

April 20, 2006
OPINION NUMBER 05-0330

47-A-1 FIRE PROTECTION DISTRICTS
42:1301

Mr. Joseph A. Dionisi, Administrator
State of Louisiana Deferred Compensation Plan
2237 South Acadian Thruway, Suite 702
Baton Rouge, LA 70808

Employees of the Hammond Rural Fire
Department may participate in the Louisiana
Deferred Compensation Plan.

Dear Mr. Dionisi:

You requested an Attorney General's opinion regarding the Louisiana Deferred Compensation Plan (the "Plan"). You note that the Plan was established for the purpose of providing supplemental retirement income to employees and independent contractors of a Louisiana public employer by permitting such individuals the opportunity to defer a portion of their compensation into the Plan. You question whether the Hammond Rural Fire Department may offer the Plan to its employees.

You stated that a question has been submitted by the Hammond Rural Fire Department ("Fire Department") as to whether the Fire Department may offer the Plan to their employees. The Fire Department indicated that the Fire Department is a volunteer fire department operating as a nonprofit corporation. It has two full-time and six part-time employees. The Fire Department, along with nine other nonprofit volunteer fire departments, enters annually into an agreement with Tangipahoa Parish Rural Fire Protection District No. 2 ("District") to provide firefighting services for the District. The District is a political subdivision of the state of Louisiana, which levies a 20 mils ad valorem tax for firefighting and emergency response needs. These taxes, state revenue sharing monies, and state fire insurance rebate funds are allocated to the ten nonprofit volunteer fire departments, based on population, to provide firefighting and emergency response services to rural taxpayers of Tangipahoa Parish.

The Plan is governed by the Louisiana Deferred Compensation Commission, which is established under La. R.S. 42:1301-1308. R.S. 42:1301(8), which defines "Person" for purposes of the Plan, provides:

"Person" means any officer or employee of the state of Louisiana or of any of its political subdivisions, or an independent contractor who has a current contract with the state or any of its political subdivisions. "Person" shall also mean any parish coroner.

In order to be eligible for the Plan, Fire Department employees must employees of the District or independent contractors with a current contract with the District. For purposes of the Plan, Fire Department employees would be considered employees or independent contractors. The determination of which classification (employee or independent contractor) the employees fall under is a question of fact which this office is not in a position to determine. However, because both classifications are eligible for the Plan, such a determination is not necessary in this instance.

Therefore, it is the opinion of this office that Hammond Rural Fire Department may offer the Plan to its employees.

Trusting this adequately responds to your inquiry, we remain

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
KENNETH L. ROCHE, III
Assistant Attorney General

CCC, JR./KLR/jv

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KENNETH L. ROCHE, III,
ASSISTANT ATTORNEY GENERAL