

June 26, 2006
OPINION NUMBER 06-0140

90-A-1 Public Funds & Contracts
La. Const. Art. VI, Sec. 44
La. R.S. 39:1211 et seq.

Honorable Ann Duplessis
Louisiana State Senator, District 2
P. O. Box 94183
Baton Rouge, Louisiana 70804

Ernest N. Morial-New Orleans Exhibition Hall Authority
is a local depositing authority subject to and included
within the provisions of R.S. 39:1211-1235.

Dear Senator Duplessis:

You have requested an opinion of this office regarding the status of the Ernest N. Morial-New Orleans Exhibition Hall Authority ("Authority") as a "local depositing authority" pursuant to the provisions of LSA-R.S. 39:1211-1235. Specifically, you ask whether the Authority is a local depositing authority as that term is defined in R.S. 39:1211 and, if so, whether the provisions of R.S. 39:1233.1, which provides for recusal in certain matters by an appointed member of a local depositing authority who is serving as an officer, director, or employee of any national or state bank, is applicable to the board of commissioners of the Ernest N. Morial-New Orleans Exhibition Hall Authority.

The Authority was created pursuant to Act 305 of the 1978 Regular Session of the Louisiana Legislature (Act 305). The governing body of the Authority consists of eleven appointed Board members. The Authority was granted all powers necessary and incidental to the acquisition, construction, reconstruction, extension, improvement, operation, and maintenance of a convention, exhibition and tourist facility. Section 1 of Act 305 states that the Authority "shall be a body politic and corporate and political subdivision of the state of Louisiana. The territorial limits and territorial jurisdiction of said Authority shall be the entire parish of Orleans as the boundaries and limits of said parish are presently fixed by law." Our office has previously opined that the Authority is a political subdivision of the State. See Atty. Gen. Op. Nos. 99-200 and 99-307.

R.S. 39:2211 provides that the term "local depositing authorities", *includes* "all parishes, municipalities, boards, commissions, sheriffs and tax collectors, judges, clerks of court, and any other public bodies or officers of any parish, municipality or township, but it does not include the state and its elected officials, and state commissions, boards, and other state agencies." Unless otherwise provided by law, state entities that are not considered "local depositing authorities" are mandated by law to deposit their funds with the State Treasurer.

While the statute includes various local public bodies within the definition of a local depositing authority, it expressly excludes the state and its elected officials, and state commissions, boards and other state agencies as a local depositing authority. Therefore, the Authority would be included within the definition of a local depositing authority unless it is a state agency, board or commission.

Our research indicates that the Authority is not a state commission, board or state agency. The Authority is not included in any branch of state government as provided for in Title 36 of the Louisiana Revised Statutes of 1950 and which is referred to as the Executive Reorganization Act. This Act implements Article IV, Section 1 and Article XIV, Section 6 of the state constitution which allocates all offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government, whether constitutional or statutory, into twenty departments.

Under Title 36, agency “means and includes the boards, commissions, departments, agencies, offices, officers, and other instrumentalities, or any or all of these, within the executive branch of state government which are abolished by this Title, or which are transferred and placed within the departments of the state government created and established or continued by this Title or transferred to and placed within the office of the governor as provided by this Title.” (LSA-R.S. 36:3(1)). One example of such an inclusion of a state commission, board or agency within Title 36 is the Sabine River Authority (SRA). Act 272 of 1990 transferred the Sabine River Authority to the Department of Transportation with the mandate that the SRA “perform and exercise its powers, duties, functions, and responsibilities in the manner provided for agencies transferred in accordance with the provisions of R.S. 36:801.1.”

The Ernest N. Morial-New Orleans Exhibition Hall Authority is not included in any of the provisions of the Executive Reorganization Act or other state law that would make the Authority a state board, commission or state agency, and which would exclude the Authority as a local depositing authority under R.S. 39:1211. If not a state agency, board or commission, then the Authority must be considered a political subdivision and unit of local government.

Article VI of the state constitution, entitled Local Government, provides in Section 19 that “Subject to and not inconsistent with this constitution, the legislature by general law or by local or special law may create or authorize the creation of special districts, boards, agencies, commissions, and authorities as it deems proper, including, but not limited to, the power to incur debt and issue bonds.”

Article VI, Section 44(2) of the state constitution defines Political Subdivision as 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.”

Pursuant to the cited constitutional provisions the legislature has clearly established the Ernest N. Morial-New Orleans Exhibition Hall Authority as a political subdivision of the state and unit of local government and not a state board, commission or state agency. As such, the Authority clearly falls within the statutory definition of local depositing authority as that term is used in R.S. 39:1211. Also see Attorney General Opinion No. 92-141 wherein levee districts were found not to be state agencies, boards or commissions, but rather political subdivisions of the state within the local government framework, and thus considered a "local depository authority" in accordance with R.S. 39:1211.

Accordingly, it is the opinion of this office that the Ernest N. Morial-New Orleans Exhibition Hall Authority is a local depositing authority as that term is used in R.S. 39:1211 and that the Authority is subject to the provisions of 39:1211-1235, including the provisions of R.S. 39:1233.1 requiring recusal in certain matters by an appointed member of a local depositing authority who is also serving as an officer, director, or employee of a national or state bank.

We trust this adequately responds to your request. If you have any questions or comments, please do not hesitate to contact our office.

With kindest regards,

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:

RICHARD L. MCGIMSEY
Assistant Attorney General

CCF, Jr./RLM/dam

Opinion Number 06-0140
Syllabus

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La. Const. Art. VI, Sec. 44
La. R.S. 39:2212 et seq.

The Ernest N. Morial-New Orleans Exhibition Hall Authority is a local depositing authority subject to and included within the provisions of R.S. 39:1211-1235.

Honorable Ann Duplessis
Louisiana State Senator, District 2
P. O. Box 94183
Baton Rouge, Louisiana 70804

Date Received:

Date Released: June 26, 2006

Richard L. McGimsey
Assistant Attorney General