



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005
March 9, 2015
OPINION 13-0195

Mr. F. Douglas Wimberly
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P.O. Box 53951
Lafayette, Louisiana 70505-3951

47-A-1 Fire Protection Districts

La. Const. art. VII, § 14

The City of Crowley may not provide fire protection services free of charge to the area of Acadia Parish outside of the City's corporate area.

Dear Mr. Wimberly:

You have requested an opinion of the Attorney General as to whether the Acadia Parish Police Jury is obligated to reimburse the City of Crowley and/or City of Crowley Fire Department for expenses incurred in responding to service calls in rural areas of the parish from approximately August 2000 through August 2012. Your request has been assigned to me for research and reply.

According to your opinion request, the City of Crowley, through its fire department, provided fire protection services to the areas outside of the corporate limits of the City for many years without a formal agreement existing between the City of Crowley and the Parish of Acadia. On July 2000, the mayor of the City of Crowley sent a letter to the president of the Acadia Parish Police Jury affirming that the City would continue to provide fire protection services to the unincorporated areas outlying the City. On August 1, 2000, the Parish of Acadia Police Jury adopted a resolution setting and recognizing boundaries within its jurisdiction to represent actual fire protection districts or service areas. The August 1, 2000 resolution also stated that "the City of Crowley, through its Fire Department, as well as the Church Point Volunteer Fire Department, formally acknowledged their continued commitment to serve the areas outside of the corporate limits in their respective municipalities."

No payment has ever been made from the unincorporated areas to the City of Crowley for fire protection services other than payment of fire insurance rebates. Then, on or about August 1, 2012, the City of Crowley made a formal request to the Acadia Parish Police Jury for reimbursement of expenses incurred in providing fire protection services to the areas located outside the city limits of Crowley. You would like to know if the Acadia Parish Police Jury is required to reimburse the City of Crowley for these expenses.

In order to respond to your inquiry, it is necessary to analyze whether the cost of providing services may be borne solely by the City of Crowley. Your request requires the analysis of the Louisiana constitutional prohibition against donating public funds and the statutes regarding the use of proceeds from special taxes. Initially, we note, that the

City of Crowley Fire Protection District is funded through an ad valorem tax. La. R.S. 39:704 addresses the use of special tax proceeds and provides, in pertinent part, "[t]he 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." This office has consistently determined that special tax proceeds must be used in accordance with the will of the electorate, and their use is dictated solely by the language contained in the proposition approved by the voters.¹ The tax proposition presented the following question to the voters:

Shall the City of Crowley, State of Louisiana, ("the City") under the provisions of Article VI, Section 22, Section 27(B), Section 30(A) of the Constitution of the State of Louisiana of 1974, continue to levy and collect a Five (5) Mill Tax on all property subject to taxation situated within said City (current estimated annual amount of \$325,967.00), annually for a period of ten (10) years ... which shall be for the purpose of and dedicated to the payment of salaries of the personnel of the Fire Department of said City and one-half (1/2) of the avails of which shall be for the purpose and dedicated to the payment of salaries of the personnel of the Police Department?

Additionally, longstanding Louisiana jurisprudence requires that special tax authorizations be strictly construed.² In this instance, the proceeds of this ad valorem tax must be used solely for expenses of the City's fire department, which was established exclusively for the benefit of the citizens of the City. This being the case, the City may not use these dedicated tax proceeds to provide free fire protection services in an area outside its limits.

Furthermore, all questions concerning the use of public funds must be examined in light of La. Const. art. VII, § 14(A), which reads in pertinent part:

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. Except as otherwise provided in this Section, neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

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.*, 2005-2298 (La. 9/6/06), 938 So.2d 11 (the "Cabela's" case), the Louisiana Supreme

¹ La. Atty. Gen. Ops. No. 02-060, 99-080, 96-246, 94-346, 92-050.

² *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. 2 Cir. 1972), and *Brock v. St. James Parish Council*, 407 So.2d 1265 (La.App. 4 Cir. 1981), writ denied, 412 So.2d 1094 (La. 1982).

Court abandoned its prior 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."³

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.

First, the City must have the legal authority to expend funds. As noted above, the City does not have the authority to expend funds in those areas outside of the City. Acadia Parish is responsible for the geographic areas in question. Therefore, providing fire protection services free of charge to areas outlying the City of Crowley would appear to be a prohibited donation in light of prior opinions of this office.

It has been the consistent opinion of this office that a "[t]own may not provide services for the area outside its limits free of charge, regardless of the source of public funds."⁴ In La. Atty. Gen. Op. No. 05-0122, we were asked by the Rapides Parish Police Jury whether it could renew an agreement it had with the Town of Woodworth in which the Town provided fire protection services for an area of the parish located outside the Town limits, an area for which the Parish was responsible. Prior to the agreement, the Town provided fire protection services free of charge. In our response, we stated the following:

It is our opinion that the Town may not provide services for the area outside its limits *free of charge*, regardless of the source of the public funds. However, if the Town desires to continue providing services in this area, it may do so by entering into a local services agreement with the Parish, provided the Parish bears all costs associated with providing the services. Your request requires the analysis of the La. constitutional prohibition against donating public funds and the statutes regarding the use of proceeds from special taxes.

La. Atty. Gen. Op. No. 05-0122.

³ Cabela's, 938 So.2d at 20.

⁴ See La. Atty. Gen. Ops. No. 11-0044, 06-0058 and 05-0122.

Whether the amount of the expenses claimed accurately reflects the costs of services actually provided by the City of Crowley to the Parish of Acadia would be a question of fact that our office is not in a position to determine. We note, however, that an action for the recovery of compensation for services rendered is subject to a three year prescriptive period.⁵

Based on the foregoing, it is the opinion of this office that the City of Crowley does not have the legal authority to provide fire protection services free of charge to the area of the Parish outside of the City's corporate area, such an expenditure would be merely gratuitous and would amount to a prohibited donation. If the City desires to continue providing services in this area, it may do so by entering into a local services agreement⁶ with the Parish, provided the Parish bears all costs associated with providing the services. Entering into such an agreement with the City would prevent a violation of Louisiana's Constitutional provision on prohibited donations, because the City would receive compensation from the Parish of Acadia proportionate to the cost of providing fire protection services to the unincorporated areas of the parish.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: Erin C. Day
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JDC: ECD

⁵ La. C.C. art. 3494(1).

⁶ La. R.S. 33:1324; Also commonly referred to as "intergovernmental" or "joint services" agreements.