



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

JAN 23 2014
OPINION 13-0216

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 13:1888

Honorable Ann B. McIntyre
Judge, Winnsboro City Court
1308 Cornell Street
Winnsboro, Louisiana 71295

The clerk and deputy clerks of the Winnsboro City Court are employees of the Court, not the City of Winnsboro. The Court and City may enter into a cooperative endeavor agreement allowing employees of the two entities to donate and use "serious illness leave time" into either leave pool as long as both entities are able to demonstrate that the agreement provides each entity with a reasonable expectation of receiving equivalent value for any funds spent.

Dear Judge McIntyre:

Your have requested an opinion of this office regarding whether the clerk and deputy clerks of the Winnsboro City Court ("Court") are employees of the Court or of the City of Winnsboro ("City").

In *Cosenza v. Parish of Rapides*, 341 So. 2d 1304 (La. App. 3 Cir. 1/31/77), the question before the Third Circuit Court of Appeal of Louisiana was whether Rapides Parish was legally responsible for the actions of the clerk of the city court in Pineville, Louisiana. *Id.* at 1305. The Third Circuit concluded that a city court judge was a state office and while the parish was legally obligated to fund the city court, it was not the employer or master of the city court. In reaching this conclusion, the Third Circuit noted that the Legislature provided for the creation of the numerous city courts in existence in the state pursuant to the authority in La. Const. art. 5, Sec. 51. The Third Circuit stated as follows:

Pursuant to LSA-R.S. 13:1884, each city judge:

Shall appoint a Clerk for both the civil and criminal sections of the court who shall serve at the pleasure of the judge and until his successor is appointed and qualified.

The salary of the City Judge is paid in different proportions by his particular city and parish as well as by the state of Louisiana. La. R.S. 13:1874. The salary of the Clerk of a City Court is paid, in equal proportions, by the city and parish of the court's domicile. La. R.S. 13:1888. Under the statutory scheme developed by the Legislature the city in which the [sic] court is domiciled is required to provide a suitable

courtroom and offices for the city judge and other court personnel. LSA-R.S. 13:1889.

Although the Parish of Rapides contributes to the salaries of both the city judge of the Pineville City Court and his employee, the city court clerk, we are of the opinion that the relationship between the Parish and the Judge (and his clerk) terminates at that point. The City Court and the office of City Judge are created by legislative act based upon authority derived from the state constitution. As such, the city judge is a state officer and the police jury of Rapides Parish or any other executive body at that level is powerless to interfere with or direct the activities of the court.

(Emphasis added). *Id.* at 1305.

Our office has also opined on whether city court employees are employees of the court, or of the city in which the court is located. La. Atty. Gen. Op. No. 98-34 concluded that the Monroe City Court did not fall under the supervision of the local governing authority except insofar as following budgetary procedures. La. Atty. Gen. Op. No. 97-474 stated that "Louisiana law unequivocally places the burden of funding the salaries of the city court judges, marshals, deputy marshals, clerks and deputy clerks squarely on the shoulders of the City and the Parish." Therefore, the opinion concluded that the city court could file a writ of mandamus to compel the city to perform its statutory and ministerial duty to fund the salaries and operational expenses of the city court. La. Atty. Gen. Op. No. 07-0292 considered whether employees of a marshal's office were considered city-parish employees. The opinion concluded that the Shreveport City Court employees were employees of the City of Shreveport because the Shreveport City Charter specifically included those employees as city employees. A review of the Winnsboro Code of Ordinances did not reveal anything which would cause the employees of the Court to be City employees.

In light of the foregoing, it remains the opinion of this office that although a city and parish are statutorily obligated to fund the salaries and operational expenses of city courts, the clerk and deputy clerks of city court are employees of the court and not of the particular city, unless the particular city's charter or code of ordinances expressly provides otherwise. Thus, it is the opinion of this office that the clerk and deputy clerks of the Winnsboro City Court are employees of the Court, not the City of Winnsboro.

Your request also asks our office to address whether Court employees and City employees who participate in an emergency leave pool can transfer leave hours between the Court and City leave pools. According to your request, both the Court and the City have adopted "serious illness leave policies." It is our understanding that under these policies, employees are allowed to donate unused sick leave into a leave pool which may be available for other employees to use if they qualify under the serious illness leave policy. You ask whether employees of the City and Court may transfer

leave time from one pool to the other and, therefore, be able to use leave time donated to either pool.

This office has opined in the past that, in general, sick leave is an earned benefit that is part of an employment contract and is a vested right. Its purpose is to provide time off with pay while employed and as established by office policy. La. Atty. Gen. Op. No. 92-121. When an employer promises a benefit to employees, and employees accept by their actions in meeting the conditions, the result is not a mere gratuity or illusory promise but a vested right in the employee to the promised benefit. *Bouillion v. City of New Iberia*, 95-120 (La. App. 3 Cir. 5/31/95), 657 So. 2d 397.

With regard to pooling leave time by local political subdivisions, La. Atty. Gen. Op. No. 91-678 concluded that there was no express provision of state law prohibiting a donation of accumulated and unused leave hours from one employee in a sheriff's office to another employee and stated that the policy governing such a leave donation program would be a matter of office policy. See also La. Atty. Gen. Op. No. 00-407, stating that "a policy must be implemented by the sheriff's office that allows for such a donation prior to the transfer." We would also call your attention to La. Atty. Gen. Op. No. 94-530, which discusses certain requirements found in the Louisiana Civil Code which must be followed if one employee chooses to donate leave to another employee.¹

In each of the opinions referenced in the previous paragraph, the time donated by employees was going to be used by employees in the same agency or department. As we understand the facts presented in your opinion request, Court employees would be able to use leave donated by City employees and vice versa. If such a policy were not in place and a Court employee needed to take time off due to a serious illness but did not have enough accrued leave to do so, the employee may be granted time off without pay at the judge's discretion. As explained in greater detail below, it is the opinion of this office that the City and Court may enter into a cooperative endeavor agreement in which both entities agree to terms and conditions which would allow employees to donate leave time to either pool and to use leave time from either pool.

Public entities are permitted by La. Const. art. VII, Sec. 14(C) to enter into cooperative endeavor agreements with one another for a public purpose. However, such agreements cannot run afoul of La. Const. art. VII, Sec. 14(A), which generally prohibits the gratuitous donation of public funds. See *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. In order to determine if an expenditure of public funds violates La. Const. art. VII, Sec. 14(A), our office considers whether the public entity has the authority to spend funds for the purpose it intends to and then considers the following:

¹ La. R.S. 42:441, *et seq.*, is the State Employee Leave Transfer Program but is only applicable to agencies "of the executive, legislative, or judicial branch of state government" in which the leave recipient is employed. La. R.S. 42:441(1).

- (i) whether the expenditure comports with the purpose the public entity has the legal authority to pursue;
- (ii) whether the expenditure or transfer, taken as a whole, appears to be gratuitous; and
- (iii) whether 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.

With regard to the first consideration, we agree that a public entity has the authority to award and control sick and personal leave for its employees, subject to restrictions and requirements imposed by federal and state laws.

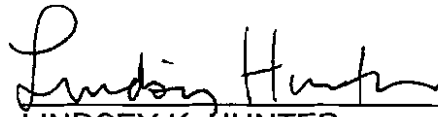
Without a proposed cooperative endeavor agreement to review, we are unable to determine whether the agreement would pass the second and third prongs of the *Cabela's* analysis. Whether allowing employees to pool their leave time between the Court and City results in a gratuitous alienation of public funds or whether both entities have 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 City and Court to determine. Consideration should be given by the entities to the fact that employees of both the City and Court would have access to the leave pool, thereby giving employees of each entity a better likelihood of being able to receive sick leave for a serious illness which qualifies under the serious illness leave policies, and that the employees freely choose to donate their leave with the understanding that it may be used by employees of either entity. If both entities are able to show they will receive a value equivalent to the obligations undertaken in the agreement, then we believe such an agreement would be permissible. We note, however, that until such an agreement is in place, the two entities may not combine their serious illness leave pools because employees who donated their time did so with the understanding and based on the condition that all donated time would only be used by employees within the same department or agency.

Based on the foregoing, it is the opinion of this office that the clerk and deputy clerks of the Winnsboro City Court are employees of the Court, not the City of Winnsboro. It is also our opinion that the Court and City may enter into a cooperative endeavor agreement allowing employees of the two entities to donate and use "serious illness leave time" into either leave pool as long as both entities are able to demonstrate that the agreement provides each entity with a reasonable expectation of receiving equivalent value for any funds spent.

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