



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

April 24, 2014
OPINION 14-0024

Hon. Scott M. Perrilloux
District Attorney
21st Judicial District
P.O. Drawer 639
Amite, LA 70422

90-A-1 PUBLIC FUNDS & CONTRACTS

La.Rev.Stat. 39:1312

The ordinance adopting the budget for Livingston Parish was not adopted in accordance with the Livingston Parish Charter and is not a valid ordinance. As such, the corresponding budget is not a valid, legal budget. Pursuant to Section 5-02 (B) of the Livingston Parish Charter, the budget proposed by the president shall be considered adopted.

Dear District Attorney Perrilloux:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. You have asked for our opinion on a matter related to the recent budget that was adopted by the Livingston Parish Council ("Council"). Your opinion request refers to a number of perceived deficiencies in the budget which ultimately lead you to conclude that the budget adopted was an invalid budget.

Particularly, at issue is the fact that the ordinance adopting the budget was not forwarded to the Livingston Parish President in the time prescribed by the Livingston Parish Charter. You are of the opinion that this renders the adopted budget an invalid budget. In the event our office agrees with your conclusion, your opinion request goes on to ask whether Livingston Parish must now operate under the budget as presented by the Livingston Parish President pursuant to Section 5-02(B) of the Livingston Parish Charter, or whether Livingston Parish must operate under the previous year's budget, up to 50% of the budgeted items for that year, as provided by La.Rev.Stat. 39:1312.

It is our understanding that the Parish President presented a proposed budget to the Council on September 26, 2013. The budget was formally introduced on October 10, 2013. On December 5, 2013, the Council adopted a budget that contained various amendments to the proposed budget. The ordinance adopting the amended budget was received by the Parish President on December 12, 2013. On December 19, 2013, the Parish President vetoed the ordinance with the Council voting to override the Parish President's veto on January 9, 2014.

Livingston Parish Charter Section 2-13(A) governs the submission of ordinances to the Parish President and provides the following:

Every ordinance adopted by the council shall be signed by the presiding officer or the clerk of the council. The clerk of the council shall certify to its passage, and it shall be presented to the president within three (3) days

after adoption, excluding Saturdays, Sundays and holidays. The clerk of the council shall record upon the ordinance the date and hour of its delivery to the president.

As stated above, it is our understanding that the Council adopted Ordinance 13-39 adopting the budget on December 5, 2013. However, Ordinance 13-39 was not delivered to the Parish President until December 12, 2013. Therefore, Ordinance 13-39 was not submitted within three (3) days after adoption, excluding Saturdays, Sundays, and holidays, as required by Section 2-13(A) of the Livingston Parish Charter. As such, it is the opinion of this office that Ordinance 13-39 was not properly adopted and is not a valid ordinance. As such, it also the opinion of this office that the corresponding budget is not a valid, legal budget.

With respect to whether Livingston Parish must now operate under the budget as presented by the Parish President, or whether it must operate on 50% of the previous year's budget, we note that La.Rev.Stat. 39:1312 provides the following:

§ 1312. Governing authority's failure to make appropriation

If, at the end of any fiscal year, the appropriations necessary for the support of the political subdivision for the ensuing fiscal year have not been made, then fifty percent of the amounts appropriated in the appropriation ordinance or resolution for the last completed fiscal year shall be deemed reappropriated for the several objects and purposes specified in such appropriation ordinance or resolution.

However, we also note that Section 5-02 (B) of the Livingston Parish Charter provides the following:

B. Upon failure of the council to adopt a budget before the end of the current fiscal year, the budget proposed by the president shall be considered adopted.

As recognized in your opinion request, our office addressed a similar question in Attorney General Opinion No. 01-0279. There, the Lafourche Parish Council had not approved a budget, and the Lafourche Parish Council questioned whether its charter superseded the Louisiana Local Government Budget Act and specifically La.Rev.Stat. 39:1312. Article 5 of the Lafourche Parish Charter provided that until the Lafourche Parish Council enacts a budget, the parish government was to operate under the previous year's budget. In our response, we opined that Article 5 of the Lafourche Parish Charter did not conflict with the constitution or the general laws of the state of Louisiana and concluded that Lafourche Parish was to operate on the previous year's budget until it enacted a budget for the then current fiscal year.

Similarly, in Attorney General Opinion No. 01-0274 we were asked whether Section 6-04 of the Baker City Charter took precedence over the Louisiana Local Government Budget Act. Section 6-04 of the Baker City Charter provided that if the Baker City Council fails to adopt a budget by the appropriate date set forth in the charter, it shall be presumed to have adopted the budget submitted by the mayor. In our response, we opined that Section 6-04 of the Baker City Charter did not conflict with the constitution or police powers of the state of Louisiana and was the applicable law for the particular issue at hand. Accordingly, since the Baker City Council had voted to void its budget, the budget submitted by the mayor was presumed to have been adopted.

In Attorney General Opinion Nos. 01-0274 and 01-0279, our office recognized that the Louisiana Local Government Budget Act applies to political subdivisions operating under a home rule charter as a minimum standard. *See also* La.Rev.Stat. 39:1303(C). Thus, in accord with the prior opinions of this office, it is the opinion of this office that the budget proposed by the Parish President shall be considered adopted. As indicated above, the ordinance adopted by the Livingston Parish Council on December 5, 2013 was not a valid, legal ordinance and as such, the corresponding budget was not a valid, legal budget. Pursuant to Section 5-02(B) of the Livingston Parish Charter, the budget proposed by the president shall be considered adopted. As such, Livingston Parish must now operate under the budget as presented by the Parish President.

We trust this adequately responds to your request. If you should have any questions about the response contained herein, please feel free to contact our office.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



MICHAEL J. VALLAN
Assistant Attorney General

JDC/MJV/chb