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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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OPINION 13-0087

90-A-1 PUBLIC FUNDS & CONTRACTS
La. C.C. art. 2642

Mr. Richard E. Lee
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810 Main Street
Pineville, Louisiana 71360

The Sheriff of Rapides Parish is authorized by La. C.C. art. 2642 to assign to a storage company, which acted as keeper for the movable property seized under the writ of sequestration, a judgment awarding the Sheriff the fees he incurred for keeping said property with the subject storage company. If, by assigning the judgment to the storage company, the Sheriff is giving up anything of value, then he must ensure he receives adequate consideration for the assignment in order to avoid running afoul of La. Const. art. VII, Sec. 14(A).

Dear Mr. Lee:

Your request for an opinion on behalf of your client, the Sheriff of Rapides Parish ("Sheriff"), has been assigned to me for research and reply.

According to your request, a civil suit was filed by North Louisiana Bidco, L.L.C. against Cox Ventures, L.L.C. to enforce a security agreement. A writ of sequestration was issued in the case on certain vehicles and other movable property. The Court ordered the vehicles and other movables to be picked up and stored by a particular storage company in December of 2008. Since that time, the vehicles and other movables remain at the storage company, and the plaintiff has refused to pay the towing and storage.

On behalf of the Sheriff, you instituted a lawsuit to recover the outstanding transportation and storage fees which the Sheriff is permitted to charge by La. R.S. 13:5530(A)(6). See La. R.S. 13:5530(A)(6); see also *Byles Welding & Tractor, Inc. v. Eissman Estate*, 99-921 (La. App. 3 Cir. 12/8/99), 755 So. 2d 916, 918 (holding "Byles Welding & Tractor was not the proper party to bring a rule for storage fees. La. R.S. 33:1428 [now cited as La. R.S. 13:5530] authorizes only the sheriff to assess fees for the preservation of seized property.").¹ On April 9, 2013, you received a favorable judgment representing storage costs owed to the Sheriff for keeping the property seized pursuant to the writ of sequestration. Paulk's Wrecker Service ("Paulk's" or "storage

¹ La. R.S. 13:5530(A)(6) provides: "A. Sheriffs shall be entitled to no more than the following fees and compensation of office in all civil matters: (6) For keeping property when a keeper or guardian is required, the sheriffs shall be allowed the actual amount paid the keeper appointed by them but not to exceed sixty dollars for each eight hours of keeping; and in all cases in which the property under seizure is of a nature requiring the constant attention of the sheriffs, they may appoint one or more additional keepers for which allowance shall be made on the basis above set forth."

company") was appointed as keeper in this matter and therefore, by contractual agreement between Paulk's and the Sheriff, Paulk's is owed the money reflected in the judgment for its service as keeper of the sequestered property.

In light of these facts, you have asked our office whether the Sheriff may assign all of his rights and interests in the judgment representing storage and towing costs over to the storage company in return for a release of any claim the storage company may have against the Sheriff for said costs. Your request states you think this approach is advisable for the Sheriff as it relieves him of incurring more attorneys' fees trying to collect the judgment when the money will ultimately be turned over to the storage company to compensate it for its service as keeper of the sequestered property.

The Louisiana Civil Code provides that "all rights may be assigned, with the exception of those pertaining to obligations that are strictly personal. The assignee is subrogated to the rights of the assignor against the debtor." La. C.C. art. 2642. The assignment of a right is effective against the debtor and third persons only from the time the debtor has actual knowledge, or has been given notice of the assignment. La. C.C. art. 2643. There is no particular form required for the notice of assignment of judgment; it is only necessary that the judgment debtor be informed that his former creditor has divested himself of all rights to the thing assigned. La. C.C. art. 3643, comment (c); see also *Fidelity Nat. Bank of Baton Rouge v. Calhoun*, 2008-1685 (La. App. 1 Cir. 3/27/09), 11 So. 3d 1119. Based on the facts stated in your opinion request, we are assuming that there was no contractual prohibition against the assignment of rights. La. C.C. art. 2653 provides that, "[a] right cannot be assigned when the contract from which it arises prohibits the assignment of that right. Such a prohibition has no effect against an assignee who has no knowledge of its existence."

Although we are of the opinion that La. C.C. art. 2642 authorizes the assignment of a judgment, we also acknowledge that an assignment of right is a species of sale and is treated as such in our Civil Code. See *Scott v. Corkern*, 231 La. 368, 91 So.2d 569 (La. 1956); *Alco Collections, Inc. v. Poirier*, 95-2582 (La. App. 1 Cir. 9/27/96), 680 So. 2d 735; *writ denied*, 96-2628 (La.12/13/96), 692 So. 2d 1067. Therefore, the Sheriff and his legal counsel will have to determine whether the Sheriff is gratuitously giving up anything of value by assigning the judgment. If the Sheriff determines the judgment has no value to his office, then he can assign it to the storage facility without receiving consideration. Gratuitously giving up something of value would violate La. Const. art. VII, Sec. 14(A), which generally prohibits the gratuitous alienation of public funds, property, and/or resources.

The facts that you have presented in your opinion request, specifically that the judgment representing storage and towing costs is contractually owed by the Sheriff to the storage company for its services as keeper, and that, by accepting the assignment, the storage company will release any and all claims it may have against the Sheriff for storage/keeping costs, lead us to believe that the Sheriff is not gratuitously assigning

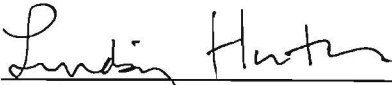
the judgment. However, the ultimate determination of whether anything of value will be given up by assigning the judgment in question is a factual determination that must be made by the Sheriff after consultation with his legal counsel.

Based on the foregoing, it is the opinion of this office that the Sheriff of Rapides Parish is authorized by La. C.C. art. 2642 to assign to a storage company, which acted as keeper for the movable property seized under the writ of sequestration, a judgment awarding the Sheriff the fees he incurred for keeping said property with the subject storage company. If, by assigning the judgment to the storage company, the Sheriff is giving up anything of value, then he must ensure he receives adequate consideration for the assignment in order to avoid running afoul of La. Const. art. VII, Sec. 14(A).

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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By: 
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JDC/LKH/chb