, or premium, if any, and other obligations incident to the issuance, security, and payment of bonds or other evidences of indebtedness associated therewith."

Monies deposited into the Fund pursuant to R.S. 47:322.7 and R.S. 47:332.28 are subject to the same uses as set forth in R.S. 47:302.36.

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Your final question is: "Are the specific projects on which that revenue will be expended determined by the Allen Parish Capitol Improvements Board or by the Allen Parish police Jury?"

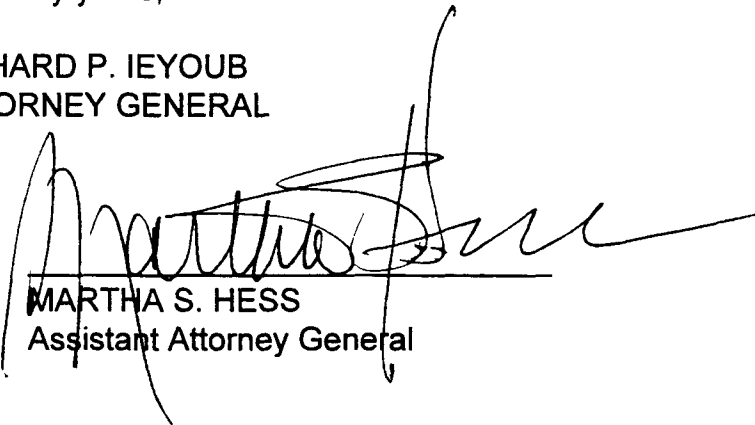
As is clearly stated in R.S. 47:322.36(D), the monies paid into the Fund shall be administered and distributed by the Allen Parish Capital Improvement Board, which is created in R.S. 47:322.36 and not by the Allen Parish Police Jury.

Trusting this adequately responds to your request, we remain

Very truly yours,

RICHARD P. IEYOUB
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BY:



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