

October 18, 2005
OPINION NUMBER 05-0346

90-B-A PUBLIC FUNDS & CONTRACTS
90-B-3 PUBLIC LANDS
La. Const. Art. VII, Sec. 14(A);
R.S. 34:2201-2205

Honorable Reggie P. Dupre, Jr.
Louisiana State Senator, District 20
P.O. Box 3893
Houma, LA 70361

Port may not lease or sell port property for a nominal amount or for less than appraised fair market value without violating constitutional prohibition of donation of public funds.

Dear Senator Dupre:

You have requested the opinion of this office on the following issues:

1. Can the board of commissioners of the Terrebonne Parish Port Commission in Houma (Port) sell or lease real estate that the Port owns at a nominal price or at a price that is less than the appraised fair market value without violating Article VII, Section 14 of the Louisiana Constitution?

According to your request, the Port is engaged in discussions and negotiations with a national shipbuilding firm (National) that owns property in the immediate vicinity of the Port property. The parties are considering a transaction which would have National donate land to the Port who would issue taxable revenue bonds to be used to construct a shipbuilding facility (Facility) and other infrastructure improvements upon the donated property. Upon completion, the Facility would become the property of the Port who would then lease the Facility to National under a long term lease, the rental income being used to satisfy the bond obligation. National has requested that after the bond obligation has been met that the rental rate be reduced to a nominal amount. National has also requested the right to purchase the property at any time during the term of the lease for the cost of paying off the bonds, or thereafter for a nominal amount.

In response to this question, we would point out that the Terrebonne Parish Port Commission was organized pursuant to La. R.S. 34:2201-2205. La. R.S. 34:2201 designates the Port as a political subdivision of the state. Pursuant to La. R.S. 34:2203 the Port was given the power to purchase and acquire lands and to purchase, acquire and construct facilities necessary to carry out its responsibilities in the operation of a port.

Although the Port is given broad powers in carrying out its duties and responsibilities, this does not mean that there are no limitations on what amount may be charged for the rental of port property or the amount that must be obtained in the sale of port property. The board of commissioners is required to act prudently and responsibly when entering into a negotiated lease agreement or in deciding to sell port property.

Article VII, Sec. 14(A) of the Louisiana Constitution provides, in pertinent part:

Except as otherwise provided by this constitution, 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.

You have asked whether the Port may rent or sell the Port owned Facility for a nominal amount or lease the Facility, at any point during the lease term to National, for less than fair market value or sell the Facility to National for less than fair market value. We would view a lease or sale of the Facility at a nominal amount or a lease or sale of the Facility for an amount less than the fair market value for such property to constitute a donation of funds by the Port to the lessee or buyer and therefore a violation of the above quoted constitutional provision.

I trust this addresses your concerns. Please contact us if we can be of further assistance.

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: _____
RICHARD L. MCGIMSEY
Assistant Attorney General

CCF, Jr/RLM:dam

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RICHARD L. MCGIMSEY
ASSISTANT ATTORNEY GENERAL