



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

DEC 19 2013
OPINION 13-0190

Mr. Leverne Perry
Executive Director
Louisiana Quarter Horse
Breeders Association
P.O. Box 12300
Alexandria, Louisiana 71315

90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 49:319

The Louisiana Quarter Horse Breeders Association is not a state depositing authority under La. R.S. 49:319 and thus is not able to require security for deposits of state funds under La. R.S. 49:321.

Dear Mr. Perry:

You requested an opinion from this office regarding whether the Louisiana Quarter Horse Breeders Association (the "Association") is considered a "state depository authority" under La. R.S. 49:319 and thus able to require security for deposits of state funds under La. R.S. 49:321.

You indicated that the Association is a nonprofit corporation and is statutorily recognized under La. R.S. 4:179 "... as the sole official registrar for purposes of registering of accredited quarter horses foaled in Louisiana." To further this purpose, the Association receives revenue from certain gaming activities, all of which is properly classified as public funds under Louisiana law.¹

Currently, the Association has over \$7 million dollars in public funds on deposit at three institutions, none of which is currently protected by a pledge of any bank securities. The Federal Deposit Insurance Corporation ("FDIC") policy providing unlimited protection for non-interest bearing deposits for corporations expired on December 31, 2012.

Pertinently, the term "state depository authority" is defined in La. R.S. 49:319 as follows:

"State depository authority" as used in this Chapter means the state treasurer, and other elected state officials or any department, board, commission, or *institution of the state*; and "depository" or "fiscal agent bank" means any bank selected and designated by the Interim Emergency Board for deposit of state funds by the treasurer and other elected state officials or any department, board, commission, or institution of the state.

¹

See La. R.S. 4:165, La. R.S. 27:361, and La. Atty. Gen. Op. No. 10-0292.

[Emphasis added].

Clearly, the Association is not the state treasurer or other elected state official or a department, board, commission. Thus, the Association can only be a state depositing authority if it is considered to be a state institution.

Nevertheless, it is clear that the Association is not a public entity, but rather a private entity. Therefore, it cannot be considered to be a state institution.

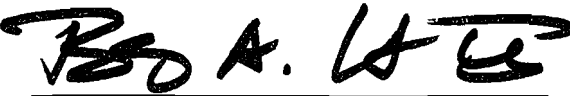
The Louisiana Supreme Court has held that in order for an entity to be considered public, the following four factors must be considered: (1) whether the entity was created by the legislature; (2) whether its powers were specifically defined by the legislature; (3) whether the property of the entity belongs to the public; and (4) whether the entity's functions are exclusively of a public character and performed solely for public benefit.² Further, all four factors must be present in order for a court to determine that an entity is public.³ The Association is not an entity created by the legislature. If an entity fails to meet the criteria of even one factor, it is not a public entity. Therefore, the Association is not public and thus cannot be considered a state institution.

Considering the forgoing statutory authority, it is the opinion of this office that the Association is not a state depositing authority under La. R.S. 49:319 and thus is not able to require security for deposits of state funds under La. R.S. 49:321. We recommend that the Association consider spreading its deposits of public funds over multiple insured banks and using the Certificate of Deposit Account Registry Service⁴ in order to maximize the FDIC coverage.

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: 

BENJAMIN A. HUXEN II
Assistant Attorney General

JDC/BAH II

² *State v. Smith*, 357 So.2d 505, 507-08 (La.1978).

³ *Property Insurance Association of Louisiana v. Theriot*, 09-1152 (La.3/16/10), 31 So.3d 1012, 1015.

⁴ See La. Atty. Gen. Op. No. 09-0073, a copy of which is enclosed.