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ATTORNEY GENERAL

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

November 20, 2013

OPINION 13-0178

150 - TAXATION

La. Const. art. VI, § 26; La. Const. art. VI, §22; La. R.S. 18:1284

Ms. Lynette Fossum
Lafourche Parish Library
Board of Control
314 Saint Mary Street
Thibodaux, Louisiana 70301

Dear Ms. Fossum:

An extension of the duration for which the tax is authorized to be levied does not constitute a tax increase. As such, the Lafourche Parish Charter does not require that an ordinance that rededicates and extends the duration of a certain *ad valorem* tax be enacted only when voted upon favorably by at least a two-thirds (2/3) majority (6) of the voting members of the Council. Also, under the proposition in question, the rededication would only affect *ad valorem* taxes levied in 2014. Finally, it was permissible for the Lafourche Parish Council to approve an ordinance to levy the library millage at 3.80 mills in 2013 and then subsequently approve the ordinance mentioned above to hold extension and partial rededication election.

Your request for an Attorney General's Opinion regarding a certain *ad valorem* tax has been assigned to me for research and reply.

You indicate that, on August 27, 2013, by a vote of less than two-thirds majority of the voting members of the Lafourche Parish Council (the "Council"), the Council passed an ordinance providing that the following proposition be placed before voters at a November 16, 2013 election:

Shall the Parish of Lafourche, State of Louisiana (the "Parish") partially rededicate and extend the special tax of 3.80 mills (the "Tax") on all property subject to taxation within the Parish (an estimated \$3,451,000.00 reasonably estimated at this time to be collected from the levy of the Tax for an entire year) for acquiring, constructing, improving, maintaining and/or operating the Lafourche Parish Public Library and its branches, including automation and other equipment, library books and materials and furnishings therefor, as previously authorized by voters on October 15, 2005, for an additional period of 30 years, commencing on January 1, 2014, with 1.0 mills of such Tax to be rededicated to the acquisition, construction, operation and maintenance of a new Parish jail; with the proceeds thereof subject to being funded into bonds and with the remaining 2.80 mills to continue to be dedicated to the library (which will also continue to benefit from an additional 2.50 mills currently dedicated thereto) as previously authorized?

First, you ask whether the ordinance needed to be approved by a vote of not less than two-thirds majority of the voting members of the Council. Article V, Section 2(G) of the

Lafourche Parish Home Rule Charter (the "Charter"), in pertinent part, provides that "[a]n ordinance to increase a tax, service charge, occupational license fee, or special fee shall only be enacted only when voted upon favorably by at least a two-thirds (2/3) majority (6) of the voting members of the Council." Thus, the ultimate question is whether an extension of the duration for which the tax is authorized to be levied constitutes a tax increase. Significantly, we note that the Charter is silent on the matter.

Under La. Const. art. VI, §26(B), the governing authority of a parish may levy annually an *ad valorem* tax beyond the four mills generally allowed for general purposes. Further, La. Const. art. VI, §32 provides that "[f]or the purpose of acquiring, constructing, improving, maintaining, or operating any work of public improvement, a political subdivision may levy special taxes when authorized by a majority of the electors in the political subdivision who vote thereon in an election held for that purpose."

Moreover, La. Const. art. VI, §22 provides the following:

When an election is required in a political subdivision under the provisions of this constitution which require submission to the electors of a proposition or question, the election shall be called, conducted, and the returns thereof canvassed, in accordance with the procedures established by the law then in effect pertaining to elections for incurring bonded indebtedness and special taxes relative to local finance, or as may be otherwise provided by law.

The purpose of La. R.S. 18:1281 *et seq.* is to implement La. Const. art. VI, §22 by establishing a uniform procedure for the conduct of elections to authorize the issuance of bonds, the assumption of indebtedness, and the imposition or increase of taxes by political subdivisions. Pertinently, La. R.S. 18:1284(C) provides as follows:

If the purpose of the election is to authorize the levy or increase of a special tax, the resolution and the proposition submitted to the voters shall state the rate, object, and purpose for which the tax is to be levied or increased; the estimated amount reasonably expected to be collected from the levy or increase of the tax for one entire year at the time it is proposed; and, if it is to be limited as to duration, the number of years it is to run. *If the purpose of the election is to authorize an increase of a tax, the resolution and the proposition shall also state the rate increase.* The contents of any proposition or resolution relative to the issuance of general obligation bonds shall be as provided in Subsection B of this Section.

[Emphasis added].

As you can see, under La. R.S. 18:1284(C), a tax increase contemplates a rate increase but not an extension of the duration of the tax. Therefore, considering the forgoing statutory authority, it is the opinion of this office that an extension of the

duration for which the tax is authorized to be levied does not constitute a tax increase. As such, the Charter does not require that the ordinance in question be enacted only when voted upon favorably by at least a two-thirds (2/3) majority (6) of the voting members of the Council.

Next, you also ask whether the potential rededication would affect *ad valorem* taxes levied in 2013 and collected in 2014.

The short answer to that question is no. The proposition clearly provides that the rededication and extension is to commence on January 1, 2014. Therefore, it is the opinion of this office that, under the proposition in question, the rededication would only affect *ad valorem* taxes levied in 2014.

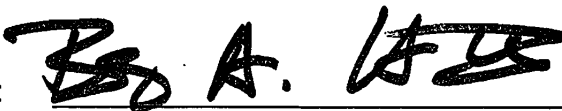
Finally, you ask whether it was legal for the Council to approve an ordinance to levy the library millage at 3.80 mills in 2013 and then subsequently approve the ordinance mentioned above to hold extension and partial rededication election.

You did not cite, nor could we find any legal authority prohibiting the Council from doing so. In fact, the two ordinances do not even relate to taxes to be levied in the same year. Thus, it is the opinion of this office that it was permissible for the Council to approve an ordinance to levy the library millage at 3.80 mills in 2013 and then subsequently approve the ordinance mentioned above to hold extension and partial rededication election.

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