

April 20, 2005
OPINION NO. 05-0148

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La. R.S. 41:640
La. R.S. 41:711 & 712
La. R.S. 41:981
La. R.S. 47:8001 through 47:8027
La. R.S. 51:2302
La. Atty. Gen. Op. Nos. 97-408 & 03-0345

Dear Mr. Hughes:

The East Feliciana Parish School Board may not develop an industrial park on a sixteenth section tract in the parish. It has been opined in previous La. Attorney General Opinions that school boards may not participate in economic development. Recent cases are consistent with this position.

This office is in receipt of your opinion request in which you inquire as to whether the East Feliciana Parish School Board may develop an industrial park on a sixteenth section tract with funding obtained through an economic development grant.

The law provides that Parish School Boards may lease sixteenth section lands granted by Congress for public school purposes under limited conditions as set out in LSA-R.S. 41:640 (C) which reads:

The parish school boards of parishes within which there lies a township containing sixteenth section or any portion of a sixteenth section shall have the authority to lease, contract, or both, with any other governmental agency or department for the use of sixteenth section lands within the boundaries of their respective parishes. The proceeds and revenues thereof shall be credited to the parish school boards in which such townships are situated in proportion to the percentage of the sixteenth section lands lying in each parish.

LSA-R.S. 41:981 does allow indirect economic development of sixteenth section land by establishing a procedure under which sixteenth section land may be leased under LSA-R.S. 41:640 (C) "to a parish or municipality through a corporate industry development board organized under the provisions of Chapter 7 of Title 51 of the Louisiana Revised Statutes of 1950, as an instrumentality of the parish or municipality, subject to approval of such lease by the Louisiana Board of Commerce and Industry".

Therefore, it is permissible for the East Feliciana Parish School Board to lease a sixteenth section tract in that parish under these limited conditions.

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Further LSA-R.S. 41:711 and 41:712 provide for the sale of sixteenth section land. However, this may only be done after a vote in favor of the sale by the residents of the township in which the sixteenth section is located. This is in contrast to the sale of other school property which may be sold, if no longer needed for school purposes, using the appropriate public bid procedure.

It should also be noted that sixteenth section lands are not titled in the name of the school board, but rather in the name of the State of Louisiana in its sovereign capacity. Proceeds from any sale of sixteenth section lands are not deposited with a school board but rather are deposited in the state account where interest from the account goes to the school board.

In short, sixteenth section land is unique, even as school property, and its use and sale has been extremely limited and protected by the various applicable state statutes.

The Attorney General's office has previously opined in La. Atty. Gen. Opinions 97-408 and 03-0345 that "the school board is not authorized or obligated to engage in economic development." Further evidence of this prohibition is presented in La. R.S. 47:8001 through 48:8027, known as the Tax Increment Development Act, which specifically excludes school boards and school districts from the application of the Act.

The one contradictory authority is given in *Denham Springs Economic Development District vs. All Taxpayers, Property Owners, et al.*, No. 885 So.2d 1153, 2004-1013 (La. App. 1 Cir. 6/4/04) in which the First Circuit allowed school board participation in economic development; however, the participation was "narrowly drawn to the particular facts and circumstances of this case". *Id.* at 1165. However, the Supreme Court, in *de novo* examination, reversed the First Circuit's decision in cause number 2004-C-1674 rendered by the Supreme Court on February 4, 2005, opinion by Justice Traylor, but did not base its decision on the economic development issue.

In conclusion, the East Feliciana Parish School Board may not develop an industrial park on a sixteenth section tract in the parish. It has been opined in previous La. Attorney General Opinions that school boards may not participate in economic development. Recent cases are consistent with this position.

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We hope this sufficiently answers your inquiries, however if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

CHARLES C. FOTI, JR.
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BY:

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90-A-2 PUBLIC FUNDS
90-B-2 LEASES
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DATE REQUESTED: August 6, 2004

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REQUESTED BY: Michael L. Hughes, Esq.
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