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DEPARTMENT OF JUSTICE
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OPINION 13-0123

Honorable Mike Strain, DVM
Commissioner
Louisiana Department of
Agriculture & Forestry
P.O. Box 631
5825 Florida Blvd.
Baton Rouge, LA 70821-0631

Dear Commissioner Strain:

2 Agriculture-Pest Control

La. R.S. 3:1601; La. R.S. 3:1602; La. R.S. 3:1604; La. R.S. 3:1605; La. R.S. 3:1613

The Commissioner of the Louisiana Department of Agriculture and Forestry is authorized to transfer seventy-five cents per acre of the current Boll Weevil Eradication Assessment or to transfer from a new assessment to the National Cotton Council to be used to fund national boll weevil eradication efforts in the state of Texas only if he determines that the national boll weevil eradication efforts furthers the suppression or eradication of the boll weevil in Louisiana and these efforts are consistent with the purposes of the September 2003 referendum. The current law also authorizes a referendum for an additional assessment to transfer funds to the National Cotton Council to be used to fund national boll weevil eradication efforts in the state of Texas.

Our office received your request for an opinion regarding the transfer of a portion of the Louisiana Boll Weevil Assessment to the National Cotton Council to help fund boll weevil eradication efforts in the state of Texas. You have requested an opinion of the Attorney General addressing the following questions:

- (1) Whether seventy-five cents per acre of the current Louisiana Boll Weevil Eradication Assessment may be transferred to the National Cotton Council to be used to fund national boll weevil eradication efforts in the state of Texas;
- (2) Whether the current law, which provides for a referendum to establish assessments on cotton producers in this state, authorizes a referendum to levy an additional assessment on cotton producers that would be sent to the National Cotton Council to help fund national boll weevil eradication efforts in the state of Texas; and
- (3) Whether the legislature may enact a law providing for the money from a special assessment, if approved by referendum, to go to the National Cotton Council for such purposes, without being in violation of any provision of the Louisiana Constitution of 1974, in particular, Article VII, Section 14.

You stated in your request that a current assessment is being utilized for programs to maintain the eradication of the boll weevil in Louisiana and to fund an emergency fund to combat any boll weevil outbreak.

You also indicated that the National Cotton Council is a private trade organization comprised of cotton producers, ginner, warehousemen, merchants, cottonseed processors/dealers, cooperatives and textile manufacturers. Part of the National Cotton Council's mission is to develop and promote a national boll weevil eradication strategy. As part of its strategy, the National Cotton Council, through its Boll Weevil Action Committee, has developed a plan to eradicate the boll weevil along the Texas-Mexico border, through the Texas Boll Weevil Eradication Foundation¹. In order to fund the plan, the National Cotton Council is requesting that all cotton producing states contribute up to seventy-five cents per acre of planted cotton for a five year period beginning in 2014 for boll weevil eradication in a buffer zone along the Texas-Mexico border. The National Cotton Council has requested that Louisiana, as a cotton producing state, make a contribution to the fund.

We begin our analysis by looking at the background of the Louisiana Boll Weevil Eradication Law. La. R.S. 3:1601 *et seq.* It was enacted in 1972 to secure the suppression and eradication of the boll weevil and to cooperate with state and federal agencies in the administration of cost-sharing programs for the suppression or eradication of the boll weevil. La. R.S. 3:1602.

Louisiana boll weevil suppression or eradication programs are funded by assessments levied on affected cotton producers in the eradication zone or zones within the state. La. R.S. 3:1613 governs the assessment process and requires a referendum to be called among affected cotton producers on the question of whether an assessment shall be levied on the producers in the eradication zone or zones to offset the cost of the boll weevil suppression or eradication program. La. R.S. 3:1604.1(A)(6) authorizes the Boll Weevil Eradication Commission to call for and direct a referendum for an assessment.² [La. R.S. 3:1604.1(B)(4) authorizes the Commissioner of Agriculture and Forestry ("Commissioner") to collect, administer, and disburse the proceeds of the assessments.]

According to the provisions of La. R.S. 3:1613, the Commissioner, at the request of the Boll Weevil Commission, is authorized to call a referendum on the question of whether an assessment should be levied. La. R.S. 3:1613 states, in pertinent part:

A. At the request of the commission, the commissioner shall call a referendum among affected cotton producers on the question of whether an assessment shall be levied upon cotton producers in the eradication

¹ This foundation is a cotton-producer-run, nonprofit foundation which governs and oversees the boll weevil eradication program in Texas, which was established in 1993 by the Texas Legislature.

² The Boll Weevil Eradication Commission is created within the Department Agriculture and Forestry and consists of eight members. La. R.S. 3:1604.

zone or zones to offset, in whole or in part, the cost of boll weevil suppression or eradication programs, including but not limited to all costs of any regulatory and enforcement activities of the department, authorized by this Part or any other law of the state. Such a referendum may be held on a regional basis.

B. The assessment levied under this Part shall be based on the number of acres of cotton planted in the eradication area. The amount of the assessment, the period of the time for which it shall be levied, how it shall be levied, and when it shall be paid shall be established by the commission by rules and regulations adopted in accordance with the Administrative Procedure Act [R.S. 49:950 *et seq.*].

C. All persons who were affected cotton producers in the calendar year prior to the referendum shall be entitled to vote in any such referendum and the commission shall determine any questions of eligibility.

D. Each cotton producer shall be provided a ballot upon which to cast a vote for or against the boll weevil suppression or eradication program.

E. If two-thirds of those voting vote in favor of the assessment then the assessment shall be collected by the commissioner on behalf of the commission from the cotton producers.

La. R.S. 3:1604.1(B)(4) authorizes the Commissioner to collect, administer, and disburse the proceeds of the assessments.

The Commissioner also has the authority to enter into cooperative endeavors and agreements pursuant to La. R.S. 3:1605, which provides in pertinent part:

The commissioner, through the commission, is authorized to carry out programs to suppress or eradicate the boll weevil in the state. The commissioner is authorized to cooperate with any agency of the federal government, any state, any other agency in the state or in the region, or person engaged in growing, processing, marketing, handling cotton, or any group of such persons in programs to effectuate the purposes of this Part and may enter into written agreements, including cooperative endeavor agreements, to effectuate such purposes. Such agreements may provide for cost sharing, and for division of duties and responsibilities under this Part and may include other provisions generally to effectuate the purposes of this Part.

1. May seventy-five cents per acre of the current Louisiana Boll Weevil Eradication Assessment be transferred to the National Cotton Council to

be used to fund national boll weevil eradication efforts in the state of Texas?

Based on the facts provided to us, the National Cotton Council falls within the category of any group of "person[s] growing, processing, marketing, and/or handling cotton" that the Commissioner is authorized to cooperate with to suppress or eradicate the boll weevil, pursuant to the provisions of La. R.S. 3:1605.

The Commissioner has the authority under the provisions of La. R.S. 3:1605 to enter into a cooperative endeavor, or agreement, with the National Cotton Council in order to "effectuate the purposes" of the Boll Weevil Eradication Law. La. R.S. 3:1602 sets forth the purpose of the Boll Weevil Eradication Law and it provides, in pertinent part, "[t]he purpose of this Part is to secure the suppression or eradication of the boll weevil and to cooperate with state and federal agencies in the administration of cost-sharing programs for the suppression or eradication of the boll weevil."

Further, La. R.S. 3:1613 states that an assessment can only be levied upon cotton producers for the cost of boll weevil suppression or eradication programs if the cotton producers vote on the following: the amount of the assessment, the period of time for which it shall be levied, how it shall be levied, and when it shall be paid.

According to information provided to our office, the current assessment referendum, which was approved in 2003, was for "The Boll Weevil Eradication Maintenance Program" in the state of Louisiana. The referendum stated that "the per acre assessment on cotton acreage paid by cotton producers to fund the program will not exceed \$6 per acre per year...."³ The referendum does not specifically outline details of "The Boll Weevil Eradication Maintenance Program." Nonetheless, La. R.S. 3:1605 authorizes the Commissioner, through the Commission, to carry out programs to suppress or eradicate the boll weevil and La. R.S. 3:1604 authorizes the Commissioner to collect, administer, and disburse the proceeds of the assessment levied.

Pursuant to that authority, the Louisiana Department of Agriculture and Forestry describes the Boll Weevil Eradication Program, stating that the Program uses two techniques for boll weevil eradication – pheromone traps for detection and chemical treatments for control.⁴ The Program utilizes autumn diapause applications, and in subsequent years, traps are placed around cotton fields in the spring as cotton is planted. Traps are monitored and pesticide applications are made to all infested areas. The current opinion request also states that the current assessment is being utilized for maintenance programs in Louisiana and to fund an emergency fund to combat a boll weevil outbreak.

³ September 2003 referendum (on file at the Office of the Attorney General); see also LAC 7:XV.321(A).

⁴ <http://www.ldaf.louisiana.gov/portal/LDAF/FAQs/tabid/189/Default.aspx>. Site last visited on 9/4/2013.

Thus, the determination of whether the Commissioner can enter into a cooperative agreement authorizing the transfer seventy-five cents per acre of the current assessment to the National Cotton Council in order to fund a plan to eradicate the boll weevil along the Texas-Mexico border depends on the meeting of two requirements: (1) the Commissioner must determine whether the proposed national boll weevil eradication plan, and Louisiana's participation in same, furthers the suppression or eradication of the boll weevil in Louisiana;⁵ and (2) if the seventy-five cents per acre is set aside from the current assessment, the Commissioner must also determine that Louisiana's participation in the proposed national boll weevil eradication plan falls within the purposes for which the September 2003 referendum was voted upon.

If either of these conditions is not met, the Commissioner would not be authorized to transfer funds from the current assessment to the National Cotton Council. Further, as outlined above, although the September 2003 referendum provides that the assessment was for "The Boll Weevil Eradication Maintenance Program," neither the Boll Weevil Eradication Law nor the referendum defines the scope of that Program. Therefore, because the Commissioner, through the Commission, is authorized to administer and enforce this law, and the programs developed pursuant thereto, the Commissioner has the discretion to determine whether the two conditions outlined above are met.

2. Does the current law, which provides for a referendum to establish assessments on cotton producers in this state, authorize a referendum to levy an additional assessment on cotton producers that would be sent to the National Cotton Council to help fund national boll weevil eradication efforts in the state of Texas?

As stated earlier in this opinion, according to the provisions of La. R.S. 3:1613, an assessment can be levied upon cotton producers for the cost of boll weevil suppression or eradication programs, as long as the amount of the assessment, the period of the time for which it shall be levied, how it shall be levied, and when it shall be paid, is established by the commission and the cotton producers vote in favor of the assessment. Therefore, we are of the opinion that the current law does authorize a referendum to levy an additional assessment on cotton producers that would be sent to the National Cotton Council to help fund national boll weevil eradication efforts in the state of Texas.

3. May the legislature enact a law providing for the money from a special assessment, if approved by referendum, to go to the National Cotton Council, for such purposes, without being in violation of any provision of the Louisiana Constitution of 1974, in particular, Article VII, Section 14?

⁵ See La. R.S. 3:1604(B)(2) ("[The commissioner shall have the following powers]...[t]o enter into any cooperative endeavor or cooperative agreement with any federal, state, or local agency as he deems necessary to further the purposes of this Part.") (Emphasis added).

It is not necessary to issue an opinion on your inquiry as to whether the legislature may enact a new law authorizing funds from special assessment to be transferred to the National Cotton Council due to the fact that the current law allows a special authorization.

It should be noted there are constitutional restrictions applicable to the transfer of any Louisiana Boll Weevil Eradication Assessment funds to the National Cotton Council.⁶ Louisiana Constitution Article VII, § 14 generally authorizes the state and its political subdivisions to enter into cooperative endeavor agreements. Louisiana Constitution Article VII, §14 provides, in pertinent part, the following:

(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

* * * *

(C) Cooperative Endeavors. For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

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. 08-0071.⁷ Whether public funds or property are "gratuitously alienated" ultimately depends on the facts and circumstances surrounding the proposed expenditure.

Whether a transfer of funds to the National Cotton Council would be considered a non-gratuitous alienation of public funds would be a factual determination. As a general rule, it is the policy of the Office of the Attorney General not to make determinations on factual matters.⁸ Therefore, based on the limited facts provided to us at this time we are unable to provide you with an opinion on whether funds from a special assessment can

⁶ The incorrect Constitutional Article was referenced in the opinion request.

⁷ See also *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So.2d 11, 20 (the "Cabe/a's" case) (the Louisiana Supreme Court concluded that La.Const. art. VII, § 14(A) "is violated when public funds or property are gratuitously alienated.").

⁸ La. Atty. Gen. Op. Nos. 12-0185, 07-0111, 09-0141A, 08-0334.

be transferred to the National Cotton Council, to be used to fund national boll weevil eradication efforts in the state of Texas, without being in violation of La.Const. art. VII, § 14.

In conclusion, it is the opinion of this office that, the Commissioner of Agriculture and Forestry may only transfer seventy-five cents per acre of the current Louisiana Boll Weevil Eradication Assessment to the National Cotton Council to be used to fund national boll weevil eradication efforts in the state of Texas if he determines that (1) the proposed national boll weevil eradication plan furthers the suppression or eradication purposes of Louisiana's Boll Weevil Eradication Law; and (2) Louisiana's participation in the proposed national plan to eradicate boll weevils at the Texas-Mexico border falls within the purposes for which the September 2003 referendum was voted upon. It is further our opinion that the current law also authorizes a referendum for an additional assessment to authorize the disbursement of funds to the National Cotton Council to be used to fund national boll weevil eradication efforts in the state of Texas.

We hope that this opinion adequately addresses the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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JDC:MSC:jv