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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0133

90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 15:708; La. Const. art. VII, §14

The Honorable Roland J. Boudreaux
Mayor, City of Rayne
P.O. Box 69
Rayne, Louisiana 70578

The City of Rayne may use prisoners to perform manual labor on property owned by the parish school board or parochial schools, provided that the property qualifies under the provisions of La. R.S. 15:708, and the prisoners work on a voluntary basis. However, the City may not allow churches and other non-profit organizations to use City facilities free of charge.

Dear Mayor Boudreaux:

You have requested an opinion of this office on two matters. First, you ask whether the City of Rayne (the "City") may use prisoners to perform manual labor on property owned by the parish school board or parochial schools. Second, you ask whether churches and other non-profit organizations may use City facilities free of charge.

As to your first question, La. R.S. 15:708(A)(1) provides as follows:

Whenever a prisoner sentenced to a parish prison of any parish of the state, by any court of competent jurisdiction, or a prisoner in a parish prison awaiting transfer to a state correctional facility shall be willing of his own free will to perform manual labor upon any of the public roads, levees, streets, or public buildings, works, or improvements inside or outside of the prison, or in or upon the buildings, other improvements, or property of any organization which has qualified for tax-exempt status under 26 USC 501(c)(3), 501(c)(19), or 501(c)(23), the sheriff may set the prisoner to work. Work authorized pursuant to this Paragraph also specifically includes participation in litter abatement or collection programs to police and remove litter on public grounds, rights-of-way, lakes, streams, the shores of lakes and streams, public roads, levees, or streets.

Property owned by the school board is a public building, work, or improvement. Property owned by a parochial school might also qualify under La. R.S. 15:708(A)(1), since it could be owned by organization which has qualified for tax-exempt status under 26 USC 501(c)(3).

Thus, it is the opinion of this office that the City may use prisoners to perform manual labor on property owned by the parish school board or parochial schools, provided that the City meets all of the provisions of La. R.S. 15:708.

Next, you ask whether churches and other non-profit organizations may use City facilities free of charge. Significantly, La. Const. art. VII, §14(A) provides that "[e]xcept 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..."

The Louisiana Supreme Court has determined that this constitutional provision "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). Our office has interpreted the *Cabela's* case to say that in order for an expenditure or transfer of public funds to be permissible under La. Const. art. VII, §14(A), 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.¹

Use of city facilities constitutes something of value, and your request asks whether the City may permit facility use by churches and other non-profit organizations without charge. Presumably, the City would receive nothing in return. Thus, the City fails the second prong of the *Cabela's* test, because the expenditures or transfers, taken as a whole, appear to be gratuitous. As such, the expenditure or transfer would violate La. Const. art. VII, §14(A).

As an alternative, we recommend that the City adopt a policy that sets forth a uniform fee schedule for any organization wishing to rent the facilities and expresses a commitment not to treat religious organizations any differently than any secular organization.² Further, we recommend that the policy allow use of the facilities on a first come, first serve basis so as not to be biased.³

Considering the forgoing, it is the opinion of this office that the City may use prisoners to perform manual labor on property owned by the parish school board or parochial schools, provided that the City meets all of the provisions of La. R.S. 15:708. However,

¹ See La. Atty. Gen. Op. No. 08-0071.

² See La. Atty. Gen. Op. No. 02-0363.

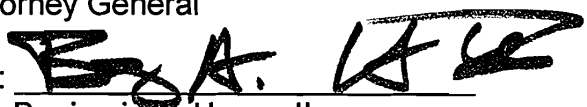
³ See La. Atty. Gen. Op. No. 03-0218.

the City may not allow churches and other non-profit organizations to use City facilities free of charge.

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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