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DEPARTMENT OF JUSTICE
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JUN 24 2013
OPINION 13-0030

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 33:4712.2

The Honorable Charles J. Ballay
District Attorney
Twenty-Fifth Judicial District
301-A Main Street
Belle Chasse, Louisiana 70037

In connection with an agreement to donate or exchange, the Plaquemines Parish Courthouse District may not transfer a particular tract of immovable property to a limited partnership. The agreement was subject to the suspensive condition that voters approve moving the parish seat to either of the two sites referenced in the agreement, and that condition was not fulfilled.

Dear Mr. Ballay:

You have requested an opinion of this office regarding the legality of the requested transfer of property from the Plaquemines Parish Courthouse District (the "District") to CLL Limited Partnership, Ltd. ("CLL"). To assist with this request, you provided the following information:

On May 13, 2004 and in anticipation of an election to be held on November 14, 2004 to move the Plaquemines Parish seat from Pointe a la Hache to either West Pointe a la Hache or Ironton, the District entered into an agreement to donate or exchange certain properties (the "Agreement") with CLL. In this Agreement, CLL agreed to donate or exchange one of two described tracts of property to the District if the District exercised its option to acquire either tract, and, in consideration, the District would convey to CLL title to a tract of property the District owned known as the "Railroad Property." The Agreement provided that the District must exercise the option to acquire either of the two CLL properties on or before December 31, 2004. Further, the Agreement requires that the Railroad Property be transferred to CLL even if the District did not exercise its option to acquire either of the tracts of property from CLL.

Voters declined to move the parish seat. Thus, the District did not exercise its option to acquire either tract of property. Nevertheless, CLL has asked that the District transfer title to the Railroad Property to it as per the Agreement.

You have asked whether the District may transfer the Railroad Property to CLL, with the consideration being the unexercised option the District had to receive property from CLL.

We have examined the Agreement and have determined that, under the third paragraph under the heading "Recitals," it is subject to the suspensive condition that voters approve moving the parish seat to either of the two CLL property sites. Specifically, that paragraph provides as follows:

WHEREAS, the Board has determined that CLL is the owner of two (2) potential sites for a new courthouse complex, and has requested that CLL convey one (1) of the sites to the Board for use as the site of the new courthouse complex, *in the event that either of the two sites is approved by voters of the Parish of Plaquemines*. [Emphasis added]

Also, the fifth paragraph of recitals, in pertinent part, provides the following:

NOW, THEREFORE, *in consideration of the premises...* [Emphasis added]

Black's Law Dictionary, in pertinent part, defines "premises" as "[m]atters (usu. preliminary facts or statements) previously referred to in the same instrument..."¹

Further, La. Civ. Code art. 1767, in pertinent part provides the following:

A conditional obligation is one dependent on an uncertain event.

If the obligation may not be enforced until the uncertain event occurs, the condition is suspensive...

Here, the District's obligation to transfer the Railroad Property is only enforceable "in the event that either of the two sites is approved by voters of the Parish of Plaquemines."² Since that condition did not occur, the Agreement has no effect, and thus the District's obligation to transfer the Railroad Property is currently unenforceable.

Significantly, La. Const. art. VII, Sec. 14(A) provides that "[e]xcept as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private..."

The Louisiana Supreme Court has determined that this constitutional provision "is violated when public funds or property are gratuitously alienated." *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). Our office has interpreted the *Cabela's* case to say that in order for an expenditure or transfer of public funds to be

¹ Black's Law Dictionary 1219 (8th ed. 2004).

² See Agreement, *supra*.

permissible under Art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds. See La. Atty. Gen. Op. No. 08-0071.

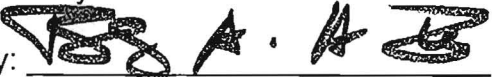
Although this office finds the Agreement unenforceable due to the suspensive condition not having been met, it is worth noting that, in the event a court determined that the Agreement was not subject to the suspensive condition, La. Const. art. VII, Sec. 14(A) may also prevent the District from transferring the Railroad Property. Because this office is not a finder of facts, we cannot determine whether the District had a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds at the time the Agreement was consummated.

Considering the forgoing, it is the opinion of this office that, in connection with the Agreement, the District may not transfer the Railroad Property to CLL. The Agreement was subject to the suspensive condition that voters approve moving the parish seat to either of the two CLL property sites, and that condition was not fulfilled.

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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By: 

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