



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

July 17, 2013
OPINION 13-0061

90 - 1 - A - PUBLIC FUNDS & CONTRACTS

La. R.S. 46:1060
La.Const. art. VII, §14

Mr. Blake Kramer
Administrator
Franklin Medical Center
2106 Loop Road
Winnsboro, LA 71295

The Franklin Parish Hospital Service District #1 may sell its accounts receivable if such accounts are determined by the District to be "uncollectible". Should the district classify the accounts accordingly, then such accounts should be sold to the highest bidder after giving public notice and subject to the District receiving payment commensurate with their value. Further, the District is not prohibited from selling the accounts in bulk, rather than one at a time, should the District determine this method of sale would generate the most interest and value.

Dear Mr. Kramer:

Our office received your request for an opinion submitted on behalf of the Board of Commissioners for Franklin Parish Hospital Service District #1 ("District") concerning the sale of accounts receivable. Consistent with our discussion regarding your request, the accounts at issue range in amounts from twenty dollars to around twenty thousand dollars. Your request states that "all legal avenues have been exhausted" in pursuing collection of these accounts, and that private corporate entities have expressed an interest in the purchase of these accounts receivable.

In light of the above, you have specifically asked:

- (1) Whether a political subdivision, such as the District, may sell accounts receivable to a private entity;
- (2) If the answer to the first question is in the affirmative, is the procedure for selling accounts receivable the same as that which must be followed for selling surplus movable property, i.e., declaration of surplus, publication, bid/auction, etc.; and
- (3) If the answer to the second question is in the affirmative, can the accounts be sold in a bulk transaction or must they be sold one account at a time?

As a starting point, we consider the ability of the District to dispose of property. The powers of a hospital service district are described in La. R.S. 46:1060, which provides:

Any hospital service district thus created and named by any police jury or any parish in the state shall constitute a body corporate in law with all the powers of a corporation, shall have perpetual existence, shall have the

power and right to incur debts and contract obligations, to sue and be sued, and to do and perform any and all acts in its corporate capacity and its corporate name necessary and proper for the carrying out of the objects and purposes for which the hospital service district was created. Such hospital service district shall have the right and power of expropriating property for the purpose of acquiring land for any purpose that it may find necessary in the operation of a hospital service district and may require by donation or purchase, any existing hospital facility in the district. It shall also have the power and authority to acquire any and all necessary equipment and buildings for the purpose of performing the objects for which it is formed, and shall own all sites and physical facilities which are acquired either by donation, purchase, expropriation, exchange and otherwise in full ownership.

Pursuant to La. R.S. 46:1060 a hospital service district is authorized "to do and perform any and all acts in its corporate capacity and its corporate name necessary and proper for the carrying out of the objects and purposes for which the hospital service district was created." Such acts would seem to include the sale of property or assets that are determined by the District to be no longer needed for public purposes or which are diminishing in value.

Your first question specifically asks whether it is permissible for the District to sell accounts receivable, accounts which the District has claimed to have "exhausted all legal avenues to collect." In La. Atty. Gen. Op. No. 02-0104, our office was asked whether LSU Health Care Services Division could negotiate a sale of uncollected and apparently uncollectible accounts receivable. LSU contracted with a commercial collection agency who attempted without success to collect the accounts and LSU Health Care Services Division then declared such accounts as "uncollectible." *Id.* This office concluded that we were unaware of any provision of law that would prohibit the sale of such accounts "as long as the Health Care Services Division has exhausted all reasonable avenues for the collection of these accounts and as long as the Health Care services Division will receive payment for the accounts commensurate with their value."¹ *Id.*

Whether the accounts at issue in your opinion request should be qualified as "uncollectible" or whether the District has exhausted all reasonable avenues for the collection of such accounts is a fact specific inquiry, and our office does not serve as a fact-finder. We do, however, note that before the District could contemplate the sale of any accounts receivable, the District must give careful and deliberate consideration of each specific account, including examining the District's own efforts to collect on the account. While your request states that the District has "exhausted all legal avenues to collect" these past due accounts, your letter did not include a description of such efforts.

¹ Please note that the requestor in La. Atty. Gen. Op. No. 02-0104 indicated that "according to the Accounting Principles Board, accounts that are more than six months old are worth fifty to sixty cents on the dollar, while those that are more than one year old are worth about thirty cents on the dollar."

In considering the relationship between debts owed to a public body and La. Const. art. VII, §14, our office has previously stated that this constitutional provision requires public bodies exercise reasonable means to recover debts owed to the public body.² Reasonable means must be determined by the agency on a case-by-case basis and on sound business practices and principles.³ As described by La. Atty. Gen. Op. No. 02-0104, such reasonable means may include a public body entering into a professional services contract with a third party for debt collection services.⁴

For the reasons described above, the District, and not our office, is in the best position to consider what reasonable collection efforts should be undertaken by the District before declaring the accounts "uncollectible" and, further, what amount would represent a fair value for such accounts. However, consistent with La. Atty. Gen. Op. No. 02-0104, our office is of the opinion that there is nothing prohibiting the sale of "uncollectible" accounts receivable provided prior reasonable efforts are made to collect on such accounts, and the District receives payment for the accounts commensurate with their value.

Should the District conclude that reasonable collection efforts have been made to collect on the accounts receivable such that the accounts are properly classified as "uncollectible," the question then turns to the correct procedure for disposing of such property.

As stated above, the revised statutes do not specify an exact procedure which a hospital service district must follow in disposing of "uncollectible" accounts receivable. However, pursuant to La. Const. art. VII, §14, the District should follow the same publication and notice requirements that it would follow if it were disposing of surplus movable property.⁵ Thus, the District should declare at a public meeting that the accounts qualify as "uncollectible" and that the accounts will, after notice, be offered for sale to the highest bidder. The District should fix a minimum price which would reflect the fair value of the accounts and which may be obtained through an appraisal of the accounts. Any sale must be such that the District receives payment for the accounts commensurate with their value.

In response to your third question, we see nothing prohibiting the sale of the accounts in bulk, rather than one account at a time, if such method is deemed by the District and the District's Director to be the method which would generate the most interest and income for the property.

² La. Atty. Gen. Op. Nos. 07-0067 and 05-0227.

³ La. Atty. Gen. Op. No. 05-0112 and 03-0444.

⁴ See also La. Atty. Gen. Op. No. 07-0067, 02-0188, 96-427.

⁵ See La. Atty. Gen. Op. No. 93-391 (a hospital service district has the authority to sell surplus equipment and must do so in accordance with La. R.S. 49:125 or at "public auction") and La. Atty. Gen. Op. No. 07-0096 wherein we stated that "publication and notice allows opportunity for opposition to the proposed action to be made known, and in our estimate, generates the most interest to get the best price for the property sought to be sold." Attached, please find copies of these opinions.

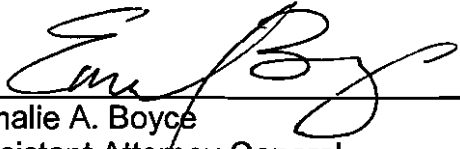
In conclusion, it is the opinion of this office that the District may sell accounts receivable to a private entity if such accounts are determined by the District to be "uncollectible" at a public meeting. Should the district classify the accounts accordingly, then such accounts should be sold to the highest bidder only after obtaining an appraisal of the accounts representing their fair market value, setting a minimum price, and giving public notice of the intended sale. Further, there is nothing which prohibits the District from selling the accounts in bulk, rather than one at a time, should the District determine this method of sale is the method which would generate the most interest and income.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:


Emalie A. Boyce
Assistant Attorney General

JDC: EAB

Enclosed: La. Atty. Gen. Op. Nos. 02-0104, 93-391 and 07-0096.