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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0119

Mr. Ron J. Henson
First Assistant State Treasurer
P.O. Box 44154
Baton Rouge, LA 70804

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, § 10.8

Under La. Const. art. VII, § 10.8(A)(1)(c), seventy-five percent of monies received by the treasurer as a result of the MSA during Fiscal Year 2002-2003 and each fiscal year thereafter must be deposited in the Millennium Trust. However, beginning in Fiscal Year 2011-2012, after the balance in the Millennium Trust reaches a total of one billion three hundred eighty million dollars, one hundred percent of the seventy five percent must be deposited in the TOPS Fund, which is a special fund within the Millennium Trust.

Dear Mr. Henson:

Your request for an Attorney General's Opinion has been assigned to me for research and reply.

You indicated that the State Treasury was wired three Master Settlement Agreement (the "MSA") payments this year, as follows: \$46,504,394.50 on April 15, 2013, \$29,680,925.18 on April 18, 2013, and \$8,062,942.58 on April 25, 2013, for a total of \$84,248,262.26. Basically, you ask how these payments should be allocated to the funds within the Millennium Trust, considering that a portion of the payments relate to years prior to 2011, which is when voters approved a constitutional amendment requiring that the treasurer thereafter allocate and credit the entire seventy-five percent of the MSA payments received into the Millennium Trust to the TOPS Fund.

First, we note that the relevant constitutional provision, La. Const. art. VII, § 10.8(A), in pertinent part, currently provides as follows:

(A) Creation

(1) There shall be established in the state treasury as a special permanent trust the "Millennium Trust". After allocation of money to the Bond Security and Redemption Fund as provided in Article VII, Section 9(B) of this constitution, the treasurer shall deposit in and credit to the Millennium Trust certain monies received as a result of the Master Settlement Agreement, hereinafter the "Settlement Agreement", executed November 23, 1998, and approved by Consent Decree and Final Judgment entered

in the case "Richard P. Ieyoub, Attorney General, ex rel. State of Louisiana v. Philip Morris, Incorporated, et al.", bearing Number 98-6473 on the docket of the Fourteenth Judicial District for the parish of Calcasieu, state of Louisiana; and all dividend and interest income and all realized capital gains on investment of the monies in the Millennium Trust. The treasurer shall deposit in and credit to the Millennium Trust the following amounts of monies received as a result of the Settlement Agreement:

* * *

(c) Fiscal Year 2002-2003 and each fiscal year thereafter, seventy-five percent of the total monies *received that year*. However, beginning in Fiscal Year 2011-2012 after the balance in the Millennium Trust reaches a total of one billion three hundred eighty million dollars, the monies deposited in and credited to the Millennium Trust, received as a result of the Settlement Agreement, shall be allocated to the various funds within the Millennium Trust as provided in Subsubparagraphs (2)(b), (3)(b), and (4)(b) and (c) of this Paragraph.
[Emphasis added]

* * *

(4)(a) The TOPS Fund shall be established as a special fund within the Millennium Trust. The treasurer shall deposit in and credit to the TOPS Fund one-third of the Settlement Agreement proceeds deposited into the Millennium Trust, and one-third of all investment earnings on the investment of the Millennium Trust. The treasurer shall report annually to the legislature as to the amount of Millennium Trust investment earnings credited to the TOPS Fund.

(b) Beginning Fiscal Year 2011-2012, and each fiscal year thereafter, the treasurer shall credit to the TOPS Fund one hundred percent of the Settlement Agreement proceeds deposited into the Millennium Trust, and one-third of all investment earnings on the investment of the Millennium Trust. The treasurer shall report annually to the legislature as to the amount of Millennium Trust Settlement Agreement proceeds and investment earnings credited to the TOPS Fund.

As you can see, under La. Const. art. VII, § 10.8(A), the treasurer must deposit in and credit to the Millennium Trust certain monies received as a result of the MSA. Under La. Const. art. VII, § 10.8(A)(1)(c), seventy-five percent of those monies received by the treasurer during Fiscal Year 2002-2003 and each fiscal year thereafter must be deposited in the Millennium Trust. However, beginning in Fiscal Year 2011-2012, after the balance in the Millennium Trust reaches a total of one billion three hundred eighty

million dollars, one hundred percent of the seventy five percent must be deposited in the TOPS Fund, which is a special fund within the Millennium Trust. We understand that, as of the dates all of the payments were received during Fiscal Year 2012-2013, the balance in the Millennium Trust equaled or exceeded a total of one billion three hundred eighty million dollars.

Significantly, we note that, both before and after the October 22, 2011 constitutional amendment, the provisions of La. Const. art. VII, § 10.8(A) govern the allocation of monies deposited to the Millennium Trust according to when the monies are actually received by the treasurer.¹ Thus, the particular year a payment relates to is irrelevant. All that matters is that the payment is received as a result of the MSA and the year the payment is received by the treasurer.

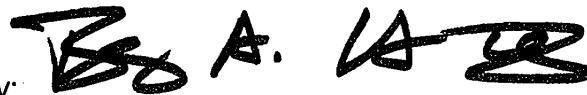
Considering the forgoing, it is the opinion of this office that, under La. Const. art. VII, § 10.8(A)(1)(c), seventy-five percent of monies received by the treasurer as a result of the MSA during Fiscal Year 2002-2003 and each fiscal year thereafter must be deposited in the Millennium Trust. However, beginning in Fiscal Year 2011-2012, after the balance in the Millennium Trust reaches a total of one billion three hundred eighty million dollars, one hundred percent of the seventy five percent must be deposited in the TOPS Fund, which is a special fund within the Millennium Trust.

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:



BENJAMIN A. HUXEN II
Assistant Attorney General

JDC/BAH II

¹ See La. Const. art. VII, § 10.8(A)(1)(c) ("... seventy-five percent of the total monies *received that year*") [Emphasis added].