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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0065

Mr. O'Neil Parenton, Jr.
Assistant District Attorney
23rd Judicial District
Post Office Box 1659
Gonzales, Louisiana 70707

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 38:1844

Public funds cannot be used to make repairs to bridges located on private property unless the Parish determines that the benefit of doing so would accrue to the Parish and not the private landowner.

Dear Mr. Parenton:

On behalf of the East Ascension Consolidated Gravity Drainage District No. 1 ("District"), you have requested an opinion of our office clarifying La. Atty. Gen. Op. No. 04-0358, which was issued to the Ascension Parish ("Parish") President.

La. Atty. Gen. Op. No. 04-0358 addressed two issues relative to the Parish and the District: (1) whether the District could erect bridges over existing public rights of way for the purpose of providing access to private property; and (2) whether the District could do so when the Parish is offered a right of way for the maintenance of the drainage canals the bridges will span. The opinion considered these two questions in light of La. Const. art. VII, Sec. 14(A), which generally prohibits the gratuitous expenditure of public funds, and concluded as follows:

Although this office is not a finder of fact, your letter gives the impression that the bridges you refer to have been or will be built to serve only the private landowner of the property each bridge will access or sit upon. In such cases, the benefits resulting from the erection or maintenance of such bridges would presumably inure only to the benefit of the individual landowners, and not to the public at large. In our opinion, neither Ascension Parish nor the East Ascension Drainage Board can expend public funds for the erection or maintenance of a bridge unless the bridge will bring about a public benefit and serve the interests of the public at large. If the erection of the bridge is primarily of the benefit of a private landowner, the landowner must assume responsibility for the erection of the bridge.

Your opinion request states that upon receiving the opinion, the District refrained from constructing or performing maintenance on these bridges unless by objective analysis it

was determined that the structure was for the benefit of the public rather than the landowner. However, you now seek clarification on two issues.

First, because of a lack of maintenance, some older bridges within the District have degenerated, in some cases, to such a state of disrepair, that they are a risk to the public's safety and potentially expose the District and/or the Parish to damage suits. Your request states that these bridges are the only means of access to private property owners' homes and asks what, if anything, the District and/or Parish may do with these bridges.

Secondly, your request states that the Parish has an intricate drainage system relying on gravity drainage and a pumping system. In developing the drainage system, some ditches which were passable by a property owners' culvert were widened and deepened by the District or the Parish and converted to small bayous/canals. The District has designated some of these canals and bayous as major drainage channels as per La. R.S. 38:113, *et seq.* You ask what, if any, work the District may perform on these bridges that replaced the property owners' culverts.

Our office has consistently opined that public funds and/or equipment may not be used to repair private property when doing so is primarily for the benefit of the private landowner. For example, La. Atty. Gen. Op. No. 10-0201 concluded that the City of Minden may not use public funds and/or resources to repair private roads leading to a private or church-owned cemetery. La. Atty. Gen. Op. No. 05-0299 opined that a Parish may not repair roads on private property used primarily for the benefit of private individuals. Similarly, La. Atty. Gen. Op. No. 08-0109 concluded that the use of parish prisoners to clean private property would be tantamount to a prohibited donation and such activities are not permissible under Louisiana law. La. Atty. Gen. Op. No. 88-384, which addressed whether the City of Minden could use public employees to repair sidewalks on private property stated that "providing the manpower required to repair these privately owned sidewalks requires the use of public funds" and concluded, "even though the materials for the repair are provided by the landowners, this practice is contrary to the provisions of Article VII, Section 14 of the Louisiana Constitution of 1974." La. Atty. Gen. Op. No. 81-1223 opined that a "police jury is not legally authorized to perform construction or maintenance work on private driveways if the benefits of said work accrue only to the owner of the property enhanced thereby."

With regard to bridges and culverts, La. Atty. Gen. Op. No. 06-0011 concluded that a police jury may install culverts on private property for the purpose of improving the parish drainage system but that the police jury could not do so if the work was for the exclusive benefit of the private landowner. Similarly, La. Atty. Gen. Op. No. 95-41 concluded that a police jury could repair a bridge on private property when doing so was for the benefit of the parish road system but not when doing so was for the sole use of the property owner. La. Atty. Gen. Op. No. 06-0307 concluded that the Gas Utility District No. 1 of West Feliciana Parish could construct a privately owned bridge because

doing so resulted in a substantial benefit to the district (specifically, the expenditure made possible a pipeline which delivered natural gas to Angola State Penitentiary and the East Louisiana State Hospital). The opinion did not determine whether the cost of the project was proportionate to the benefit the district would receive.

In keeping with these past opinions, it remains our opinion that the Parish and District cannot use public funds to repair bridges when doing so is primarily for the benefit of the private landowner.¹ Our office does not serve as a finder of fact and therefore, cannot determine what, if any, liability the Parish would be exposed to if a private landowner failed to maintain the bridge which provides ingress and egress to and from his private property. That decision should be made after consulting with Parish counsel. If, however, the Parish determines that it must make repairs on private bridges to avoid liability for the Parish, it has the authority to do so, but the Parish and/or District must also determine that the expenditure of public funds for this purpose is not primarily for the benefit of a private landowner and must not spend more public funds than necessary to limit its liability.

With regard to your second question, a drainage district is authorized to preserve and maintain the efficiency of public drainage and is granted a legal servitude over the drainage channels within its district. See *Savoy v. Bayou Plaquemine & Wickoff Gravity Drainage District*, 2009-0686 (La.App. 3 Cir. 12/9/09), 25 So. 3d 986. Drainage districts have jurisdiction over all public drainage channels within the limits of their authority. La. R.S. 38:113. Drainage districts are authorized by La. R.S. 38:1844 "to do any other work of drainage they may deem necessary." Therefore, if the District determines that constructing or repairing bridges on private property is for the benefit of the Parish drainage system rather than the private landowner, then the District has the authority to spend public funds for that purpose. If the District chooses to make this expenditure, it must also ensure that the benefit to be received by the Parish will be proportionate to the public funds spent.

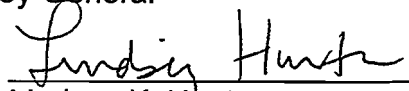
Based on the foregoing, it is the opinion of this office that public funds cannot be used to make repairs to bridges located on private property unless the Parish determines that the benefit of doing so would accrue to the Parish and not the private landowner.

¹ The Parish may use public funds to perform work on bridges if ownership of the bridges have been transferred by the private landowner to the Parish for public use. In accord are La. Atty. Gen. Op. Nos. 08-0232 and 08-0334, which concluded that it is permissible for a public entity to maintain a roadway that traverses private property when that road has been dedicated to a public use by the private landowner. See also La. Atty. Gen. Op. No. 04-0243, which concluded that a town may not use public funds to mow private cemeteries, cemeteries that have not been dedicated for public purposes, or cemeteries that have not been dedicated and accepted by the town.

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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JDC/LKH/chb