

September 1, 2006
OPINION NUMBER 06-0155

Mr. Philip J. Boudousque'
3021 35th Street
Suite D
Metairie, Louisiana 70001

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Const. Art. VII, Sec. 14

A flat rate contract fee for legal services would be valid provided there is no advance payment and the work is actually performed each month.

Dear Mr. Boudousque':

As counsel to the Chief of Police for the City of Kenner, you have requested an Attorney General's opinion regarding a contract for legal services. You question whether it is lawful for a municipality to pay a flat rate contract fee to an attorney for legal services to be performed monthly, as long as there is no advance payment and the work is actually performed each month.

Our office advises against the use of this type of contract. That being said, a flat rate contract for legal services is not per se improper. In Attorney General Opinion No. 91-589-A, our office opined on the use of flat rate contracts as follows:

The hourly contract certainly is the preferred practice: for the flat rate contract to be lawful and not violate Art. 7 Sec. 14 of the La. Const. 1974, payments should not be made prior to the work being performed, the work must be actually performed every month.

In order for a flat rate contract to be lawful, the municipality can only pay for legal services which are actually rendered, and may not pre-pay for future services. Therefore, in the situation described, where there is no advance payment and the work is actually performed each month, such a contract would be valid and the payments made under such contract would be constitutional.

Trusting this adequately responds to your request, we remain

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

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

CCF, JR/KLR, III/jv

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Date Received:

Date Released: September 1, 2006

Kenneth L. Roche, III
Assistant Attorney General