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DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

FEB 04 2004

Opinion Number 03-0381

Mr. Grover C. Austin, CPA
Office of the Legislative Auditor
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Baton Rouge, Louisiana 70804-9397

61- LAWS-General
3 - CORPORATIONS

State agencies can establish non-profit corporations to perform services on behalf of the agency or the state, as long as the agency has express or implied authority to do so, and as long as LSA-R.S. 12:202.1 is not violated thereby.

Dear Mr. Austin:

This office is in receipt of your opinion request regarding non-profit organizations established by state agencies. Pertinently, your letter states:

"Over the past year we have come upon several non-profit organizations established by agency heads. The majority of the funding of these new non-profit entities is secured by the agency head through budget appropriation or grants directed to his/her agency. These non-profits appear to be organized to do all of the work of a particular state department. Therefore, our basic question is:

May a state employee, or agency head, or a state agency establish and manage a non-profit organization that provides a service that the agency would ordinarily perform?

Our concern here is with off-balance sheet accounts and the agency doing indirectly (i.e., not following public law: not following travel regulations) what it could not otherwise do directly. We respectfully request that you consider R.S. 12:202.1 in your answer."

LSA-R.S. 12:202.1 provides, in pertinent part:

"A. Notwithstanding any other provisions of this Chapter or of any other law, no state board, commission or department, nor any other persons, acting on behalf of such state board, commission or department, shall incorporate or cause to be incorporated any nonprofit corporation which has for its purpose any public or quasi-public function or any function for the benefit of or in connection with any public agency, purpose or function, if in the exercise of any part of the functions of the corporation any bonds or other evidences of indebtedness of the corporation are or may be issued, unless the purpose for which the corporation is to be created; the

amount of bonds to be issued; the method of financing of said bonds, including but not restricted to the term of the bonds, the interest and other charges to be paid with respect to the bonds, and the purposes for which the bonds are to be issued shall have been first submitted to and approved by the legislature.”

Please be advised that it is the opinion of this office that the purpose of LSA-R.S. 12:202.1 is to prevent a state board, commission or department from creating, without specific legislative approval, a non-profit corporation which has the purpose or ability to issue debt. In accord: Attorney General’s Opinion Nos. 97-536; 95-232; 87-701.

Although we do not view LSA-R.S. 12:202.1 as authority for state entities to create non-profit corporations, it is our opinion that LSA-R.S. 12:202.1 recognizes that state boards, commissions and departments can and do create non-profit corporations that have the ability to perform “any public or quasi-public function or any function for the benefit of or in connection with any public agency, purpose or function” of the state entity, other than in connection with the issuance of debt.

In response to your specific question, please be advised that our research did not reveal any provision of law which specifically prohibits a state agency, or a state employee or agency head, on behalf of the state agency, from establishing or managing a non-profit corporation that provides a service that the agency would otherwise perform. It is therefore our opinion that state agencies can establish non-profit corporations to perform services on behalf of the agency or the state, as long as the agency has express or implied authority to do so, and as long as LSA-R.S. 12:202.1 is not violated thereby.

We trust the foregoing to be of assistance. Please do not hesitate to contact this office if we can be of assistance in other areas of the law.

Yours very truly,

CHARLES C. FOTI, JR.
Attorney General

BY: 
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

CCF, jr./JMZB/dam