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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
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September 23, 2013
Opinion 13-0079

Mayor Phillip Bickham
Village of Folsom
82378 June Street
Folsom, LA 70437

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Const. art. VII, Sec. 14

For accounting purposes only, the Village may write off a debt in order to ensure that only the appropriate assets and liabilities are reflected in the Village's financials, provided the Village has exercised reasonable means to recover the debt, subject to future collection efforts as deemed reasonable and necessary.

Dear Mayor Bickham:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Village of Folsom ("Village"), you have asked for our office's opinion as to whether the Village may write-off certain unpaid sewer and/or water bills.

According to your request, the Village has an ordinance that provides that the Village may request the Village attorney to file suit against a property owner when their sewer and/or water bill has not been paid. However, your request indicates that this practice is normally not cost feasible. You also make reference to the audit recently performed by Griffin & Company, LLC, wherein it was recommended that the Village review the prior balances of the Village's accounts receivables in detail and determine which amounts can be reasonably collected and write-off any amounts determined to be uncollectible. You have asked for our opinion on the legality of writing off certain unpaid sewer and/or water bills.

At the outset, we note that there is a distinction between "writing off" a debt and forgiving a debt. The term "write off" is an accounting term and involves transferring the entire balance of an asset to an expense or loss account to reflect the asset's total loss of value. See Black's Legal Dictionary, 9th ed. 2009. The debt is still due and payable. However, for accounting purposes only, the debt is reflected as having no value. Forgiving a debt, on the other hand, completely extinguishes a debtor's responsibility to pay.

On more than one occasion, our office has opined that a public entity has no authority to set-aside, reduce, or otherwise forgive a debt. In each of our responses, we were guided by Louisiana Constitution Article VII, Section 14 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 ...

In general terms, our office has interpreted this provision as prohibiting the gratuitous alienation of public funds, property, and/or resources for private purposes. For example, our office has previously opined that providing rental space at a publicly owned facility without receiving anything of value in return for such use would amount to a prohibited donation under Article VII, Section 14. See Attorney General Opinion No. 09-0315. Similarly, in Attorney General Opinion No. 10-0264, we opined that under Article VII, Section 14 the Amite River Basin Drainage and Water Conservation District could not refund erroneously-paid ad valorem taxes, the claims for which had prescribed. Further, in Attorney General Opinion No. 10-0287, we opined that voluntarily releasing a tenant from its lease, thereby giving up \$90,000.00 in revenue due to the Greater Krotz Springs Port Commission, would violate Article VII, Section 14.

Specifically, with respect to unpaid water bills, in Attorney General Opinion No. 97-425, we opined that the Town of Pollack could not adjust the water bill of a town resident when all evidence indicated that the meter was properly read and that the meter was properly working. In our view, adjustment of the water bill by the Town would amount to a donation of a public thing of value thereby violating Article VII, Section 14 of the Louisiana Constitution. Nevertheless, we also recognized that the Town was not prohibited from adjusting a water bill that was clearly incorrect, such as in the case of a misread meter.

In accord with the prior opinions of this office, we are of the opinion that the Village has no authority to forgive, reduce, or otherwise set-aside a particular resident's sewer and/or water bill. It has been our office's position that Article VII, Section 14 of the Louisiana Constitution requires public bodies to exercise reasonable means to recover debts owed to a public body. Attorney General Opinion Nos. 07-0067 and 05-0227. Reasonable means must be determined by the agency on a case-by-case basis and on sound business practices and principles. Attorney General Opinion Nos. 05-0112 and 03-0444. Such reasonable means may include a public body entering into a professional services contract with a third party for debt collection services. See Attorney General Opinion Nos. 07-0067, 02-0188, 96-427.

Nonetheless, in the event the Village is confident that it has exercised reasonable means to recover certain unpaid sewer and/or water bills and those efforts remain unsuccessful, it is also our opinion that the Village may employ certain measures to ensure that only the appropriate assets and liabilities are reflected in the Village's financials for accounting purposes only. Writing off a debt, as described herein, would be one such acceptable measure, subject to future collection efforts as deemed reasonable and necessary. Again, we reiterate that writing off a debt does not extinguish the debt. Further, please note that continuing to provide sewer and water

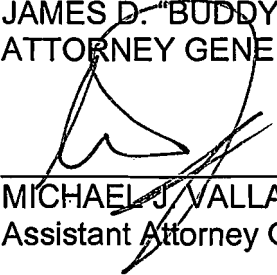
services without payment of past and current charges could constitute a donation of public property prohibited by Article VII, Section 14 of the Louisiana Constitution.

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:



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JDC/MJV/chb