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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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MAY 31 2013
OPINION 13-0048

Mr. Doug DeVille
Evangeline Parish Police Jury
1008 W. LaSalle Street
Ville Platte, Louisiana 70586-4490

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 33:1324

The Evangeline Parish Police Jury cannot donate \$15,000 to the Evangeline-Ville Platte Recreation District; however the two political subdivisions may enter into a cooperative endeavor agreement pursuant to La. Const. art. VII, Sec. 14(C) and La. R.S. 33:1324(5) to construct, acquire, or improve "recreational and educational facilities, such as playgrounds, recreation centers, parks and libraries."

Dear Mr. DeVille:

You have requested an opinion of this office regarding whether the Evangeline Parish Police Jury ("Police Jury") may contribute \$15,000 to the Evangeline-Ville Platte Recreation District ("District") to assist the District in running a recreational facility.

The District is a political subdivision of the state and was created by the Police Jury pursuant to the authority set forth in La. R.S. 33:4562.3. The purpose of the District is to "own and operate recreational facilities of the district, the City of Ville Platte, and the parish which are located within the boundaries of the district whether preexisting or thereafter constructed and acquired by the district; and generally to administer programs and engage in activities which would promote recreation and any related activity designed to encourage recreation and promote the general health and well-being of citizens." La. R.S. 33:4562.3(B). The District has the authority to levy taxes, incur debt, and issue bonds, subject to the approval of the parish governing authority and approval by a majority of the electors of the district voting at an election called by the parish governing authority and held for such purposes. La. R.S. 33:4562.3(D).

All questions concerning the use of public funds must be examined in light of La. Const. art. VII, Sec. 14(A), 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 subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private ...

It has been the consistent opinion of this office that in order for an expenditure of public funds to be permissible under La. Const. 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. Nos. 09-0271, 09-0259, 09-0251, 09-0146 and 07-0050A.¹

It is our opinion that the Police Jury cannot simply donate \$15,000 to the District. The District was created by the Police Jury and given the authority to levy taxes, incur debt, and issue bonds. Therefore, the District, not the Police Jury, is the political subdivision that exists for financing recreation facilities and activities in the parish.

Although the Police Jury cannot simply donate \$15,000 to the District, we note that the Police Jury and District are authorized to enter into a cooperative endeavor agreement for the purpose of running the recreational facility. Cooperative endeavor agreements are authorized by La. Const. art. VII, Sec. 14(C) and La. R.S. 33:1324(5). La. R.S. 33:1324(5) specifically provides that political subdivisions may cooperate to construct, acquire, or improve "recreational and educational facilities, such as playgrounds, recreation centers, parks and libraries." Therefore, as long as the Police Jury and District are each able to effectively demonstrate that they have a reasonable expectation of receiving a benefit at least equivalent to the amount that will be expended or transferred, it is our opinion that a cooperative endeavor agreement would be acceptable.

Finally, we note that your opinion request states that the source of funding the Police Jury is considering donating to the District is "tax dollars." Louisiana law provides that the proceeds of any special tax shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied. La. R.S. 39:704. Additionally, Louisiana jurisprudence provides that special tax authorizations must be strictly construed. *Police Jury of the Parish of Acadia v. All Taxpayers, et al.*, 95-145 (La. App. 3rd Cir. 3/29/95), 653 So.2d 94, rehearing denied; *Hemler v. Richland Parish School Board*, 76 So. 585 (La. 1917); *Watkins v. Ouachita Parish School Board*, 136 So. 591 (La. 1931); *Hodnett v. Monroe City School Board*, 277 So.2d 598 (La. App. 2nd Cir. 1972) and *Brock v. St. James Parish Council*, 407 So.2d 1265 (La. App. 4th Cir. 1981), writ denied. It has consistently been the opinion of this office that sales and use tax proceeds must be used solely for the purposes approved by the voters. La. Atty. Gen. Op. Nos. 12-0089 and 09-0150. We have not seen the tax proposition that the voters approved and therefore offer no opinion on whether the proceeds of the particular special tax the police jury is considering using to support the recreation district can be used for that purpose.

¹ This three prong test is based on the guidance set out by the Louisiana Supreme Court in *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 (the "Cabela's" case).

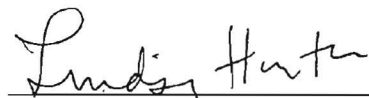
In conclusion, it is the opinion of this office that the Evangeline Parish Police Jury cannot donate \$15,000 to the Evangeline-Ville Platte Recreation District; however the two political subdivisions may enter into a cooperative endeavor agreement pursuant to La. Const. art. VII, Sec. 14(C) and La. R.S. 33: 1324(5) to construct, acquire, or improve "recreational and educational facilities, such as playgrounds, recreation centers, parks and libraries."

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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Attorney General

By:



Lindsey K. Hunter
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JDC/LKH/chb