

August 28, 2006
OPINION NUMBER 06-0171

90-A-1 Public Funds & Contracts

La. R.S. 24:511 et seq.; La. R.S. 33:2101; La. R.S. 38:2211 et seq.;
La. R.S. 39:1301-1315; La. R.S. 40:1492 et seq.; La. R.S. 42:4.1-13;
La. R.S. 44.1 et seq.

Martin S. Triche, President
Assumption Parish Police Jury
4813 Highway 1
P. O. Box 520
Napoleonville, Louisiana 70390

Volunteer Fire Department governed by the Assumption Parish Police Jury and which is primarily funded with public funds, which serves a public purpose and which renders a public service, is a quasi-public entity and is subject to the Louisiana Public Records Law (La. R.S. 44:1 et seq.), subject to the audit and oversight authorities of the Legislative Auditor under La. R.S. 24:511 et seq., and subject to a complete review, control and possession of its financial records by the fire protection district or governing authority, but is not subject to the Public Bid Law (La. R.S. 38:2211 et seq.), Open Meeting Law (La. R.S. 42.1 et seq.), or the Local Governmental Budget Act (La. R.S. 39:1301 et seq.).

Pursuant to the authority provided in La. R.S. 40:1492 et seq., and R.S. La. R.S. 33:2101, the Assumption Parish Police Jury may enter into a contract with a Volunteer Fire Department to handle certain administrative functions of the Fire Department and to receive payment for such services from the individual millage funds allocated to each Fire Department within the Fire Protection District.

Dear Mr. Triche:

On behalf of the Assumption Parish Police Jury ("Police Jury"), you have requested an opinion of this office regarding the legal status of Fire Departments located within Assumption Parish. According to your request, the Police Jury currently serves as the Fire Board of Assumption Parish and contracts with individual Fire Departments to provide fire protection. Funding for the Fire Departments comes from a tax millage that is distributed by the Police Jury to each Fire Department pursuant to a written contract to provide fire protection within a designated fire protection district.

Enclosed with your request is a copy of a sample contract between Fire Protection District No.1, for the Parish of Assumption, through the Assumption Parish Police Jury as the governing authority, and a local Volunteer Fire Department.

Specifically, you ask whether the individual Fire Departments that contract with the Police Jury are considered political subdivisions of the State or whether they are considered public bodies at all. You also ask how the legal designation of the Fire Departments relates to compliance with the State public bid law, open meeting law, publication of minutes and budgets, etc. Finally, you ask whether the Police Jury can handle administrative functions of the Fire Departments, such as bill paying, from the individual millage funds allocated to each Fire Department, if such payment is included in the contract between the Police Jury and the Fire Department.

La. R.S. 40:1492 authorizes a parish governing authority to create or enlarge fire protection districts and provides that fire protection districts so created are "subdivisions of the state within the laws of this state relating to the voting and levying of special maintenance taxes, incurring debt, and issuing bonds therefore...." For all other

purposes and pursuant to La. R.S. 40:1500, fire protection districts shall constitute public corporations and may enter into such contracts as they consider necessary or desirable to carry out the purposes for which they were created. La. R.S. 40:1496.15 provides that “the governing authority of the parish of Assumption shall be the governing authority of each fire protection district within the parish and shall have all powers and duties provided by law for governing authorities of fire protection districts.”

Finally, La. R.S. 33: 2101 authorizes a parish or fire district to contract with a volunteer fire department to provide fire protection within the fire protection district created or governed by the parish pursuant to R.S. 40:1492.

As noted above, La. R.S. 33:2101 authorizes the Assumption Parish Police Jury, acting as governing authority of each fire protection district within the parish, to enter into contracts with private entities, such as a Volunteer Fire Department, to provide for fire protection services within statutorily created fire protection districts.

Prior opinions of our office have opined that a volunteer fire department is a quasi-public body if it is primarily funded with public funds, serves a public purpose and renders a public service. See Atty. Gen. Op. Nos. 02-36, 91-162, 90-271, and 84-583. Quasi-public bodies are those bodies which are not strictly private bodies. See Attorney General Opinion No. 78-1183.

In Atty. Gen. Ops. 84-583 and 93-595, this office opined that all quasi-public bodies are required to conduct and file audits pursuant to La. R.S. 24:511, et seq. In Atty. Gen. Op. 02-36, this office opined that the governing authority of a fire district has the right to seek a complete review and audit of the financial records of a volunteer fire department, obtain possession to the records of the volunteer fire department and its equipment, and take control of the bank account if the volunteer fire department is primarily funded by public funds.

As stated above, a volunteer fire department that is primarily funded with public funds, and which serves a public purpose and renders a public service is classified as a quasi-public body and would thus be subject to the audit and oversight authorities of the Legislative Auditor under La. R.S. 24:511 et seq., and subject to a complete review, control and possession of its financial records by the fire protection district or governing authority. In addition, La. R.S. 44:1A(1) specifically states that the Public Record Law (La. R.S. 44:1 et seq.) applies to all public bodies, including “a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function.” Accordingly, a quasi-public nonprofit volunteer fire department is also subject to the Public Records Law.

However, a volunteer fire department, even if a quasi-public body, is not a public entity within the meaning of Public Bid Law (La. R.S. 38:2211A (10)), or a public body within the meaning of Open Meeting Law (La. R.S. 42:4.2A (2)) and therefore is not subject to the Public Bid Law (La. R.S. 38:2211-2293) or Open Meeting Law (La. R.S. 42:4.1-13). Furthermore, the Local Government Budget Act (La. R.S. 39:1301-1315) applies to all political subdivisions, including municipalities, of the state with a general fund or a special revenue fund. A volunteer fire department is not considered a political subdivision and thus is not required to comply with the Budget Act.

Accordingly, it is the opinion of this office that a volunteer fire department governed by the Assumption Parish Police Jury and which is primarily funded with public funds, which serves a public purpose and which renders a public service, is a quasi-public entity and is subject to the Louisiana Public Records Law and subject to the audit and oversight authorities of the Legislative Auditor under La. R.S. 24:511 et seq., and subject to a complete review, control and possession of its financial records by the fire protection district or governing authority, but not subject to the Public Bid Law, Open Meeting Law or Local Governmental Budget Act.

It is the further opinion of this office that, pursuant to the authority provided in La. R.S. 40:1492 et seq., and La. R.S. 33:2101, the Assumption Police Jury, acting as the governing authority for the parish fire protection district, may enter into a contract with a Fire Department to handle certain administrative functions of the Fire Department and receive payment for such services from the individual millage funds allocated to each Fire Department.

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/RLM/jav

Opinion Number 06-0171
Syllabus

90-A-1 Public Funds & Contracts

La. R.S. 24:513 et seq.;
La. R.S. 33:2101;
La. R.S. 38:2211 et seq.;
La. R.S. 39:1301-1315;
La. R.S. 40:1492 et seq.
La. R.S. 42:4.1-13;

Volunteer Fire Department governed by the Assumption Parish Police Jury and which is primarily funded with public funds, which serves a public purpose and which renders a public service, is a quasi-public entity and is subject to the Louisiana Public Records Law (La. R.S. 44:1 et seq.), subject to the audit and oversight authorities of the Legislative Auditor under La. R.S. 24:511 et seq., and subject to a complete review, control and possession of its financial records by the fire protection district or governing authority, but is not subject to the Public Bid Law (La. R.S. 38:2211 et seq.), Open Meeting Law (La. R.S. 42.1 et seq.), or the Local Governmental Budget Act (La. R.S. 39:1301 et seq.).

Pursuant to the authority provided in La. R.S. 40:1492 et seq., and R.S. La. R.S. 33:2101, the Assumption Parish Police Jury may enter into a contract with a Volunteer Fire Department to handle certain administrative functions of the Fire Department, and to receive payment for such services from the individual millage funds allocated to each Fire Department within the Fire Protection District.

Martin S. Triche, President
Assumption Parish Police Jury
4813 Highway 1
P. O. Box 520
Napoleonville, Louisiana 70390

Date Received:

Date Released: August 28, 2006

Richard L. McGimsey
Assistant Attorney General