

November 17, 2005
OPINION NO. 05-0147

Mr. Raymond E. Allain
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90-1 **PORT COMMISSIONS**
LSA Const. Art. 6, § 7 and § 44
La. R.S. 34:246
LSA-R.S. 1:4

The Board of Commissioners of the Port of Iberia does not have the authority to acquire immovable property in another parish.

Dear Mr. Allain:

As legal advisor to the Board of Commissioners of the Port of Iberia ("the Commission"), and as authorized by resolution of the Commission, you have requested an opinion of the Attorney General on the following: Does the Commission have the legal authority to acquire immovable property interests in Vermillion Parish by either voluntary purchase or expropriation, which are necessary and proper for the use and development of the business of the Commission.

In order to properly answer this question, the focus should be on the Commission's powers and the source of those powers. "The Commission, unlike natural persons, possesses only those powers granted to it by the constitution and statutes of Louisiana." (Op. A.G. 04-0234).

To determine what power has been given to the Commission, we must first look to the definitions and see how a Commission would be categorized. Article 6 of the Louisiana Constitution discusses local governments. A port commission would be considered a "political subdivision" (Op. A.G. 04-0234, Op. A.G. 99-358) based on the constitutional definition which includes "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." LSA-Const. Art. 6, § 44(2).

The power for commissions generally is found in LSA-Const. Art. 6, § 7, titled "Powers of Other Local Governmental Subdivisions." This section states "the local governmental subdivision shall have the powers authorized by this constitution or by law." *Id.* For example, the Louisiana Supreme Court in

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Denham Springs v. All Taxpayers affirmed another case saying that “[l]ocal governments possess the right to impose taxes only when the power is granted to them by the state constitution or by statute. *Radiofone, Inc. v. City of New Orleans*, 93-0962 (La.1/14/94), 630 So.2d 694.” 04-1674 (La. 2/4/05) 894 So.2d 325, 331.

More specifically, the Commission’s enabling statutes set forth the Commission’s powers with respect to land acquisition, in La. R.S. 34:246. This statute explicitly states, in pertinent part that “[t]he board is authorized to acquire by purchase, donation, expropriation, or otherwise any lands in the Parish of Iberia.” It is clear with this wording that the land be acquired only in the Parish. “When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.” LSA-R.S. 1:4.

We have found no other laws that grant the Commission any powers to acquire property outside of its parish.

It is the opinion of the Attorney General that the Board of Commissioners of the Port of Iberia lacks the authority to acquire immovable property located outside of its Parish, by either voluntary purchase or expropriation.

If we may be of further assistance, please do not hesitate to contact the undersigned.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
Charles F. Perry
Assistant Attorney General

CCF,Jr./CFP/tp

OPINION NO. 05—147

90-1 PORT COMMISSIONS

The Board of Commissioners of the Port of Iberia does not have the authority to acquire immovable property in another parish.

DATE REQUESTED: April 8, 2005

DATE RELEASED: November 17, 2005

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