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OPINION NUMBER 03-0237

3 APPROPRIATIONS

La. R.S. 15:1094, et seq

La. Const. Art. III, §16

Power of appropriation to fund start up for
juvenile detention center is vested in the
legislature.

Rep. Robert R. "Bobby" Faucheux, Jr.
District 57
House of Representatives
197 Belle Terre Boulevard
P. O. Box 1960
LaPlace, LA 70069

Dear Rep. Faucheux:

You requested the opinion of this office concerning whether the State is responsible for start up costs for the construction of a facility as per La. R.S. 15:1094 - 15:1099.4.6 and HB 1743 of the 2003 Regular Session of the Louisiana Legislature ("H.B. 1743"). H.B. 1743 was not enacted by the legislature and thus renders that portion of your question moot.

La. R.S. 15:1094 creates the Florida Parishes Juvenile Justice District (the "District") as a political subdivision of the State with territorial jurisdiction of the five parishes that make up the Twenty-First and Twenty-Second Judicial Districts. The Florida Parishes Juvenile Justice Commission (the "Commission") was created to control, administer, and manage the affairs of the District. La. R.S. 15:1094.1. The purpose of the Commission is to assist and afford opportunities to children who enter the juvenile justice system, or who are children in need of care or supervision, to become productive, law-abiding citizens of the community, parish, and state by the establishment of rehabilitative programs within a structured environment and to provide physical facilities and related services for children throughout the parishes of Livingston, St. Helena, St. Tammany, Tangipahoa and Washington. La. R.S. 15:1094.2.

The board is given the authority to purchase or otherwise acquire, construct, reconstruct, rehabilitate, improve, repair, operate, lease, manage and administer or enter into contracts for the management, administration and operation of a juvenile detention facility, shelter care facility or such other juvenile justice facility as are useful, necessary, expedient, or convenient to carry out the plans and purposes of the Commission. La. R.S. 15:1094.4. The Board is authorized to incur debt and issue bonds and may levy taxes pursuant to Article VI, Sections 30 and 32 of the Louisiana Constitution or any other constitutional or statutory authority. The Commission is also authorized to issue general obligation bonds if approved by the voters. La. R.S. 15:1094.5.

La. R.S. 15:1094.6 provides as follows:

A. On the basis of information provided in accordance with R.S. 15:1083, the Department of Public Safety and Corrections shall determine the actual cost of operating the juvenile detention facility situated in Tangipahoa Parish when the facility files a statement requesting participation and funding under this Part. The department shall enter into a contractual agreement with the participating regional detention facility, specifying the services to be provided and the dollar amount of the contractual agreement, which shall be the actual cost of operating the facility or program. This amount shall be paid in quarterly advances to the participating regional detention facility.

B. *In order to develop the detention facility desperately needed in the state and region for juveniles who are clients of the Department of Public Safety and Corrections, the department shall provide start-up funds for the establishment of the facility or program.* (Emphasis added).

It is our understanding that the Juvenile Detention Facility was constructed several years ago; however, a dispute arose between the contractor and the Commission and the contractor filed suit¹ against the Commission. A judgment was rendered against the Commission by the Twenty-First Judicial District Court. H.B. 1743 provided for an appropriation of \$63,896.60 plus interest, court costs and expert witness fees to pay the judgment.

As to whether the Louisiana legislature is required under Louisiana law to appropriate these start-up funds, our courts have stated:

It is elementary that the "fiscal affairs of the state, the possession, control, administration, and disposition of the property, funds, and revenues of the state, are matters appertaining exclusively to the legislative department." *State v. Duhe*, 201 La. 192, 9 So.2d 517, 521 (1942) (citing *Carter v. State*, 42 La. Ann. 927, 933, 8 So. 836, 837 (1890)).

Meredith v. Ieyoub, 96-1110, p. 5 (La.9/9/97), 700 So.2d 478, 481.

The legislature has absolute control over the finances of the state, except as limited by constitutional provisions. *Woodard v. Reily*, 244 La. 337, 152 So.2d 41 (La. 1963). It is the legislature that decides how the branches and departments of government shall be funded

¹*J. Caldarera & Company, Inc. v. Florida Parishes Juvenile Justice Commission* bearing Number 94-00583 on the docket of the Twenty-First Judicial District Court, Parish of Tangipahoa.

from the public fisc. *Segura v. Louisiana Architects Selection Board, et al.*, 353 So.2d 330 (La.App. 1st Cir. 1977); *Louisiana Public Facilities Authority v. Foster*, 2001-0009 (La. 9/18/01), 795 So.2d 288; *Quarles v. Jackson Parish Police Jury*, 482 So.2d 833 (La.App. 2 Cir. 1986), citing *State ex rel. Assistant Dist. Attys. Ass'n v. Theriot*, 242 So.2d 49 (La.App. 1 Cir. 1970). The power to appropriate funds to operate state government belongs exclusively to the legislature. La.Const. Art. III, Sec. 16; *Bruneau v. Edwards*, 517 So.2d 818 (La.App. 1st Cir. 1987). An appropriation is a legislative act of authorization for the withdrawal of public funds by warrant from the state treasury by designated officers or institutions for expenditure for certain public purposes specified by the legislature. La.Const. Art. III, Sec. 16; Ops.Atty.Gen. 91-174, 02-0243.

Except as expressly provided by the Constitution, no other branch of government, nor any person holding office in one of them, may exercise the legislative function. *New Orleans Firefighters Association v. Civil Service Commission of the City of New Orleans*, 422 So.2d 402, 406 (La.1982); *Louisiana Association of Educators v. Edwards*, 521 So.2d 390 (La.1988).

In *Cormier v. T.H.E. Ins. Co.*, 1998-2208 (La. 9/8/99), 745 So.2d 1, a child brought suit against Department of Public Safety and Corrections and owner of amusement ride for injuries sustained on the ride. The question was whether the Department was negligent in causing the injuries for failing to implement the "Amusement Ride Safety Law," despite the legislature's repetitive denial of funding for the Program. The court stated in pertinent part as follows:

"In 1985, the legislature enacted the Safety Law and, in doing so, burdened the Department with an affirmative duty to protect the public through the adoption and issuance of rules regarding the safety of amusement rides. However, the legislature also rejected several budget requests submitted to it by the Department for the purposes of implementing the law... The state must seek appropriations on a yearly basis. La. Const. Art. 7, § 10(D); La.Rev.Stat. 39:33. A program may not be operated at a deficit and the losses recouped when the program begins to earn a profit. The Department is under an obligation to return excess revenue to the state coffers and cannot retain it for its programs. La.Rev.Stat. 39:82. Nor can departments shuffle appropriations or employees from one program to another without legislative authorization. La.Rev.Stat. 39:36; La.Rev.Stat. 39:32. Funds may only be reallocated if specifically allowed by statute, e.g., to meet unforeseen circumstances or to correct errors. See La.Rev.Stat. 39:71(C) and La.Rev.Stat. 39:77.

The trial court focused on what it deemed improper acts on the part of the legislature for enacting a law which it later refused to fund. However, the trial court had no legal basis to review the budgetary decisions of the

legislature, nor to impute what it determined to be a wrongful act of the legislature to the Department."

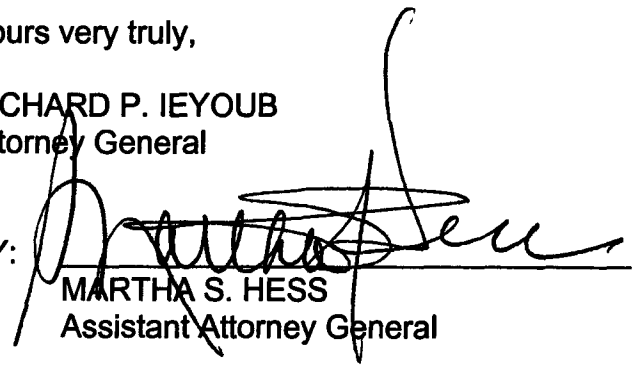
Thus, under the Louisiana Constitution, the legislature and only the legislature has the authority to determine whether or not to appropriate the start up costs of the Juvenile Detention Facility. Op.Atty.Gen. 03-0241. The Department can only fund the start up costs of the Juvenile Detention Facility if the legislature appropriates money for that purpose.

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