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State of Louisiana
DEPARTMENT OF JUSTICE
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August 21, 2013
OPINION 13-0128

The Hon. George Dupuis
Town of Erath
115 West Edwards
Erath, LA 70533

90-A-1 Public Funds & Contracts

La. Const, art. VII, Sec. 14

Town of Erath may enter into a cooperative endeavor agreement with a nonprofit organization for the purpose of providing maintenance services, provided that the Town has a reasonable expectation to receive at least equivalent value.

Dear Mayor Dupuis:

You have requested an Attorney General's opinion as to whether the Town of Erath ("Town") may provide certain maintenance services to a community building constructed by a nonprofit corporation on Town's property for no charge.

Specifically, your request states that the Town and the Erath Community Building Association ("ECBA"), a nonprofit corporation, entered into a 99 year lease whereby ECBA would construct a community center on the Town's property for the benefit of the Town's citizens. Occasionally, ECBA requests limited maintenance services from the Town, such as washing the building prior to an event sponsored by the nonprofit corporation, utilizing Town personnel and equipment for these requested services.

Your request makes reference to the following facts: 1) the Town and other nonprofit corporations hold public functions at the building; 2) the Town has a key to the building; 3) the Town has used the building for evacuations from significant storms; 4) the Town receives from ECBA annual lease payments in the amount of \$10.00; and 5) the Town will become the owner of the building at the end of the term of the lease.

The question of whether the Town may use public funds (personnel and equipment) to wash the community building owned by ECBA must be examined in light of La. Const. art. VII, Sec. 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 ...

(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.

As quoted above, Paragraph (A) generally prohibits the loan, pledge, or donation of public property. Paragraph (C) of Section 14 authorizes the state and its political subdivisions to engage in cooperative endeavors for a public purpose with other governmental agencies, public or private associations and corporations and/or individuals. However, Paragraph (C) merely supplements the prohibition against donations contained in Paragraph (A). It does not create an exemption or exception from the general constitutional norm. In other words, the cooperative endeavor must meet the general standards for the non-gratuitous alienation of public funds established in Paragraph (A).¹

La. Const. art. VII, Sec. 14(A) is violated when public funds or property are gratuitously alienated. *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 “Cabela’s” case). In order to determine whether an expenditure of public funds violates La. Const. art. VII, Sec. 14(A), our office uses the following three prong test: to spend public funds, 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.²

As an initial matter, we note that the Lease Agreement between the Town and ECBA specifically provides that the lessee, ECBA, at its own expense, is obligated to maintain the premises.³ Even though under the terms of the lease the Town does not have a contractual obligation to provide maintenance services, pursuant to La. Const. art. VII, Sec. 14(C), the Town is permitted to enter into a cooperative endeavor agreement with ECBA for the purpose of providing certain maintenance services.

Ensuring that the Town’s citizens have adequate access to a community building to hold public events and provide emergency shelter certainly serves a public purpose; thus, it appears that the first part of the test is satisfied because the expenditure would be for a public purpose for which the Town has a legal authority to engage in. Further, the expenditure does not appear to be gratuitous because in exchange of providing certain maintenance services, the Town would be entitled to use ECBA’s immovable in benefit of the community. Finally, the expenditure will be permitted provided that the Town has a reasonable expectation of receiving at least equivalent value in the exchange.

¹ La. Atty. Gen. Op. No. 08-0300.

² La. Atty. Gen. Op. No. 12-0180.

³ Black’s Law Dictionary, in pertinent part, defines “maintenance” as “[t]he care and work put into property to keep it operating and productive; general repair and upkeep.” Black’s Law Dictionary (7th ed. 1999) p. 965.

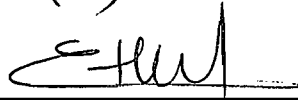
It is therefore the opinion of this office that the Town of Erath may enter into a cooperative endeavor agreement with ECBA for the purpose of providing maintenance services to the ECBA's building, in exchange for providing the Town with access to the building for community purposes, provided that the Town has a reasonable expectation to receive at least equivalent value.

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:



Ethel Solache Graham
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JDC: ESG