



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

JAN 16 2014
OPINION 13-0148

Hon. Roland J. Boudreaux
Mayor, City of Rayne
P.O. Box 69
Rayne, LA 70578

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Const. art. VII, Sec. 14

The City of Rayne is prohibited from using public funds to pay for the services of a crossing guard at a local church.

Dear Mayor Boudreaux:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the City of Rayne ("City"), you have asked for our opinion as to whether the City may expend public funds in order to pay for a crossing guard for the catechism program at a local church.

All questions concerning the use of public funds must be examined in light of La. Const. art. VII, § 14. La. Const. art. VII, § 14(A), 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 ..."

In *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.*, 938 So.2d 11, 2005-2298 (La. 9/6/06) (the "Cabela's" case), the Louisiana Supreme Court abandoned its analysis in *City of Port Allen v. Louisiana Mun. Risk Mgmt. Agency, Inc.*, 439 So.2d 399 (La. 1983), and articulated a new standard of review governing La. Const. art. VII, § 14(A), stating that La. Const. art. VII, § 14(A) "is violated when public funds or property are gratuitously alienated." *Cabela's*, 938 So.2d at 20.

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 to be permissible under Art. VII, Sec. 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 undertake; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) 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.

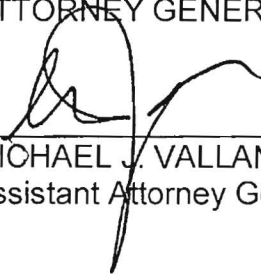
In our view, the proposed expenditure by the City would likely be considered merely gratuitous. You have not provided our office with any information that would indicate that the City has a duty or obligation to provide a crossing guard for a catechism program at a local church. Further, our office has previously recognized that no Louisiana statute expressly requires any governmental entity, including police departments or school boards, to provide crossing guards for public schools. See Attorney General Opinion No. 10-0221. Nevertheless, since school boards have a duty to provide reasonable supervision over its students, we also recognized that such duty may include providing crossing guards for schools if the age of the children and the attendant circumstances warrant it. *Id.* Here, it appears that any duty to provide a crossing guard for a catechism program at a local church would lie with the church, not the City. Thus, the proposed expenditure does not comport with the governmental purpose for which the City has legal authority to undertake. As a result, when considering the proposed expenditure under the lens of La. Const. art. VII, Sec. 14, it is the opinion of this office that the proposed expenditure would be merely gratuitous and would amount to a prohibited donation of public funds.

We trust this adequately responds to your request. If you should have any questions about the response contained herein, please feel free to contact our office.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



MICHAEL J. VALLAN
Assistant Attorney General

JDC/MJV/chb