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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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BATON ROUGE
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OPINION 13-0180

90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 46:105, 1052 & 1072

Mr. Bernard F. Duhon
Counsel to Vermilion Parish Hospital
Service District No. 2
Post Office Box 1169
Abbeville, Louisiana 70511-1169

The Vermilion Parish Hospital Service District No. 2 is not authorized to participate in a cooperative endeavor agreement which creates the Economic Development Committee in Vermilion Parish.

Dear Mr. Duhon:

As attorney for the Vermilion Parish Hospital Service District No. 2 ("District"), you have requested an opinion of this office as to whether the District may participate in a cooperative endeavor agreement which forms the Economic Development Committee ("EDC") in Vermilion Parish.

A copy of the proposed agreement which would create the EDC was enclosed with your request. According to the proposed agreement, the EDC would consist of several public entities in Vermilion Parish and its purpose would be "to promote and encourage economic development in Vermilion Parish." The agreement states that the District will contribute \$6,275 per year for the next three years and that "said funds shall be used for the purpose of promoting economic development within Vermilion Parish, including but not limited to the hiring of a director, support staff, office expenses, and other expenditures consistent with the purposes" set forth in the agreement. As consideration for the public funds the District will contribute under the Agreement, the District will be given one seat on the fifteen person EDC.

Because the proposed cooperative endeavor agreement involves the expenditure of public funds, it must be examined in light of La. Const. art. VII, Sec. 14, which both authorizes cooperative endeavor agreements and 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.

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. 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.

With regard to the first prong of the *Cabela's* analysis described above, it is our opinion that the District does not have the legal authority to participate in the proposed agreement because the proposed expenditure is not in line with the purposes for which the District was created.

Hospital service districts are political subdivisions of the state and are governed by La. R.S. 46:1051, *et seq.* They are generally created for the "purpose of purchasing and acquiring lands and purchasing, acquiring, constructing and maintaining hospitals, nursing homes, physicians and dentists offices, laboratories, and other physical facilities necessary to carry out the purposes of this Chapter." La. R.S. 46:1064(A). The objects and purposes of hospital service districts are set forth in La. R.S. 46:1052 and include:

- (1) To own and operate hospitals for the care of persons suffering from illnesses or disabilities which require that patients receive hospital care.
- (2) To administer other activities related to rendering care to the sick and injured or in the promotion of health which may be justified by the facilities, personnel, funds and other requirements available.
- (3) To promote and conduct scientific research and training related to the care of the sick and injured insofar as such research and training can be conducted in connection with the hospital.
- (4) To participate so far as circumstances may warrant in any activity designated and conducted to promote the general health of the community.
- (5) To cooperate with other public and private institutions and agencies engaged in providing hospital and other health services to residents of the district.

As authority for entering into a cooperative endeavor agreement with a private developer, your opinion request makes reference to La. R.S. 46:1077, which permits a hospital service district to enter into joint ventures. However, when discussing the types of contracts or joint ventures a hospital service district may enter into, La. R.S. 46:1077 provides that the contract must be "to offer, provide, promote, establish, or sell a hospital health service . . ." The statute further states that when a hospital service district enters into a contract under the La. R.S. 46:1077, that district "shall be further presumed to have entered into such contract for the purpose of obtaining a tangible benefit and for a public purpose, and such contract shall not be presumed to be a donation in contravention of Article VII, Section 14(A) of the Constitution of Louisiana." La. R.S. 46:1072(5) states that "tangible benefit" means but is not limited to:

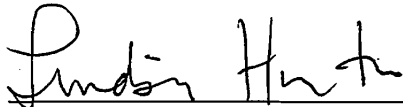
- (a) Any reasonable expectation of a demonstrable increase in or maintenance of usage of the provider's services;
- (b) Any contractual provision requiring quality control of patient care and participation in a resource monitoring procedure, or
- (c) Any reasonable expectation of prompt payment for any service rendered.

Although the law provides that hospital service districts may enter into cooperative endeavor agreements or joint ventures, it is our opinion that the proposed agreement, the purpose of which is "to promote and encourage economic development in Vermilion Parish" does not comport with the purpose for which hospital service districts were created. Because we have determined that the proposed expenditure does not satisfy the first prong of the *Cabela's* analysis, there is no need to look into whether such an expenditure is gratuitous or whether the District would have a reasonable, demonstrable and objective expectation of receiving equivalent value for public funds contributed under the proposed agreement.

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/LKH/chb