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OCT 02 2003
OPINION NUMBER 03-0341

Gene Bellisario, Chairman
Nominating Committee
St. Tammany Parish Hospital Service District #2
510 Bradford Dr.
Slidell, LA 70461

Mr. Bellisario:

84 - PARISHES
90-A - POLITICAL SUBDIVISIONS - Officers, Agents & Employees
107-A - SPECIAL DISTRICTS
LSA R.S. 9:2792.4(B); LSA R.S. 42:62(2)
La.Atty.Gen.Op.No. 92-61
La.Atty.Gen.Op.No. 96-218(A)

Act 562 of the Louisiana Legislature

Members of the nominating committee are appointed officials such that they are appointed pursuant to an act of the state legislature by elected officials in conjunction with governmental bodies of the state and its political subdivisions. Any person who is serving as a member of any board, commission, or authority of a political subdivision must be absolved of any personal liability while acting in the course and scope of his/her duties provided he/she is in good faith and absent any intentional misconduct on his/her part.

This office is in receipt of your recent opinion request in which you present questions relative to whether members of the St. Tammany Parish Hospital Service District nominating committee are elected or appointed officials and whether any personal liability may arise in the course of carrying out their duties (i.e., interviewing potential nominees and/or forwarding the names of nominees to the appointing authority).

The Louisiana legislature has provided a definition for appointive offices for the purposes of dual office holding, which reads as follows:

"Appointive office" means any office in any branch of government or other position on an agency, board, or commission or any executive office of any agency, board, commission, or department which is specifically established or specifically authorized by the constitution or laws of this state or by the charter or ordinances of any political subdivision thereof and which is filled by appointment or election by an elected or appointed public official or by a governmental body composed of such officials of this state or of a political subdivision thereof. *La.R. S. 42:62(2). Also see La.Atty. Gen. Op. No. 96-218A citing La.Atty.Gen.Op.No. 92-61.*

While your inquiry does not concern itself with dual office holding, this office is of the opinion that this statute communicates what the legislature intends "appointive office" to mean. Sections 2.1(B)(1)(a), (b) and (c) of Act 562 state that elected officials (i.e., the mayor, city council, parish president, parish governing authority, and a legislative delegation) bear the responsibility of naming persons to the permanent nominating committee. Based on the foregoing, it is definitively clear that the members of the nominating committee are appointed officials such that they are appointed pursuant to

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an act of the state legislature by elected officials in conjunction with governmental bodies of the state and its political subdivisions.

Your final inquiry is whether members of the nominating committee may be subject to any personal liability while in the course of carrying out their duties (i.e., interviewing potential nominees and/or forwarding the names of nominees to the appointing authority). La.R.S. 9:2792.4 discusses the limitations of liability of members of boards, commissions, or authorities of political subdivisions. La.R.S. 9:2792.4(B) states, in relevant part:

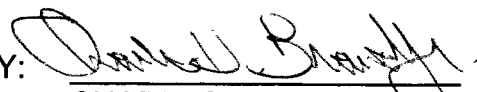
A person who serves as a member of a board, commission, or authority of a political subdivision as defined in Subsection A, shall not be individually liable for any act or omission resulting in damage or injury, arising out of the exercise of his judgment in the formation and implementation of policy while acting as a member of a board, commission, or authority of that political subdivision, provided he was acting in good faith and within the scope of his official functions and duties, unless the damage or injury was caused by his willful or wanton misconduct.

For the purposes of statutory construction, the word "shall" is mandatory and the word "may" is permissive. La.R.S. 9:2792.4(B) uses the word "shall" in its language, which establishes that the provisions contained therein are to be regarded as a mandate from the legislature. It is clear on the face of the statute that any person who is serving as a member of any board, commission, or authority of a political subdivision must be absolved of any personal liability while acting in the course and scope of his/her duties provided he/she is in good faith and absent any intentional misconduct on his/her part.

I trust that this adequately responds to your inquiry. Should you have any further questions, please contact this office.

Yours very truly,

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BY: 
CHARLES H. BRAUD, JR.
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