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DEPARTMENT OF JUSTICE
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OPINION 13-0139

Hon. Glenn L. Brasseaux
Mayor, City of Carencro
P.O. Drawer 10
210 East St. Peter Street
Carencro, LA 70520

90-A-2 PUBLIC FUNDS – Loan, Pledge, or Grants

La. Const. Art. VII, Sec. 14
La. R.S. 3:21318:1; 29:721, *et seq.*; 33:4811, *et seq.*

Pursuant to the restrictions of La. Const. Art. VII, Sec. 14(A), public entities cannot inter privately-owned animals on private property at no cost to the owner. In the event of a declaration of emergency, such interments may be authorized, as required by the factual circumstances of the particular emergency.

Dear Mayor Brasseaux:

You have requested an opinion from this office regarding the "legality of allowing public forces to bury privately-owned animals on private property." Your opinion request seeks this office's opinion on whether such animals can be interred at the public entity's cost as a matter of course, as well as, if not under normal circumstances, then when such animals pose "an imminent threat of disease or other similar health hazard."

Any review of the lawful nature of the use of public things to benefit private property must begin with La. Const. Art. VII, Sec. 14. Specifically, La. Const. Art. VII, Sec. 14(A), reads:

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. Except as otherwise provided in this Section, neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

In a basic sense, the Louisiana courts have interpreted this constitutional provision as prohibiting the gratuitous use of public funds to benefit private interests. *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 (the "Cabela's" case). This office has applied this interpretation consistently to mean that:

In light of the *Cabela's* case, it is the opinion of this office that in order for an expenditure or transfer of public funds or property to be permissible under Article VII, § 14(A), the public entity must have the legal authority to make the expenditure or transfer 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. The *Cabela's* standard places a strong emphasis on the reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds.¹

In order to use "public forces" to inter privately-owned animals on private property, some expenditure of public funds is necessary. With the threshold question of whether public funds must be expended answered in the positive, we must examine the public entity's legal authority to make such expenditures. We have reviewed the Louisiana Revised Statutes and can identify no statutory authority for authorizing a public entity to expend funds or use its resources to inter the remains of dead privately-owned animals on private property. For this reason, it is not necessary for us to examine the remaining inquiries under the *Cabela's* test outlined above. It is thus the opinion of this office that public entities cannot inter privately-owned animals on private property at no cost to the owner.²

In the past, we have opined on the urgent need for governmental action in emergency situations and the interaction of that need with general constitutional guarantees and protections.³ There is little doubt that public entities have the legal authority to respond to a situation in which the public health or safety is threatened.⁴ However, what sort of event constitutes a threat to the public's health or safety is entirely factual and one that must be determined by the public entity on a case-by-case basis.⁵ In situations in which a public entity determines that the risks presented by exposed dead animals presents such a threat to the public's health or safety as to mandate a governmental response (*i.e.*, interment of the remains at the government's cost), we are of the opinion that the government's general police powers constitute an authorization to so expend the necessary funds.⁶ However, whether the particular public entity meets the additional

¹ La. Atty. Gen. Op. No. 13-0117.

² In this regard, we are cognizant of La. R.S. 33:4811, *et seq.*, which authorizes the use of the general municipal police power to remove the "dead" from certain areas for public health and safety reasons. However, because this law contemplates the removal of such dead to a cemetery, we are of the opinion that these provisions apply only to the human dead. The reason for this is that La. R.S. 8:1(7) defines the term "cemetery" as "a place used or intended to be used for the interment of the human dead."

³ See La. Atty. Gen. Op. No. 05-0373 (noting that due process protections may be provided on a post-hoc basis in emergency situations).

⁴ See *e.g.*, La. R.S. 29:721, *et seq.* (providing for the declaration of and response to emergencies by State, parish, and municipal officials).

⁵ Indeed, La. R.S. 29:724, La. R.S. 29:727, and La. R.S. 29:737 place determinations of when to declare emergencies within the province of the governor, parish president, and municipal chief executive (respectively), effectively making such determinations factual ones that are outside of the province of this opinion.

⁶ With this reality noted, in cases where there is no emergency, but an animal dies from disease, Louisiana law explicitly places the responsibility of burying or cremating the remains of that animal on the

requirements of the *Cabela's* inquiry noted above is a factual matter that must be determined by the public entity.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

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By: 

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JDC/RMS/tp

private owner of the animal and does not make such a job a public obligation. La. R.S. 3:2131. One exception to this caveat is that,

[t]he provisions of this Part shall not apply to animal carcasses within the limits of a city or town which is provided with an incinerator or in which a rendering plant is operated, provided such incinerator or rendering plant is equipped with facilities to properly transport or handle carcasses in a manner to prevent dissemination of infection.

Id.