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DEPARTMENT OF JUSTICE
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OPINION 13-0005

Mr. F. Douglas Wimberly
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90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 33:4711

La. R.S. 33:4711 authorizes the Acadia Parish Police Jury to lease property to Second Chance Paws if such property is no longer needed for a public purpose; however, the police jury must receive lease payments that are commensurate with the fair market value of the property leased. La. Const. art. VII, Sec. 14 prevents the police jury from simply donating property to Second Chance Paws as doing so would be a gratuitous donation of public property.

Dear Mr. Wimberly:

As attorney for the Acadia Parish Police Jury, you have requested an opinion of this office regarding the donation and/or lease of public lands. According to your request, the Acadia Parish Police Jury has been approached by a non-profit organization, Second Chance Paws, regarding the construction of a pet adoption center on parish property. The organization has indicated that if the Parish donates property to them, they will be able to secure a grant to construct the adoption facility. Acadia Parish does operate an animal control facility, which has limited space for housing stray animals. In light of these facts, the Acadia Parish Police Jury has asked the following:

1. Can the police jury donate property to a private, non-profit organization for the construction of an animal adoption center?
2. Can the police jury enter into a lease, for a nominal sum, with a private, non-profit organization for the construction of an animal adoption center?

Police juries are authorized pursuant to La. R.S. 33:4711 to sell, lease, or exchange public property with private parties, such as Second Chance Paws, once it is determined the property is no longer needed for public purpose. The statute provides as follows:

Police juries may sell, lease, or exchange with private persons or other political corporations of this state any property owned by the police jury or the parish, when such property is no longer needed for public purposes;

and police juries may grant to municipalities within their respective parishes portions of roads, streets, alleys, or other public ways which may lie along and parallel or approximately parallel to any boundary of any municipality in such manner as to be partly in the municipality and partly outside of the municipality; provided such transfer shall have no effect until accepted by the municipality to which it is made.

When transferring public property in the manner described above, a police jury must ensure compliance with La. Const. art. VII, Sec. 14, which provides, in pertinent part, as follows:

Section 14(A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property or things of value of the state or of any political shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private...

This constitutional provision is violated whenever a public entity gratuitously transfers public property. See *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All. Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So. 2d 11, 20 (the "Cabela's" case).

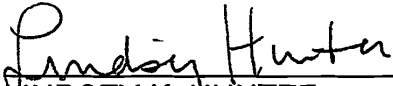
When a police jury transfers public property pursuant to La. R.S. 33:4711, it has consistently been the opinion of this office that in order to comply with the mandates of La. Const. art. VII, Sec. 14, the police jury must receive fair market value in exchange for the alienation of public property. Our office has previously opined that fair market value means "the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell and both parties have reasonable knowledge of relevant facts." La. Atty. Gen. Op. Nos. 09-0293, 08-0226, 06-0236. Black's Law Dictionary provides a similar definition of "fair market value": "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect." Black's Law Dictionary, 9th ed. 2009.

Based on the foregoing, it is the opinion of this office that La. R.S. 33:4711 authorizes the Acadia Parish Police Jury to lease property to Second Chance Paws if such property is no longer needed for a public purpose; however, the police jury must receive lease payments that are commensurate with the fair market value of the property leased. See La. Atty. Gen. Op. No. 01-0167. We further opine that La. Const. art. VII, Sec. 14 prevents the police jury from simply donating property to Second Chance Paws as doing so would be a gratuitous donation of public property.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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