



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

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OPINION 13-0159

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII. Sec. 14
La. R.S. 33:9102

Mr. Randy J. Maxwell
President, Board of Directors
Concordia Communications District
Post Office Box 1615
Ferriday, Louisiana 71334

Subject to any limitations in tax or service charge propositions, the Concordia Parish Communications District may spend public funds for the purchase of communications equipment which will enable law enforcement and public safety agencies to decrease response time and improve effectiveness when responding to emergency calls. However, the District must be able to demonstrate that the communications equipment purchased and issued to local law enforcement agencies would result in a benefit to the District in an amount equivalent to the funds the District spends on the equipment.

Dear Mr. Maxwell:

On behalf of the Concordia Communications District ("District"), you have requested an opinion of this office regarding whether the District may enter into a cooperative endeavor agreement with the Concordia Parish Sheriff's Office and the Town of Vidalia for the purpose of purchasing communications and safety equipment (specifically bullet proof vests) to be issued to these local law enforcement agencies for their use in responding to emergency situations within Concordia Parish.

Under the proposed agreement, the District will undertake the following obligations:

1. The District shall purchase radio equipment required to allow agencies participating in this agreement to communicate with each other effectively for the purpose of response to emergencies within Concordia Parish and will allow participating agencies to use such radio equipment as needed for emergency response and law enforcement.
2. The District will maintain ownership of all equipment purchased under this agreement and will provide said equipment to the other participating agencies for their use during the term of this agreement.
3. The District will maintain an accurate inventory of all equipment purchased under this agreement and will issue equipment to participating agencies on a written receipt basis to show type and serial number of equipment issued to the participating agency.
4. The District will be responsible for repair costs for normal wear and tear concerning damaged or malfunctioning equipment provided to the agencies.

In return for doing the above, the Concordia Parish Sheriff's Office and the Town of Vidalia agree to:

1. Use the radio equipment to enhance their abilities to respond to and control emergency situations.
2. Use and maintain radio equipment in a prudent manner that will prevent abuse of the equipment and prolong the functional life of the equipment.
3. Return all equipment received from the District to the District at the termination of the agreement.

It is our understanding that at least a portion of the funds which the District would use to participate in the proposed agreement are proceeds of a tax which was passed by the voters based on the following tax proposition:

Shall the Concordia Parish Communications District (the "District") be authorized to levy an emergency telephone service charge not to exceed five per cent of the highest tariff rate for local telephone service supplied within the District, *for the purpose of establishing, maintaining and operating an 911 emergency telephone system*; provided, that the service charge shall be imposed only upon the amount of the tariff rate for exchange access lines or their equivalent, that charges for telephone equipment and long distance service shall be exempt from the five percent service charge imposed herein, and that exchange access facilities in excess of one hundred per person per location shall be exempt from the five percent service charge imposes therein; said five per cent service charge to be levied from January 1, 1992, until such time as the service charge is reduced or suspended by the governing authority of the District, all as provided by Chapter 31, Title 33 of the Louisiana Revised Statutes of 1950, as amended, *with the revenues derived from such emergency telephone service charge to be subject to funding into bonds or other obligations as time to time permitted by law?*

(Emphasis added). Louisiana law provides that the proceeds of any special tax shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied. La. R.S. 39:704. Additionally, Louisiana jurisprudence provides that special tax authorizations must be strictly construed. *Police Jury of the Parish of Acadia v. All Taxpayers, et al.*, 95-145 (La. App. 3rd Cir. 3/29/95), 653 So.2d 94, *rehearing denied*; *Hemler v. Richland Parish School Board*, 76 So. 585 (La. 1917); *Watkins v. Ouachita Parish School Board*, 136 So. 591 (La. 1931); *Hodnett v. Monroe City School Board*, 277 So.2d 598 (La. App. 2nd Cir. 1972) and *Brock v. St. James Parish Council*, 407 So.2d 1265 (La. App. 4th Cir. 1981), *writ denied*. It has consistently been the opinion of this office that sale and use tax proceeds must be used solely for the purposes approved by the voters. La. Atty. Gen. Op. Nos. 12-0089, 09-0150.

In addition to ensuring the tax proceeds are spent strictly in accordance with the tax proposition cited above and because the proposed cooperative endeavor agreement involves the expenditure of public funds, the expenditure must also be examined in light of La. Const. art. VII, Sec. 14, which authorizes cooperative endeavor agreements but also prohibits the gratuitous expenditure of public funds.

In general terms, cooperative endeavor agreements are authorized by La. Const. art. VII, Sec. 14(C), which provides:

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.¹

Section (C) of this constitutional provision merely supplements the prohibition against gratuitous donations contained in section (A) of La. Const. art. VII, Sec. 14. It does not create an exception to or exemption from the general constitutional norm. Therefore, even though an expenditure of public funds is being done pursuant to a cooperative endeavor agreement, the expenditure still must be examined in light of La. Const. art. VII, Sec. 14(A), which provides in pertinent part as follows:

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 ...

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).

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 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. See La. Atty. Gen. Op. Nos. 13-0123, 11-0283 and 09-0251. The *Cabela's* standard places a

¹ The Local Services Law, La. R.S. 33:1321, *et seq.*, provides additional authority for this type of intergovernmental agreement. Any agreements formed under the Local Services Law must also comply with La. Const. art. VII, Sec. 14(A).

strong emphasis on the reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds.

The District was created pursuant to La. R.S. 33:9101, *et seq.* The purposes of the District are set forth in La. R.S. 33:9102(A), which provides as follows:

It has been shown to be in the public interest to shorten the time required for a citizen to request and receive emergency aid. The provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained will provide a significant contribution to law enforcement and other public service efforts by simplifying the notification of public service personnel. Furthermore, the identification of all streets, roads, highways, and dwelling places by name and number will serve to decrease the response time of law enforcement and public service personnel to emergency calls by facilitating the systematic location of such places without difficulty and ambiguity. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, quicker apprehension of criminals, and ultimately the saving of monies. Establishment of a uniform emergency number and identification of thoroughfares and dwelling places are matters of concern and interest to all citizens. It is the purpose of this Chapter to establish the number 911 as the primary emergency telephone number for use in communications districts created in parishes as herein provided and to provide for the identification of all streets, roads, highways, and dwelling places in such districts which are not otherwise designated by name and number, and *to provide for other communication enhancements which will enable law enforcement and public safety agencies to decrease response time and improve effectiveness.*

(Emphasis added). With regard to the first prong of the *Cabela's* analysis, in order for the District to expend public funds in the manner contemplated by the proposed cooperative endeavor agreement, the District must ensure that any public funds it spends comports with the purpose for which the District was created. As set forth in the statute, the primary purposes for which the District was created were to establish a three-digit emergency number system, to better identify streets, roads, highways and dwelling places by name and number, and to provide other communications enhancements which will reduce law enforcement and emergency response times. If providing radios to law enforcement and public safety agencies will decrease response time and improve effectiveness in responding to emergency calls, then such an expenditure would comport with the purposes for which the District was created.

With regard to the second and third prongs of the *Cabela's* analysis, the District must be able to effectively demonstrate that it has a reasonable expectation of receiving a demonstrable benefit or value at least equivalent to the amount expended or

transferred. Whether the transfer is gratuitous or whether the entity spending the funds has a demonstrable, objective and reasonable expectation of receiving at least equivalent value in exchange for the public funds spent is a question left to the entity involved to determine because our office is not in a position to answer such questions of fact. See La. Atty. Gen. Op. 11-0283. If the District is able to show that the procurement and transfer of the radio equipment to the law enforcement and emergency services entities will generate benefits to the District that are equivalent in value to the funds expended, then the *Cabela's* standard would be met. If not, then the transaction would be prohibited. See La. Atty. Gen. Op. 13-0117.

Your next question is whether the District may spend its funds to provide safety equipment for law enforcement officers. Without knowing specifically what safety equipment the District would like to purchase under the cooperative endeavor agreement, we cannot determine whether such expenditure is permissible, but note that the safety equipment must comport with the statutory purpose set forth for communications districts in La. R.S. 33:9102. See La. Atty. Gen. Op. No. 96-97, which determined that a communications district could not use revenues and/or personnel to answer non-emergency calls for other public entities because the enabling ordinances and revenue propositions were limited to the costs of "establishing, maintaining, and operating the 911 emergency telephone system..."; see also La. Atty. Gen. Op. No. 01-300, which concluded that the West Feliciana Parish Communications District could enter into a cooperative endeavor agreement with the West Feliciana Parish Sheriff's Office and could spend one source of District revenue to pay for the operational costs of the 911 call center because the electorate approved the measure to establish, maintain and operate an enhanced 911 emergency telephone system, and could use another revenue source for the construction of such an E911 call center because that second revenue source was more broadly dedicated to "acquiring, constructing, improving, maintaining and/or operating an enhanced 911 telephone system."

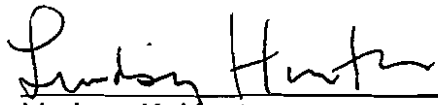
La. Atty. Gen. Op. No. 01-0300 also noted that the Local Services Law, La. R.S. 33:1324, allowing for cooperative endeavors between political subdivisions for "police, fire, and health protection" is to be liberally construed to allow such agreements to encourage "greater economy and efficiency in operation of local services" and to extend the benefits of such services. *Id.*; quoting La. R.S. 33:1323 and La. R.S. 33:1324.1. Of course, the statutes comprising the Local Services Law must be read together with the Constitution and laws relating to the District to insure that the agreement does not violate the constitutional and/or the statutory provisions limiting the District's use of its surcharge and tax revenues. It is our opinion that the District can enter into a cooperative endeavor agreement under La. Const. art. VII, Sec. 14(C) and the Local Services Law with local law enforcement agencies to contribute towards the purchase of safety equipment if the District determines that the safety equipment will reduce emergency response time or improve the effectiveness of law enforcement and public safety agencies and that such an expenditure results in an equivalent benefit to the District.

Based on the foregoing, it is the opinion of this office that subject to any limitations in tax or service charge propositions, the Concordia Parish Communications District may spend public funds for the purchase of communications equipment which will enable law enforcement and public safety agencies to decrease response time and improve effectiveness when responding to emergency calls. However, the District must be able to demonstrate that the communications equipment purchased and issued to local law enforcement agencies would result in a benefit to the District in an amount equivalent to the funds the District spends on the equipment.

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,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: 
Lindsey K. Hunter
Assistant Attorney General

JDC/LKH/chb