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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE
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OPINION 13-0138

Mr. Daniel J. Walker
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90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, § 14; La. R.S. 33:2957; La. R.S. 46:1073.1

Under La. Const. art. VII, § 14(A), Hospital Service District No. 1 of the Parish of Terrebonne, may not purchase, either directly or through mutual funds, stocks with public funds. To the extent La. R.S. 46:1073.1 purports to allow public funds to be invested in stocks, the statute is unconstitutional.

Dear Mr. Walker:

Your request for an Attorney General's Opinion on behalf of the Hospital Service District No. 1 of the Parish of Terrebonne, State of Louisiana (the "District") has been assigned to me for research and reply. You ask whether, assuming the District meets the "prudent-man rule" provisions of La. R.S. 11:263 and other restrictions applicable to the investment of funds of the Louisiana State Employees' Retirement System, the District may purchase stock, directly or through mutual funds that invest in stocks as a permitted investment, with its general fund monies that are not a part of a pension plan or retirement system.

By Act 264 of the Regular Session of 2013, the Legislature enacted La. R.S. 33:2957 and La. R.S. 46:1073.1. Under La. R.S. 33:2957, "[a]ny hospital service district may invest its funds as provided by R.S. 46:1073.1, except as provided therein." Further, La. 46:1073.1 provides as follows:

A. Notwithstanding any provision of law to the contrary, a hospital service district may invest its funds as provided by law for investment of funds of the Louisiana State Employees Retirement System, including but not limited to R.S. 11:263; however, any such investment may be made only in compliance with rules and regulations established by the hospital service district commission and in compliance with the provisions of R.S. 11:263 and any other law which provides for investments in which funds of the Louisiana State Employees Retirement System may be invested.

B. This Section shall be applicable to a hospital service district as defined in R.S. 46:1072, other than a hospital owned by the state.

Significantly, under La. R.S. 11:263(D), retirement systems may invest a certain percentage of their portfolios in equities. The question thus presented, when public funds are involved, is whether La. R.S. 46:1073.1 is in contravention of La. Const. art. VII, § 14(A). That subsection provides, in pertinent part, that "... [n]either the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private purpose."

As political subdivisions,¹ hospital service districts are subject to La. Const. art. VII, § 14(A).

In 1962, the Louisiana Supreme Court construed Article 4, Section 12 of the 1921 Constitution to prohibit the state or its political subdivisions from engaging in private enterprise by purchasing an insurance policy from a mutual insurance company.² Article 4, Section 12 of the 1921 Constitution, the predecessor to Article VII, Section 14 of the 1974 Constitution, did not refer to insurance. The pertinent section stated that "... nor shall the State, nor any political corporation, purchase or subscribe to the capital stock of any corporation or association whatever, or for any private enterprise".

The court found that a "mutual insurance company" is a cooperative enterprise and the purchase of a fire and extended coverage policy constituted a subscription to capital by the Housing Authority which contravened the Constitution.³

More recently, in 1982, the First Circuit Court of Appeals determined that La. Const. art. VII, § 14(A) applies to public funds but not private funds, such as those belonging to the members of certain retirement systems.⁴

As your request qualifies that the funds at issue are general fund monies and are not part of a pension plan or retirement system, it is clear that these are public funds rather than private.

Considering the forgoing constitutional and jurisprudential authority, it is the opinion of this office that, under La. Const. art. VII, § 14(A), the District may not purchase, either directly or through mutual funds, stocks with public funds. To the extent La. R.S. 46:1073.1 purports to allow public funds to be invested in stocks, it is unconstitutional.

¹ La. R.S. 46:1064(A).

² *Public Housing Admin. v. Housing Auth. of Bogalusa*, 137 So.2d 315 (La.1961).

³ *Id.*

⁴ *Louisiana State Employees' Retirement System v. State, Through Dept. of Justice*, 423 So.2d 73 (La.App. 1 Cir. 11/16/1982), writ denied, 427 So.2d 1206 (La. 1983).

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/BAH II