

August 2, 2006
OPINION NUMBER 06-0156

Rep. Shirley D. Bowler
District 78
1939 Hickory Ave.
Suite 203
Harahan, Louisiana 70123

90-A-1 Public Funds & Contracts
La. Const. Art. VII, Sec. 14
La. Const. Art. XI, Sec. 4
La. R.S. 2:655 et seq.; La. R.S. 24:56(F)

Louisiana Airport Authority is not authorized to enter into contracts, the purpose of which is to engage a lobbyist to advocate on its behalf before the legislature, the administration, or any other agency. Such activity is prohibited by Art. XI, Sec. 4, of the Louisiana Constitution and LSA-24:56(F).

Dear Rep. Bowler:

You have requested an opinion of this office on whether it is legal for the Louisiana Airport Authority ("LAA") to engage a lobbyist to advocate on its behalf to the legislature, the administration, or any other agency. According to your request, the LAA has entered into a contract with Issue Management, LLC., wherein Issue Management "agrees to provide on behalf of LAA, as directed by LAA, information regarding the Louisiana Transportation Center project to the State Legislature, the Administration and any agency deemed necessary for the success of the project and/or any other LAA business." You have cited Art. XI, Sec. 4 of the Louisiana Constitution, LSA-R.S. 24:56(F) and the *City of Port Allen v. Louisiana Municipal Risk Management Agency, Inc.*, 439 So.2d 399 (La. 1983) for our review in responding to your request.

La. R.S. 2:651 et seq. created the Louisiana Airport Authority as a body politic and corporate and a political subdivision of the state. Section 651B specifically states that the purpose of the LAA is "to provide airports, airport facilities, and improvements and access thereto; to assist in construction, extending, rehabilitating, repairing, maintaining, and renewing airports and airport facilities; and to assist in the financing of such needs."

LSA R.S. 2:655(2) provides that the LAA shall have the power "To make contracts in the exercise of the rights, powers, and duties conferred upon it."

The foregoing statutory framework clearly authorizes the LAA to enter into contracts in furtherance of its statutory purposes. However, such a contract cannot circumvent state law, including the prohibited donation provisions of Art. VII, Sec. 14, of the Louisiana Constitution and the anti-lobbying provisions set forth in Art. XI, Sec. 4, of the Louisiana Constitution and La. R.S. 24:56(F).

Article VII, Sec. 14, of the Louisiana Constitution (1974) contains the constitutional standard for the lawful use of public funds and property. This provision generally prohibits the state and its political subdivisions from loaning, pledging or donating public funds, assets or property to persons, associations or corporations, public or private. The Louisiana Supreme Court's interpretation of La. Const. Art. VII, Sec. 14, as set forth in *City of Port Allen v. Louisiana Mun. Risk*, 439 So.2d 399 (La. 1983), states: "...this Section is violated whenever the state or a political subdivision seeks to give up something of value when it is under no legal obligation to do so." The requirement of a legal obligation to expend public funds or use public property is the threshold predicate for the constitutionality of such an expenditure or use. As such, the expenditure of public funds where expressly prohibited by law precludes such a legal obligation and would constitute a constitutionally prohibited donation.

Article XI, Sec. 4, of the Louisiana Constitution provides that "No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to a proposition appearing on an election ballot."

LSA-R.S. 24:56(F) provides that "No state employee in his official capacity or on behalf of his employer shall lobby for or against any matter intended to have effect of law pending before the legislature or any committee thereof. Nothing herein shall prohibit the dissemination of factual information relative to any such matter or the use of public meeting rooms or meeting facilities available to all citizens to lobby for or against any such matter."

Our office has previously interpreted these provisions to prohibit the use of public funds or public employees from being involved in any lobbying activity. See Ag. Op. No. 98-40, (Local school boards and their employees are prohibited from engaging in lobbying activities.), Ag. Op. No. 90-126A, (Use of public funds by political subdivision for a public relations campaign by state officers or agencies, as opposed to providing public information, was unlawful unless expressly authorized by the constitution or by statute.)

As noted above, La. R.S. 2:655(2) authorizes the LAA to enter into contracts with private entities, such as Issue Management, LLC., to carry out its purpose in establishing and providing airports, airport facilities, and improvements and access thereto. The LAA may provide information to the legislature, the administration and other agencies, but may not engage, directly or through contractual agreements, in lobbying activities expressly prohibited by La. Constitution Art. XI, Sec. 4, and R.S. 24:56(F).

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Accordingly, it is the opinion of this office that the Louisiana Airport Authority may not use public funds, engage public employees or enter into contracts for the purpose of lobbying as prohibited by La. Constitution Art. VII, Sec. 14; Art. XI, Sec. 4; and R.S. 24:56(F).

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/jav
Encl.

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Syllabus

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Date Received:

Date Released: August 2, 2006

Richard L. McGimsey

Assistant Attorney General