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DEPARTMENT OF JUSTICE
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OPINION 14-0079

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71-1-B MUNICIPALITIES – HOME RULE CHARTER

La. Const. art. VI, § 5
La. R.S. 33:1395
La. R.S. 39:1305
La. R.S. 39:1310

The St. John the Baptist Parish Council may amend a proposed budget prior to its adoption to include specific line items for salaries of specific positions, and it may set the format for budgets prepared and proposed by the Parish President. Only the Parish President or certain administrative officers within the Parish Administration may expend funds appropriated in an adopted budget; however, appropriated funds may not be transferred from one line item in an adopted budget to another item without an amendment adopted by the Parish Council in a public meeting.

Dear Mr. Perilloux:

You have requested an opinion of this office regarding several issues surrounding the budget adoption process in St. John the Baptist Parish. This opinion will address each of your questions in turn.

1. As part of the budget adoption process, may the Council place a specific employee salary, identified by position, in a single line item with a limit on the salary budgeted therein? For example, if the budget stated "ABC Director Salary -- \$85,000.00," would the maximum salary for that position be \$85,000.00?

St. John the Baptist Parish has adopted a home rule charter form of government in accordance with La. Const. art. VI, § 5 and La. R.S. 33:1395, and thus, it is governed by its charter (the "Charter"), unless its provisions violate state law or the state constitution. As a political subdivision operating under a home rule charter form of government, St. John the Baptist Parish is subject to the Louisiana Local Government Budget Act found at La R.S. 39:1301, *et seq.*, ("LGBA"). However, the provisions of the LGBA are only minimum standards that must be met, and thus, the Charter may include stricter standards than those imposed by the LGBA and may include other rules not otherwise prohibited by the LGBA or other state law.

Under the LGBA, budgeted expenditures need to be "itemized by agency, department, function, and character." La. R.S. 39:1305(C)(2)(a). A salary line item contained in the budget appears to be authorized under La. R.S. 39:1305(C)(2)(a). Moreover, Article V, section E of the Charter provides that the budget, as adopted, "shall constitute an appropriation of funds for all purposes contained therein."

Accordingly, it is our opinion that the St. John the Baptist Parish Council may place a specific employee salary, identified by position, in a single line item with a limit on the salary budgeted therein. Such a line item would constitute an appropriation under the Charter, which would constitute the maximum salary for that position.

2. Under Section F of the Charter, once an item is in place after the budget has been adopted, can funds be transferred from another line item without council approval? For example, using the "ABC Director Salary -- \$85,000.00" example, could the Parish President transfer \$5,000.00 from another line item within the budget to cover an increase in ABC Director's salary to \$90,000.00 without Council approval?

Under Article VII, section F of the Charter, it states that the President may "transfer part or all of any unencumbered appropriation balance among programs within a department or office of the Parish Council." Despite the language of this Charter provision, the relevant provisions of the LGBA must still be followed. La. R.S. 39:1310 specifically states:

When the governing authority has received notification pursuant to R.S. 39:1311, or there has been a change in operations upon which the original adopted budget was developed, the governing authority shall adopt a budget amendment in an open meeting to reflect such change.

This office has previously opined that the transfer of budgeted funds from one program or function to another constitutes a change in operations upon which the original adopted budget was developed. See La. Atty. Gen. Op. No. 86-214. Accordingly, such a transfer of funds would require a budget amendment adopted by the Parish Council in an open meeting, as required by La. R.S. 39:1310.

It is the opinion of this office that, after the budget has been adopted, funds cannot be transferred from one line item to another without the adoption of a budget amendment by the St. John the Baptist Parish Council in an open meeting.

3. If the answer to the previous question is in the affirmative, what is the Parish President's limit on unilaterally transferring funds from one line item to another?

As stated previously, the Parish President is without authority to make such unilateral transfers of funds under the LGBA.

4. The Charter language in Art. V(B) states that "the Parish President shall submit a line item operating budget and a capital budget in accordance with accepted accounting procedures in a format established by the Parish Council." Does this language give the Council the authority to specify the format to be followed by the administration? If so, does this authority allow the Council to specify that the proposed budget include line items per department and/or provide a more detailed format for the administration to follow?

This language in Article V, section B of the Charter appears to grant the St. John the Baptist Parish Council the authority to specify the format of the budget, which would include requiring that the budget include specific line items per department. As previously stated, the LGBA only provides minimal requirements for preparation and adoption of a budget, which may be increased by the governing authorities of the political subdivisions. See La. R.S. 39:1303(A). Nothing in the LGBA prohibits the Parish Council from specifying the format of the budget, as authorized by the Charter.

Accordingly, it is the opinion of this office that the St. John the Baptist Parish Council may specify the format to be followed by the Parish Administration in the preparation of the proposed budget.

5. Prior to adoption of the proposed budget, may the Council amend the budget by eliminating line items, adding line items, or modifying the details within line items?

While the LGBA addresses budget amendments in La. R.S. 39:1310, that provision relates to amendments made after the budget has been adopted. The LGBA is silent on whether a governing authority may make amendments to the proposed budget prior to its adoption. As the LGBA contains no prohibitions against making budget amendments prior to the adoption of a budget, it is reasonable to conclude that the legislature intended to allow political subdivisions to provide for such amendments in their charters. This office has previously opined that pre-adoption budget amendments are not prohibited by the LGBA and may be made when authorized by the charter of the governing authority. See La. Atty. Gen. Op. Nos. 12-0244 and 09-0152.

Article V, section D of the Charter provides that the "Parish Council may amend the budgets before adoption..." As the Charter authorizes the Parish Council to make pre-

adoption budget amendments and the LGBA does not prohibit such amendments, it is the opinion of this office that the Parish Council may amend the proposed budget prior to its adoption by eliminating line items, adding line items, or modifying the details within line items. However, the budget, as amended, must still be "itemized by agency, department, function, and character" as required by La. R.S. 39:1305(C)(2)(a).

6. The Council currently has its own budget that it funds for various expenses. Once the Council has appropriated funds in its budget, can it spend those funds and enter into contracts using those funds by a vote of the Council? Can the Parish President spend these funds without Council approval?

Under the LGBA, only the chief executive or administrative officers of a political subdivision are authorized to "incur liabilities and authorize expenditures from the respective budgeted funds during the fiscal year." La. R.S. 39:1311(D). Further, Article III, section (B)(3)(b)(iv) of the Charter provides that the Parish President "shall be responsible for executing the budget and capital program after adoption by the Council." Additionally, Article III, section (C)(3)(a)(v) of the Charter specifically authorizes the Parish Financial Advisor to disburse all Parish funds and mandates that no money shall be paid out of the treasury until the Parish Financial Advisor verifies the availability of the funds and the validity of the obligation to pay the funds. Article III, section (C)(3)(a)(v) of the Charter also requires the Parish President to co-sign all checks and warrants drawn on the Parish treasury.

In accordance with the provisions of the LGBA and the Charter, the Parish Council may not "spend" appropriated funds or enter into contracts¹ to use those funds through a Parish Council vote. Only the Parish President or the appropriate administrative officers within the Parish Administration may expend funds appropriated in an adopted budget; however, they are limited to the amounts appropriated in the adopted budget.

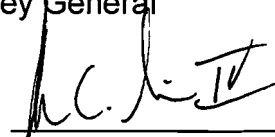
¹ This does not preclude the Parish Council from entering into contracts with other governmental units within or outside the Parish for joint performance by one unit on behalf of the other for authorized functions or activities. Article III, § (A)(7)(c)(vii) of the Charter.

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.

Yours very truly,

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By:



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