

December 8, 2005
OPINION NO. 05-0172

15-A CONSTITUTIONAL LAW
62 LEASES
90-B-1 PUBLIC LANDS – State Lands Homestead, Rights of Way, Transfer
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93 SALES
97 SCHOOLS & SCHOOL DISTRICTS – Property, Contracts, etc.

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La. Const. Art. VII, Sec 14.
La. R.S. 17:87 & 87.6
La. R.S. 41:131 through 41:140
La. R.S. 41:631 through 41:881
La. R.S. 41:891 & 892
La. R.S. 41:1211 through 41:1294
La. Atty. Gen. Ops. 87-547, 89-209, 90-39, 91-104, 92-494, 93-334, 93-483, 95-252, 96-188, 97-408, 98-292, 01-0290

Dear Mr. Britt:

The Bienville Parish School Board is prohibited from donating school property by the Louisiana Constitution. Other options for the disposition of the property include sale and lease.

On behalf of the Bienville Parish School Board, you have requested the opinion of this office as to the legality of donations of school board property to two separate juridical persons within your parish. Specifically, you have asked (1) if the school board may donate 1.74 acres of sixteenth section land to the Bienville Parish Police Jury and (2) if the school board may donate of the Old Arcadia High School site, located in Block 43 of the Town of Arcadia, to the Bienville Parish Council on Aging.

Generally, both of the donations sought to be made by the Bienville Parish School Board are prohibited under La. Const. Art. VII, Sec. 14(A). See La. Atty. Gen. Op. No. 91-104. The Louisiana Constitution states that "...the funds, credit, *property*, or things of value of the state or of any political subdivision shall not be loaned, pledged, or *donated* to or for any person, association, or corporation, public or private." La. Const. Art. VII, Sec. 14(A) (emphasis added). Although this is the general rule as to donations of property by the state or its political subdivisions, there are exceptions and deviations from the general rule.

The Louisiana Constitution provides exceptions, in Art. VII, Sec. 14(B), for the use of public funds for social welfare programs "for the aid and support of the needy." You state that the Bienville Council on Aging intends to use the Old Arcadia High School site to serve lunches to the elderly and for administrative purposes. It is apparent that this section envisions not only the provision of funding, but also property, to social welfare programs. La. Atty. Gen. Op. No. 98-292. Though this section is not an outright grant of authority for the School Board to donate property to the Council on Aging, it is suggestive that such a donation may not be prohibited under all circumstances. Additionally, on at least one previous occasion, this office has found that some of the elderly may be "classified as needy through programs of social welfare." *Id.* However, as stated in La. Atty. Gen. Op. No. 01-0290, "[o]ur office has consistently opined that in

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order to avail itself of this exception, the state must insure that there is some type of objective criteria to properly identify those who are needy.” Thus, following a screening of those to be served by the Council on Aging, through its proposed use of the Old Arcadia High School site, to determine if they meet the objective criteria of being truly needy, it is likely that a donation of the property for the purpose stated would fall under an exception to the prohibition against donations under La. Const. Art. VII, Sec. 14(A).

One potential problem with the proposed donation of the high school property under La. Const. Art. VII, Sec 14(B) is the question of whether or not the dual use of the property for the purpose of serving the needy and to house the administrative functions of the Council on Aging is permissible. If the administrative functions are solely for the support of the serving of lunches to the elderly and the elderly are determined to be needy as discussed above, then it is unlikely that this use would defeat the charitable use exception in La. Const. Art. VII, Sec. 14(B). However, if the administrative functions of the Council on Aging are to carry out the general business of that entity, it is unlikely that this can be considered efforts in furtherance of the charitable function of serving lunches to the needy. Therefore it is doubtful that, under the latter circumstances, the administrative uses by the Council on Aging of the high school site would qualify as a permissible charitable exception to La. Const. Art. VII, Sec. 14(A). If the School Board feels that the proposed donation to the Council on Aging “might be subject to challenge as a prohibited donation, [the School Board] might consider the possibility of filing suit for declaratory judgment with the district court in your area to obtain a valid determination as to the constitutionality of the [donation] prior to proceeding with it.” La. Atty. Gen. Op. No. 87-547.

In addition to the authorized uses of public assets under La. Const. Art. VII, Sec. 14(B), La. Const. Art. VII, Sec. 14(C) contains a scheme whereby public assets may be employed without violating the general prohibition contained in La. Const. Art. VII, Sec. 14(A). This scheme provides for the establishment of cooperative endeavors, through which “[f]or a public purpose, the state and its political subdivisions or political corporations may engage...with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.” La. Const. Art. VII, Sec. 14(C). Although the requirement that cooperative agreements be formed for “a public purpose” appears on its face to be a broad grant of authority for various state political entities to enter into agreements with other entities, subsequent case law has substantially limited the applicability of this section. The Louisiana Supreme Court, in *City of Port Allen, Louisiana v. Louisiana Municipal Risk Management Agency, Inc.*, 439 So.2d 399, 402 (La. 1983), held that “even if political subdivisions cooperate for a public purpose, they still may *not* give away their assets...merely for a ‘public purpose’” (emphasis in original). The Court further stated that previous jurisprudence requires that a legal obligation to pursue a particular public purpose exist for cooperative endeavors to be valid under La.

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Const. Art. VII, Sec. 14(C). *Id.* at 401; see also La. Atty. Gen. Op. No. 90-39. Thus, for either of the donations that you enquire about to be accomplished by way of a cooperative endeavor, as defined in La. Const. Art. VII, Sec. 14(C), that cooperative endeavor must pass muster under subsequent jurisprudence as fulfilling a legal obligation to provide a public service.

Although at first blush, it would appear that the donation of the Old Arcadia High School site to the Bienville Parish Council on Aging would fulfill the basic requirements to be permissible under a cooperative agreement, a closer examination casts substantial doubt on the legality of this option. It is doubtless that the Bienville Parish Council on Aging is providing a public service through its serving of lunches to the elderly. However, in order for a cooperative endeavor to be valid, there must be a legal obligation on the part of the donee to provide the public service. See La. Atty. Gen. Op. No. 92-494. This office is unaware of any legal obligation on behalf of the School Board to provide public services for the elderly individuals of the parish. Therefore, despite the undoubted public benefit of the Council on Aging's activities from the proposed donation, the relationship between the Council on Aging and the School Board does not meet the jurisprudential requirements for a cooperative endeavor under La. Const. Art. VII, Sec. 14(C).

In your inquiry, you state that the purpose of the proposed donation to the Bienville Parish Police Jury would be for the construction of a public boat launch and a parking area. It is our opinion that this proposed donation of the sixteenth section land to the Bienville Parish Police Jury does not meet the stringent requirements of fulfilling a legal obligation to provide a public service. First, the Policy Jury is under no legal obligation to construct such facilities and the School Board similarly has no legal interest in such an endeavor. Additionally, though the boat launch and parking area may be intended for public use, the public services contemplated by La. Const. Art. VII, Sec. 14(C) as qualifying for cooperative endeavors tend to serve more of a charitable function than a recreational one.

One final caveat with respect to the donation of school lands comes from La. Atty. Gen. Op. No. 93-334. In this opinion, our office noted that if a particular piece of school board property was appraised at a negative fair market value, a transfer of that property to a community group "for community use only with title to revert to the school board once the properties are no longer used for community use," after failed attempts to sell the property under Title 41 of the Revised Statutes, would not constitute a prohibited donation under La. Const. Art. VII, Sec. 14(A). *Id.* This would not be a prohibited donation because nothing of value is being transferred. Moreover, the property would not be completely lost to potential future use by the school board through the assurance that it would revert to the school board when the "community use" ceases. Although this scenario requires several factors to align in order become an available option

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for the disposal of school property, this is a possibility that the Bienville Parish School Board may be able to entertain with respect to the Old Arcadia High School site. It should be borne in mind, however, that this procedure cannot be employed if the underlying property is sixteenth section land. *Id.*

Finally, you have requested the guidance of this office as to other options for the disposal of the abovementioned land if the proposed donations are not available. Because we find that at least one, and perhaps both, of the donations are prohibited by the Louisiana Constitution, a brief review of other property disposal options is included below.

The property that you refer to as Block 43 in the Town of Arcadia, or the Old Arcadia High School site, may be sold or leased by the School Board according to the relevant provisions of the Louisiana Revised Statutes. The sale and lease of school property is controlled by La. R.S. 17:87.6. This statute states, in pertinent part, that “[a]ny parish or city school board may sell, lease or otherwise dispose of, at public or private sale...any school site, building, facility or personal property which is not used and, in the judgment of the school board, is not needed in the operation of any school or schools within its jurisdiction.” In addition to La. R.S. 17:87.6, this office has, on previous occasions, opined that the provisions of the Revised Statutes that control the sale and lease of public lands in general also require compliance in the sale or lease of school lands. See La. Atty. Gen. Op. No. 97-408. The provisions of the Revised Statutes that cover the sale of public property are located at La. R.S. 41:131 through 140 and the provisions that cover the lease of public property are located at La. R.S. 41:1211 through 1294. Additionally, we find that the sale of school board property also requires adherence to the further statutory requirements in La. R.S. 891 and 892. In light of the interpretation in La. Atty. Gen. Op. No. 97-408 that both La. R.S. 17:87.6 and the sale and lease of public land provisions embodied in La. R.S. 41:131 through 140 and 41:1211 through 1294 all apply to the sale or lease of school property, it is our opinion that, once the threshold requirements of La. R.S. 17:87.6 are met (i.e., once a school board has decided that a particular piece of property is unnecessary in the operation of the schools in its jurisdiction), then the general public land sale (modified as discussed below) or lease provisions are triggered. See La. Atty. Gen. Op. Nos. 93-483 and 97-408. Thus, any sale or lease of school property conducted by a school board must follow this combined procedure.

Briefly, the sale of public land must begin with an application for the purchase of the land by the interested party and the payment of an application fee. La. R.S. 41:131. Following such an application, the land must be appraised and then advertised for sale. La. R.S. 41:132-133. The advertised land shall then be sold at public auction to the highest bidder, with the minimum price being set by the register of the State Land Office (or other relevant entity). La. R.S. 41:134. For a

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more complete discussion of the sale process, we direct you to La. R.S. 41:131 through 140.

In addition to the requirements set by La. R.S. 17:87.6 and La. R.S. 41:131 through 140, La. R.S. 41:891 and 892 also apply to the sale of school board property. Although La. R.S. 41:891 and 892 contain similar provisions to those embodied in the general public lands sales statutes, La. R.S. 41:131 through 140, these provisions are not completely repetitive. In construing certain general and specific provisions of the Revised Statutes the Louisiana Supreme Court states that the Revised Statutes should be interpreted "as simultaneous expressions of the legislative will, and [that] all provisions should be construed together and reconciled whenever possible." *Hall v. Rosteet*, 169 So.2d 903 (La. 1964). Indeed in *Hall*, the Supreme Court held that the general and specific provisions that apply to the lease of public land must be construed as a whole. *Id.* at 908. Based upon this holding and the foregoing interpretation of the law, it is our opinion that, for the sale of school lands, the general statutes for the sale of public lands, La. R.S. 41:131 through 140, should be followed, with modifications to the sale procedure where La. R.S. 891 and 892 impose more onerous requirements.

The lease of public lands follows a similar procedure to the sale of public lands. A lease is initiated by an application by the prospective lessee, accompanied with an application fee. La. R.S. 41:1213. Following a determination that the property may be leased, the lessor must advertise the land as prescribed in La. R.S. 41:1214(A). Additionally, the lessor may initiate the lease process through an advertisement, absent an application to lease the land. La. R.S. 41:1214(B). The lease is accomplished by a public bid process, with the lessor accepting the highest bid and following the detailed procedural requirements of La. R.S. 41:1215. "All leases executed under [this Part] shall be for a period not exceeding ten years..." La. R.S. 41:1217(A). Depending on the circumstances of the lease, it may be extended for up to as much as thirty years beyond the original lease term. *Id.* For a more complete discussion of the lease process, we direct you to La. R.S. 41:1211 through 1294. Also note that, unlike with the sale of school lands, with leases, there are no extra statutes to follow beyond those related to the lease of public lands embodied in La. R.S. 41:1211 through 1294.

The property that you refer to in your letter as 1.74 acres of sixteenth section land follows entirely different sets of rules for sale and lease than the nonsixteenth section lands discussed above. Although previous opinions of this office have suggested that sixteenth section land may not be donated due to its history as property earmarked for school use by Congress, there is no support for such a unique exception from the general donation rules that apply to public property. See La. Atty. Gen. Op. No. 95-252. Ownership of sixteenth section lands is retained by the State, which holds these lands for public (school board) use. The lands are administered through the State Lands Office. The local

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school boards are only given custodial authority over the lands and not actual ownership. See La. Atty. Gen. Op. 96-188. Thus, as to donation, sixteenth section lands fall under the control of La. Const. Art. VII, Sec. 14(A) in an identical fashion to other state land. As state land, the donation of sixteenth section land is prohibited under La. Const. Art. VII, Sec. 14(A).

Because sixteenth section lands are owned by the State, sale of these lands is generally left to the discretion of the State. Pursuant to La. R.S. 41:711, when the State intends to sell sixteenth section lands, the treasurer of the parish in which the lands are situated "shall take the sense of the inhabitants of the township with reference to whether or not any lands heretofore reserved and appropriated by congress for the use of schools shall be sold." Briefly, La. R.S. 41:711 outlines the methodology for the treasurer to follow to "take the sense of the inhabitants." This procedure includes holding an election, following advertisement of the intent to sell, with the majority of the inhabitants' votes controlling whether or not the sixteenth section lands will be sold.

The lease of sixteenth section lands presents a different situation from the sale of those same lands. Local school boards are allowed to lease sixteenth section lands over which they have custodial authority. La. R.S. 17:87. Leases must be conducted pursuant to a resolution of the board, but the board does not have to seek the consent of the residents in an election such as that required under La. R.S. 41:711 in order to lease its custodial lands. For a complete review of sale and lease as it applies to sixteenth section lands in Louisiana, we direct you to La. R.S. 41:631 through 881.

It is important to note that, regardless of the classification (i.e., sixteenth section or nonsixteenth section) of the proposed lease land, the lease cannot be for a nominal fee. In a past opinion, this office stated that "[i]f [a] School Board leases...property for less than a serious consideration, then the lease would be tantamount to a donation, in violation of the Constitution." La. Atty. Gen. Op. No. 97-408; see also La. Atty. Gen. Op. No. 89-209. Thus, if the Bienville Parish School Board opts to lease the lands discussed in your request, the "consideration for the lease...should relate to the value and utility of the property as well as area market conditions." *Id.* A similar scenario exists to keep the sale of land from being at such a low price as to constitute a donation. This reality is embodied in La. R.S. 41:134, which mandates that "[n]othing less than such minimum price shall be received for the property at the sale." This "minimum price" is the price set by the register of the State Lands Office or the parish surveyor, based on the appraisal of the property. La. R.S. 41:132 and 133.

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

Sincerely yours,

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The Bienville Parish School Board is prohibited from donating school property by the Louisiana Constitution. Other options for the disposition of the property include sale and lease.

DATE REQUESTED: March 23, 2005

DATE RELEASED: **December 8, 2005**

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