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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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September 11, 2013
Opinion 13-0078

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Rev. Stat. 3:2051, *et. seq.*

Mr. Robert Joyner
Director, Louisiana Beef
Industry Council
4921 I-10 Frontage Road
Port Allen, LA 70767-4195

Pursuant to La R.S. 3:2051 *et seq.* the Louisiana Beef Promotion and Research Program (Program), operated and administered by the Louisiana Beef Industry Council, must implement its program to develop, maintain and encourage markets for Louisiana beef products only through the accepted industry organization of the National Livestock and Meat Board and its Beef Industry Council. If the Louisiana Cattleman's Association (LCA) is the only such recognized organization then the LCA would be a sole source provider for the Program.

Dear Mr. Joyner:

Your opinion request has been assigned to me for research and reply. On behalf of the Louisiana Beef Industry Council ("Council"), you have asked for our opinion on certain matters related to the procurement of administrative and professional services by the Council.

According to your request, the Council operates under the authority of La. Rev. Stat. 3:2051, which provides the following:

§ 2051. Legislative intent

The legislature intends by this Part to authorize the cattle production and feeding industry of this state to establish a self-financed, self-governed program to help develop, maintain, and expand the state, national, and foreign markets for cattle and beef products produced, processed, or manufactured in this state and to permit the cattle production and feeding industry of this state to contribute otherwise to the development and sustenance of a Louisiana coordinated promotion program and nationally coordinated programs of product improvement through research in consumer marketing via the accepted industry organization of the National Livestock and Meat Board and its Beef Industry Council, thus benefiting the entire United States cattle industry and the American public.

La. Rev. Stat. 3:2051 generally sets forth the legislative intent of Part IV, Chapter 15, Title 3 of the Louisiana Revised Statutes entitled "Beef Promotion and Research Program." Our reading of La. Rev. Stat. 3:2051 reveals that it generally

authorizes Louisiana's cattle production and feeding industry to establish a program to develop, maintain, and encourage markets for Louisiana beef products. La. Rev. Stat. 3:2051 further provides that Louisiana's cattle production and feeding industry has the authority to contribute to said program, as well as other nationally coordinated programs via the accepted industry organization of the National Livestock and Meat Board and its Beef Industry Council. Pursuant to La. Rev. Stat. 3:2052, the program created and organized by La. Rev. Stat. 3:2051, *et seq.* is the Louisiana Beef Promotion and Research Program ("Program"). La. Rev. Stat. 3:2052 further provides that the Program shall be administered by the Council.

To that end, La. Rev. Stat. 3:2058 authorizes the Council to collect assessments in accordance with the Federal Beef Promotion and Research Act of 1985¹ on all Louisiana cattle purchased or sold within or outside of Louisiana. This assessment is known as the "federal assessment." Pursuant to La. Rev. Stat. 3:2058, the purpose of the "federal assessment," among other things, is to provide for a cattle producer's participation in the Federal Beef Promotion and Research Program. La. Rev. Stat. 3:2058 further authorizes the Council to levy an additional assessment at the rate of fifty cents per head on all Louisiana cattle marketed within or outside Louisiana. This assessment is known as the "state assessment." Pursuant to La. Rev. Stat. 3:2058, the purpose of the "state assessment" is to provide for the producer's participation in the Program.

Pursuant to La. Rev. Stat. 3:2058, the collecting person, as defined by La. Rev. Stat. 3:2053, is required to deduct both the state and federal assessments, subject to any credits due to a producer, from the gross receipts of a producer at the time of sale. La. Rev. Stat. 3:2058 further requires that the collecting person collect and remit the assessments, including a report of the assessments, to the Council.

According to your request, the Council and the Louisiana Cattleman's Association currently have a Cooperative Endeavor Agreement ("CEA") wherein the Louisiana Cattleman's Association agrees to provide the following scope of services to the Council:

Contractor hereby agrees to furnish the following services:

To implement and administer a statewide beef promotion education and research program that is beneficial to the beef producers in Louisiana. Said program is pursuant to the terms and conditions of Act 320 of the 1978 Louisiana Legislature.

¹ Pub.L. 99-198, title XVI, subtitle A, Section 1601, Dec. 23, 1985, 99 Stat. 1597 (Title 7, Sec. 2901 *et seq.*).

The CEA does not contain any other reference or description of the services provided by the Louisiana Cattleman's Association to the Council. In exchange for the Louisiana Cattleman's Association providing the above stated services, the Council pays a maximum fee of \$390,000.00 over a three (3) year period.

Turning attention now to the question presented, your opinion request makes reference to La. Rev. Stat. 39:1597, which is commonly referred to as the "sole source" provision of the Louisiana Procurement Code. Specifically, you ask whether the Louisiana Cattleman's Association can be considered the sole source provider to administer the Program, since it is the only industry organization in Louisiana recognized by the National Cattlemen's Beef Association, which is the successor organization of the National Livestock and Meat Board's Beef Industry Council referenced in La. Rev. Stat. 3:2051.

La. Rev. Stat. 3:2054 creates and organizes the Council as an entity within the Louisiana Department of Agriculture, while La. Rev. Stat. 3:2055 generally sets out the powers and duties of the Council. La. Rev. Stat. 3:2056 further specifies how the Council may expend its funds and provides as follows:

§ 2056. Use of funds

A. The council may expend the funds available to it to:

(1) Contract for scientific research with any accredited university, college, or similar institution and enter into other contracts or agreements which will aid in carrying out the purposes of the program, including cattle and beef promotion, consumer market development, research advertising and, including contracts for the purpose of acquisition of facilities or equipment necessary to carry out purposes of the program.

(2) Disseminate reliable information benefiting the consumer and the cattle and beef industry on such subjects as, but not limited to, purchase, identification, care, storage, handling, cookery, preparation, serving, and the nutritive value of beef and beef products.

(3) Provide information to such government bodies as request it on subjects of concern to the cattle and beef industry and act jointly or in cooperation with the state or federal government and agencies thereof in the development or administration of programs deemed by the council to be consistent with the objectives of the program.

(4) Cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program.

(5) Pay funds to other organizations for work or services performed which are consistent with the objectives of the program.

B. All funds available to the council shall be expended only to effectuate the purposes of this Part and shall not be used for political purposes in any manner. A report of all expenditures shall be made annually to the state conventions of the Louisiana Cattlemen's Association and the Louisiana Farm Bureau Federation.

Our reading of La. Rev. Stat. 3:2056 reveals that it specifically authorizes the Council to enter into cooperative endeavor agreements in order to carry out the Program and other related purposes, i.e. cattle and beef promotion, consumer market development, scientific research, advertising, etc. Furthermore, as a state entity, the Council has the general authority to enter into cooperative endeavor agreements. La. Const. art. VII, § 14. Under Louisiana law, if a cooperative endeavor agreement calls for the expenditure of public funds and/or property, as is the case here, certain safeguards must be met, i.e. 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.

In our view, the language found in La. Rev. Stat. 3:2051 reveals that the Council can either implement the Program itself, or contract with the "accepted industry organization of the National Livestock and Meat Board and its Beef Industry Council." Further, Part IV of Chapter 15 of Title 3 of the Louisiana Revised Statutes limits implementation and the carrying out of activities authorized by the Program to the Council, or the accepted industry organization of the National Cattlemen's Beef Association. Thus, assuming that the Louisiana Cattleman's Association is the only accepted industry organization here in the State of Louisiana, it is the opinion of this office that the Louisiana Cattleman's Association is the sole source provider to administer the Program.²

² We do note that 7 U.S.C. 2905(d) indicates that the State of Louisiana can have more than one certified organization. Therefore, should another industry organization be certified in accordance

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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with state and federal law, the sole source provision found in La. Rev. Stat. 39:1597 would no longer be applicable.