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OPINION 13-0058

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90-A POLITICAL SUBDIVISIONS— Officers, Agents & Employees
172-A WATER DISTRICTS
174 ZONING

La. Const. Arts. IV §21, VI §§ 4, 5, 9(B), 17, 44(5)
La C.C. Arts. 2, 9, 10, 11, 12.
La. R.S. 33:101, *et. seq.*, 33:140.151, *et. seq.*, 34:2308

The express language contained in La. R.S. 34:2308 exempts the Red River Waterway Commission ("RRWC") from the regulatory/zoning authority of Natchitoches Parish and/or the Natchitoches Parish Planning Commission. Further, because the RRWC is an instrumentality of the State of Louisiana the Parish's general zoning authority must yield to the RRWC's power and function which emanate wholly from the State.

Dear Mr. Upton:

You have requested an opinion of this Office regarding whether the Red River Waterway Commission ("RRWC")¹ is required to obtain approval of the Natchitoches Parish Planning Commission ("Planning Commission") to develop an RV Park at the Grand Ecore Recreational Facility, which is owned and operated by the RRWD. Specifically, you ask: (1) Does the RRWD need to go through the Parish Planning Commission's zoning process for the RV Park? and (2) Does the RRWD need to go through the Parish Planning Commission's review and permit process?

In submitting these questions, you stated that, "[t]he RRWD believes the strong language of Louisiana Revised Statute [34]:2308 immunizes the RRWD from the authority of the Natchitoches Parish Planning Commission."

La. R.S. 34:2308 states, in pertinent part:

[t]he commission shall not be deemed to be a public utility and shall not be subject in any respect to the authority, control or supervision of the Louisiana Public Service Commission or any other regulatory body of the state or any political subdivision thereof.

While La. R.S. 34:2308 is clear in stating that the "RRWC shall not be deemed to be a public utility" and "shall not be subject in any respect to the authority, control or supervision of the Louisiana Public Service Commission," you are concerned as to whether the Legislature intended for the remainder of La. R.S. 34:2308 (as cited above) to apply such that the, "RRWC shall not be subject in any respect to the authority,

¹ La. R.S. 34:2302 establishes that the Red River Waterway Commission ("RRWC") is the body or commission that governs the Red River Waterway District ("RRWD"). While such a distinction may be relevant in other legal contexts, this opinion will often refer to the RRWC and RRWD collectively as the RRWC.

control or supervision of ... **any other regulatory body of the State or any political subdivision thereof.**"² Such a literal interpretation of "any other regulatory body" could ultimately make the RRWC an independent sovereign body free of any other State or local regulation of any sort including various constitutional mandates – a seemingly strained result.³

Statutory Interpretation

The questions posed in your request require our office to determine whether the RRWD is subject to the authority of the Parish Planning Commission. In order to make such a determination, we must consider how to interpret the mandate in La. R.S. 34:2308 that the RRWC "shall not be subject in any respect to the authority, control or supervision of the Louisiana Public Service Commission or any other regulatory body of the state or any political subdivision thereof." Considering the potentially broad application of such a phrase, we examine this language within the context of Louisiana's rules of statutory construction.

As a general premise, the words of a law are to be given their generally prevailing meaning.⁴ Words and phrases must be read within their context and construed according to the common and approved usage of the language.⁵

Further, when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.⁶ However, when the language of a law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.⁷

It is clear from the statutory language that the RRWC is not subject to the authority, control or supervision of the Louisiana Public Service Commission. The statute then goes on to state that the RRWC is not subject in any respect to the authority, control or supervision of any other regulatory body of the state or any political subdivision thereof. We consider the above-described rules of statutory interpretation for guidance to ascertain meaning from this seemingly broad language in La. R.S. 34:2308 that the RRWC is not "subject in any respect to the authority, control or supervision of the Louisiana Public Service Commission or any other regulatory body of the state or any political subdivision thereof." More specifically, the question posed in your request

² Emphasis added.

³ This statement is intended only as a general statement, thus ignoring any actual arguments that the RRWC's authority may legally be in conflict with any other State or local entity's authority.

⁴ La. C.C. Art. 11.

⁵ La. R.S. 1:3.

⁶ La. C.C. Art. 9.

⁷ La. C.C. Art. 10

requires us to opine as to whether the Planning Commission qualifies as “any other regulatory body of the state or any political subdivision thereof” as this phrase is used in La. R.S. 34:2308. As described below, examining this provision within the context of other statutes pertaining to RRWC, the intent appears to allow the RRWC to accomplish its purpose with some degree of autonomy.⁸

In order to properly interpret this phrase, we must analyze it in the context in which it occurs, as well as consider the text of the body of law in which it appears as a whole. The stated purpose for creating the Red River Waterway District, as described by La. R.S. 34:2302, is “establishing, operating and maintaining, individually or in cooperation with the federal government, the state and its various agencies, subdivisions and public bodies, a navigable waterway system to be known as the Red River Waterway. . . .” The RRWC is described in La. R.S. 34:2308 as “an instrumentality of the State exercising public and essential governmental functions” and the powers granted to the RRWC are outlined in detail in La. R.S. 34:2309.

The language of La. R.S. 34:2308, titled “Exercise of powers; statue of commission,” states that the RRWC is not a public utility and “shall not be subject in any respect to the authority, control or supervision of the Louisiana Public Service Commission or authority of any other regulatory body of the state or any political subdivision thereof.” The waterway system described in La. R.S. 34:2302 spans multiple parishes, thus, to require the RRWC to comply with the planning and zoning regulations of multiple parishes would frustrate and burden the purpose of the RRWC. Rather, it is more logical to interpret this clear and unambiguous language as written and conclude that the RRWC is not subject to the authority, control or supervision of the Planning Commission.

⁸ While this Office is of the Opinion that the Natchitoches Parish Planning Commission qualifies for the exemption established in La. R.S. 34:2308, we also considered whether “any other regulatory body” could be interpreted as meaning only other regulatory bodies similar in nature to the Public Service Commission (i.e., entities that regulate public utilities). Black’s Law Dictionary defines “any” as “[s]ome; one out of many; an indefinite number.”⁸ Black’s goes on to note that the “[w]ord ‘any’ has a diversity of meaning and may be employed to indicate ‘all’ or ‘every’ as well as ‘some’ or ‘one’ and its meaning in a given statute depends upon the context and the subject matter of the statute.” In explaining further, Black’s states “[i]t is often synonymous with ‘either’, ‘every’, or ‘all’. Its generality may be restricted by the context; thus, the giving of a right to do some act ‘at any time’ is commonly construed as meaning within a reasonable time; and the words ‘any other’ following the enumeration of particular classes are to be read as ‘other such like,’ and include only others of like kind or character.” Therefore, in reading the phrase “any other” in conjunction with the annotations (above) from Black’s, the phrase “any other regulatory body,” when read in the context of the sentence in which it exists, may arguably only exempt the RRWC from regulation by the Public Service Commission and “other such like” regulatory bodies that regulate public utilities. However, because the Public Service Commission’s basic charge is to “regulate all common carriers and public utilities,” the zoning authority or regulations enforced by Natchitoches Parish or its Planning Commission would arguably not be of “like kind and character” as that of the Public Service Commission and this Office maintains the position stated in the body of this opinion.

Conflicting Law and Authority

Next, it is necessary to consider whether the language in La. R.S. 34:2308 conflicts with the police powers of Natchitoches Parish and its political subdivision, the Planning Commission, and if so, whether such conflict is constitutionally permissible.

Natchitoches Parish is a local political subdivision and parish government operating pursuant to a home rule charter proposed and adopted under the authority of Article VI, Section 5 of the Louisiana Constitution of 1974. Subsection (E) of this Article provides that a:

home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.⁹

Thus, if there is a conflict between the authority of Natchitoches Parish with regard to zoning and La. R.S. 34:2308, the constitution only vests Natchitoches Parish with this authority, provided it is “not denied by general law” such as La. R.S. 34:2308.

“Created as a separate entity in 1991, the Parish Planning Office, under the guidance of the [Natchitoches Parish Police] Jury appointed Planning Commission, is responsible for the oversight of the Parish Zoning Ordinances.”¹⁰

With regard to local political subdivision zoning regulations, the Louisiana Constitution states that:

[s]ubject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained.¹¹

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Id.

¹⁰

<http://www.nppi.org/Dept-ParishPlanning.htm>, last accessed August 21, 2013.

¹¹

La. Const. Art. VI, § 17.

"Nevertheless, this grant of authority is limited by Article 6, Section 9(B) of the Constitution which provides 'notwithstanding any provision of this Article, the police power of the State shall never be abridged.'" ¹² La. R.S. 33:101, *et seq.*, sets forth the current uniform procedures described in the La. Const. Art. VI, § 17. It appears that the Planning Commission was originally created pursuant to a Natchitoches Parish Police Jury Ordinance dated May 26, 1964. ¹³ On May 15, 1991, the Parish enacted Ordinance No. 6-91, which has been set out as Appendix A in the Natchitoches Parish Code of Ordinances.

In 1988, the State Legislature enacted general zoning regulations specifically for Natchitoches Parish. ¹⁴ La. R.S.33:140.151 states that:

[f]or purpose of promoting the health, safety, morals, or the general welfare of Natchitoches Parish, the police jury of said parish is hereby authorized to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes within the parish.

As stated above, the potential conflict herein arises when one must consider whether the exemption stated in La. R.S. 34:2308 interferes with or prevents Natchitoches Parish or the Planning Commission from exercising its home rule and/or statutory authority to protect the health, safety, and welfare of Natchitoches Parish.

As you noted in your opinion request, the Supreme Court has previously addressed a situation similar to this one in *City of New Orleans v. Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690 (La. 7/5/94), 640 So.2d 237. In that case the "controversy arose when the Orleans Levee District (OLD) began to build a marina and related developments for commercial profit on state owned land inside the City of New Orleans ["CNO"] without complying with the municipal zoning and building ordinances." ¹⁵ The issue, as framed by the Court in that case was, "[w]hether the CNO's application and enforcement of its zoning and building ordinances to regulate the land development activities of the OLD, a state authorized agency, within the city boundaries, abridges the police power of the state in violation of the state constitution." ¹⁶

¹² *Lake Charles Harbor & Terminal Dist. v. Calcasieu Parish Police Jury*, 613 So.2d 1031, 1033 (La. App. 3 Cir. 1993).

¹³ See Natchitoches Parish Code of Ordinances, Section 14-1. While the current uniform procedures were not in place at the time, the Planning Commission appears to have been created pursuant to Act 319 of the 1946 Regular Session.

¹⁴ See La. R.S. 33:140.151, *et seq.*

¹⁵ *City of New Orleans*, *supra*, at 240.

¹⁶ *Id.* at 242.

In considering the *City of New Orleans* case as it applies to the current situation, it is important to note that the *City of New Orleans* case involved a home rule charter government that existed prior to the 1974 Louisiana Constitution. This means that La. Const. Art. VI, § 4 governed the authority of the government involved in that case as opposed to a home rule charter government created pursuant to La. Const. Art. VI, § 5, like the one currently governing Natchitoches Parish.

The Supreme Court, in *City of New Orleans*, held that “Article VI, § 5 authorizes any such local governmental subdivision to adopt a home rule charter providing for the exercise of any power “necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.”¹⁷

La. Const. Art. VI, § 44(5) defines “General law” as “a law of statewide concern enacted by the legislature which is uniformly applicable to all persons or to all political subdivisions in the state or which is uniformly applicable to all persons or to all political subdivisions within the same class.” In reviewing La. R.S. 34:2308, it states that:

[t]he commission shall constitute an instrumentality of the State of Louisiana exercising public and essential governmental functions; and the exercise by the commission of the powers conferred by this Chapter in the establishment, operation and maintenance of the waterway and the acquisition, construction, operation and maintenance of the various port and related facilities hereinafter authorized shall be deemed and held to be essential governmental functions of the state of Louisiana.

Given that this law: (1) establishes a political subdivision and instrumentality of the State of Louisiana; (2) establishes that the exercising of power by this political subdivision “shall be deemed and held to be essential governmental functions of the state of Louisiana;”¹⁸ and (3) applies uniformly to “all the territory located within the Parishes of Avoyelles, Rapides, Natchitoches, Red River, Grant, Bossier and Caddo,” this Office is of the opinion that La. R.S. 34:2308 is in fact a “general law.”

“Zoning laws and related land use regulations are based on, and constitute an application or exercise of, legislative power, and in particular, police power to enact laws for the safety, health, morals, convenience, comfort, prosperity, and general welfare of the people.”¹⁹ The zoning laws in question (for the Parish of Natchitoches) must,

¹⁷ *Id.* at 246.

¹⁸ La. R.S. 34:2308.

¹⁹ *City of New Orleans* at 245, citing *Village of Euclid v. Ambler Realty Co.* 272 U.S. 365 (1926); *Four States Realty Co. Inc. v. Baton Rouge*, 309 So.2d 659, 664 (La.1975) (on rehearing); *McCauley v. Albert E. Briede & Son*, 231 La. 36 (1956); *State ex rel. Dema Realty Co. v. McDonald* 168 La. 172, cert denied, 280 U.S. 556 (1929); *State ex rel. Civello v. New Orleans*, 154 La. 271 (1923).

however, "not [be] denied by general law or [be] inconsistent with th[e] constitution."²⁰ Since La. R.S. 34:2308 is a "general law," and it expressly exempts the RRWC from the "authority, control or supervision of ... any other regulatory body of the State or any political subdivision thereof," the zoning laws being implemented by the Planning Commission are, in essence, "denied," or not applicable to the RRWC under Louisiana law as they would constitute violations of general law in this scenario.

In *Lake Charles Harbor & Terminal Dist. v. Calcasieu Parish Police Jury*, the Louisiana Third Circuit Court of Appeal held that the "State Constitution and statutes only grant zoning authority to parishes when the exercise of such authority does not conflict with the State's power to use and regulate its property in performing governmental functions."²¹ In that case, the Court held that the "[Lake Charles Harbor and Terminal] District is an 'arm' of the State. Therefore, the [Calcasieu Parish] police jury's general zoning authority must yield to the District's power and function which emanate wholly from the State."²² Here, since the RRWC is an "instrumentality of the State of Louisiana exercising public and essential governmental functions," it is the opinion of this Office that the same reasoning applies, and the subject zoning ordinances are inapplicable to the RRWC.

Conclusion

In answering your specific questions, this Office is of the opinion that the RRWC is statutorily exempted from the Natchitoches Parish Planning Commission's zoning authority and/or its permit and review process. The express language contained in La. R.S. 34:2308 exempts the RRWC from the regulatory/zoning authority of Natchitoches Parish and/or the Natchitoches Parish Planning Commission. Because La. R.S. 34:2308 is a general law wherein the Legislature has established that the "acquisition, construction, operation and maintenance of the various port and related facilities hereinafter authorized shall be deemed and held to be essential governmental functions of the state of Louisiana," it has denied local political subdivisions, like Natchitoches Parish and the Natchitoches Parish Planning Commission, from regulating the RRWC's actions by way of its zoning authority. Further, since the RRWC is an instrumentality of the State of Louisiana, the Parish's general zoning authority must yield to the RRWC's power and function which emanate wholly from the State.

In opining that the Planning Commission authority and zoning ordinances referenced herein are inapplicable to the RRWC, we note that this finding is limited to the Planning Commission's (a regulatory body) authority with respect to zoning. Because certain police powers have been vested in the State and not delegated to local governments, nor denied by general law, the RRWC's exemption from the zoning regulations at issue

²⁰ La. Const. Art. VI, § 5 (E).

²¹ *Lake Charles Harbor & Terminal Dist.*, *supra*, at 1033.

²² *Id.*

here does not necessarily mean that the RRWC is exempt from all other regulatory authorities. Any such exemption provided by La. R.S. 34:2308 must be determined in the context of the powers and authority granted to local governments by La. Const. Art. VI, Part I, as well as the limitations authorized therein.

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,

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