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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 9400S
BATON ROUGE
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May 19, 2015
OPINION 14-0085

71-1-1-B MUNICIPALITIES- Home Rule Charter
La. R.S. 39:1301-39:1315

Mr. E. Jeff Perilloux
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Pursuant to the provisions of the St. John the Baptist Parish Charter ("Charter") and the Louisiana Local Government Budget Act, the parish president, as chief executive officer must execute the authorizations set forth in the budget ordinance.

Signing contracts on behalf of the parish is an executive function; therefore, the Council may not enter into a contract on behalf of the parish without the parish president's signature unless specifically authorized to do so by the Charter.

Dear Mr. Perilloux:

Our office received your request for an opinion on whether the parish president must execute authorizations set forth in the parish budget ordinance for a specific purpose such as building repairs. You have also asked whether the St. John the Baptist Parish Home Rule Charter ("Charter") requires that contracts be approved by the Council and whether the Council can enter into a contract without the signature of the parish president.

Political subdivisions operating under a home rule charter form of government are subject to the minimum standards established in the Local Government Budget Act.¹ Pursuant to the Local Government Budget Act, all political subdivisions must prepare a comprehensive budget presenting a financial plan for each fiscal year, for their general fund, and each special revenue fund.² The chief executive or administrative officer of the political subdivision prepares the proposed budget.³ The budget proposed for consideration by the governing authority must be accompanied by a proposed budget adoption instrument. The adoption instrument defines the authority of the chief executive and administrative officers of the political subdivision to make changes within various budget classifications without approval by the governing authority, as well as those powers reserved solely to the governing authority.⁴ The adopted budget and any duly authorized amendments constitute the authority of the chief executive or administrative officers of the political subdivision to incur liabilities and authorize expenditures from the respective budgeted funds during the fiscal year."⁵

¹ La. R.S. 39:1301-39:1315.

² La. R.S. 39:1305(A).

³ LA R.S. 39:1305(B).

⁴ La. R.S. 39:1305(D).

⁵ La. R.S. 39:1311(C).

Article V of the Charter addresses financial procedures and states that sixty days before the beginning of each fiscal year, the parish president shall submit a line item operating budget and a capital budget.⁶ The Council may amend the budget before it is adopted, but no item for debt service may be reduced below the amount certified by the parish president as necessary and total expenditures may not exceed anticipated revenue.⁷ The adoption of the budget must be done via ordinance.⁸ Within ten calendar days of the adoption of the budget ordinance, the parish president must return it to the Council Secretary with or without his approval or with his disapproval.⁹ If the budget ordinance is vetoed by the parish president, the Council may override the veto and adopt the ordinance by a vote of a majority plus one of all its members.¹⁰ Once adopted, this budget constitutes an appropriation of funds for all purposes contained in the budget.¹¹

In *Plaisance v. Davis*, the City of Baker failed to issue a paycheck to a city court judge. The city court judge filed suit seeking to have the Mayor issue his paycheck.¹² The court concluded the Mayor was obligated to compensate the judge in accordance with the ordinance adopting the budget. The court stated:

As the chief executive officer of the City of Baker, Mayor Davis must execute the ordinances as passed by the City Council. By submitting a proposed budget ordinance, the mayor may initially influence the ordinance later passed by the council. But he does not have the authority to actually create the budget ordinance, and thus does not have authority to control the outcome of the council's proceedings. The Council is vested with the power to create laws in the form of ordinances for the city. Once the council passes a budget ordinance, the mayor's power is limited to enforcing the ordinance. Accordingly, he must enforce Ordinance 2002-21 by implementing the provisions of the council's budget rather than the budget that he presented to the council. This separation of powers provided for in the city charter is designed to ensure an orderly process in the operations of the city government.¹³

This case is analogous to the budget process in St. John the Baptist. Additionally, pursuant to Article III, Section B (3)(1), the parish president is responsible for carrying out a policy adopted through ordinance or resolution. Accordingly, it is the opinion of this office that, pursuant to the Charter and the provisions of the Local Governmental Budget Act, upon final passage of the parish budget, the parish president, as chief executive must execute the authorizations set forth in the budget, including the

⁶ Article V, Section B.

⁷ Article V, Section D.

⁸ Article IV, Section A(9).

⁹ Article IV, Section C(2).

¹⁰ Article IV, Section C(3).

¹¹ Article V, Section E.

¹² *Plaisance v. Davis*, 03-0767 (La.App. 1 Cir. 11/7/03), 868 So.2d 711 writ denied, 03-3362 (La. 2/13/04), 867 So.2d 699.

¹³ *Id.* at 719.

expenditure of funds. The parish president cannot ignore an appropriation if there is not authority to do so and cannot frustrate the intent of the appropriation. However, the parish president is not required to spend the entire amount of the appropriation if he can carry out the purpose of the appropriation with less money.

Next, you ask whether the Charter requires contracts be approved by the Council and whether the Council can enter into a contract without the signature of the parish president.

Article III, Section B(3) states:

Except as otherwise provided in this Charter, the Parish President shall be the chief executive officer of the Parish and shall be vested with the executive power of the Parish. He shall be responsible for carrying out the policies adopted by the Parish Council and for the administration, direction, and supervision of all Parish departments, officers, agencies, and special districts.

Our office has previously concluded that the executive's power of administration includes signing contracts on behalf of the government pursuant to the parish president's duty to carry out the policies adopted by the Council.¹⁴ As a general rule, the chief executive acting alone is without the power to execute a contract incurring a debt in absence of an ordinance or resolution by the governing council authorizing him to do so.¹⁵ This approval may come through the budgeting and appropriation of funds performed in accordance with the Local Government Budget Act or from a separate approval request.¹⁶

In subsequent correspondence, you referenced La. Atty. Gen. Op. No. 97-133, which opined that the Council is empowered to enact a resolution authorizing a person to sign a contract on behalf of the Council or parish. You have also referenced Article IV, Section H of the Charter, entitled Resolutions, which states that, "an act of the Parish Council which is not to have the force of law may be enacted by resolution. Acts which may be adopted by resolution shall include but not be limited to those which: [a]uthorize a designated person(s) to sign or, execute on behalf of the Parish Council, a contract which has been previously approved." Article IV, Section H does not affect our conclusion that the executive's power of administration includes signing contracts on behalf of the government. Article IV, Section H does not grant any additional powers or authority to the Council to enter into contracts, it simply allows the Council to choose to authorize a designee to execute a contract on behalf of the Council in those situations where the Council is authorized by the Charter to enter into a contract. For example, Article III, Section A (c)(viii) grants the Council the power to enter into contracts with

¹⁴ La. Atty. Gen. Op. Nos. 14-0013, 10-0156, and 93-5.

¹⁵ *Smith v. Town of Vinton*, 209 La. 587, 597 (1946), *Sunray Services v. City of Minden*, 97-29260, (La.App. 2 Cir. 2/28/1997), 690 So.2d 970,973.

¹⁶ La. Atty. Gen. Op. No. 12-0133.

other governmental units within or outside the boundaries of the Parish for joint performance by one unit on behalf of the other of any authorized function or activity.

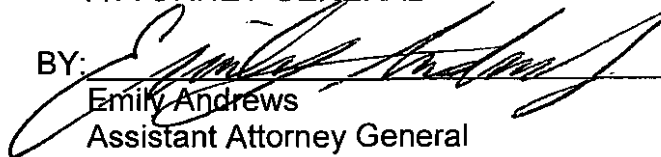
For the reasons set forth above, the conclusion in in La. Atty. Gen. Op. No. 97-133 that the Council may authorize a person other than the parish president to perform the executive function of signing contracts on behalf of the parish is recalled. As stated above, signing contracts is within the executive's power of administration and unless specifically authorized by the Charter, the Council may not enter into a contract on behalf of the parish without the parish president's signature.

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

With best regards,

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BY:


Emily Andrews
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JDC: EGA