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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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APR 08 2015
OPINION 14-0132

Mr. Jessie Davis
Manager, Red River Parish Police Jury
Post Office Drawer 709
Coushatta, Louisiana 70179-0709

90-A POLITICAL SUBDIVISIONS
172-A WATER DISTRICTS

La. R.S. 33:3815
La. R.S. 33:3822
La. Const. art. IV, § 21

A waterworks district created by the Red River Parish Police Jury must be petitioned by sixty percent (60%) of the Red River Parish residents or obtain approval by a majority vote of Parish property owners before acquiring a waterworks system through a donation.

A non-profit corporation owning and operating a waterworks system must obtain approval from the Louisiana Public Service Commission before it may donate the waterworks system to a waterworks district.

Dear Mr. Davis:

On behalf of the Red River Parish Police Jury ("Police Jury"), you have requested an opinion of this office regarding the possible transfer of a private waterworks system to a waterworks district which will be created by the Police Jury.

According to your request, Martin Water System ("Martin Water"), a non-profit corporation, owns and operates a waterworks system in Red River Parish, providing water and sewer services to residential, commercial, and industrial customers. Your request further indicates that Martin Water is subject to regulation by the Louisiana Public Service Commission ("PSC"). Under the facts contained in your request, the Red River Parish Police Jury intends to create a waterworks district for Red River Parish, and Martin Water has agreed to donate its waterworks system to the newly created waterworks district. You have asked this office (1) whether the Police Jury or the newly created waterworks district may accept this donation from Martin Water without being petitioned by 60% of Red River Parish residents as required by La. R.S. 33:3822; and (2) whether Martin Water must obtain prior approval from PSC prior to making the donation.

- 1. Must the requirements of La. R.S. 33:3822 be met before the Police Jury or a newly created waterworks district may accept the donated waterworks system from Martin Water?**

You have asked whether the Police Jury must be petitioned by 60% of Red River Parish residents in order to accept the donation of an existing waterworks district.

La. R.S. 33:3814 allows parish police juries to create waterworks districts. La. R.S. 33:3814 specifically states:

Police juries shall form a waterworks district when petitioned to do so in writing by not less than twenty-five persons owning and assessed for lands in the district. Corporations may sign the petition only if they are domiciled in the district. The petitions shall set forth substantially the boundaries of the district and the names of the persons to be appointed by the police jury as the commissioners of the district. If the district includes one or more municipalities the petition may set forth the names of the persons to be appointed by the governing authority of said municipality or municipalities as commissioners of the district.

La. R.S. 33:3815(A) authorizes a waterworks district to obtain an existing waterworks system by donation or purchase. It provides as follows:

Any waterworks district thus created and named or numbered by a police jury shall constitute a body corporate in law, with all the powers of a corporation, and all powers necessary for it to carry out the objects for which it was created. The waterworks district may expropriate property for any purpose that it may find necessary in the operation of its waterworks system, and may acquire by donation or purchase any existing waterworks system in the district. Waterworks districts may dig and excavate the roads, streets, sidewalks, and alleys in the district for the purpose of laying pipeline or water mains. It may acquire any and all machinery necessary for the purpose of affecting the object for which it is formed and shall own all sites which are acquired either by donation, purchase, expropriation, exchange, or otherwise in full ownership.

La. R.S. 33:3815(A) (emphasis added).

Under La. R.S. 33:3814 and La. R.S. 33:3815, Red River Parish Police Jury is authorized to create a new waterworks district, and that newly created waterworks district may acquire an existing private waterworks system by donation.

Despite this authority to acquire a waterworks system by donation, La. R.S. 33:3822 imposes additional requirements on the acquisition of a waterworks system. Specifically, La. R.S. 33:3822, in relevant part, states:

The governing authority of any parish, municipality or waterworks district is hereby vested with full power and authority, after having been petitioned

by sixty percent of the resident property owners of any such political subdivision, or by a vote of a majority in number and amount of the resident property taxpayers qualified to vote under the constitution and laws of this state who vote at an election held for that purpose in the manner provided by R.S. 39:501 through 39:518, in the discretion of the governing authority, to establish, acquire, construct, improve, extend and maintain within said political subdivision a waterworks system or systems, including such treatment facilities as may be required, with all necessary equipment and installations in connection therewith.

(Emphasis added).

Under this statute, a petition of sixty percent of the residents or majority vote of property owners is required in order for a parish or waterworks district to acquire a waterworks system.

The Red River Parish Police Jury, or its newly created waterworks district, would be subject to the petition or voting requirements of La. R.S. 38:3822. In accepting the donation from Martin Water, the Police Jury would be acquiring a waterworks system. La. R.S. 38:3822 does not distinguish between acquisitions by donation and those by purchase, and there is no reason to believe that the requirements of La. R.S. 38:3822 were intended to only apply to waterworks systems acquired by purchase. When a law is clear and unambiguous, no further interpretation need be made in search of the legislature's intent. La. C.C. art. 9.

Therefore, it is the opinion of this office that the Red River Parish Police Jury, or a waterworks district created by the Police Jury, must be petitioned by sixty percent (60%) of the Red River Parish residents or be approved by a vote of a majority of the Red River Parish residents before it can accept a donation of a waterworks system from Martin Water System.

2. Must Martin Water System obtain approval from the Louisiana Public Service Commission prior to donating its existing waterworks system to a waterworks district created by the Red River Parish Police Jury?

La. Const. art. IV, § 21 grants PSC the authority to regulate public utilities and authorizes it to adopt "rules, regulations, and procedures necessary for the discharge" of this duty. As acknowledged in your request, Martin Water System is subject to regulation by PSC under Section 1201 of PSC rules and regulations.

Section 501 of PSC rules and regulations mandates that a utility, such as Martin Water System, must obtain the approval of PSC before it may sell or transfer its waterworks system. Section 501 states, in relevant part:

B. No utility or carrier subject to the jurisdiction of the Louisiana Public Service Commission shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control of ownership of any of the assets, common stock or other indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, carrier, subsidiary, affiliated entity or any other entity nor merge or combine with another person, corporation, partnership, limited liability company, utility, carrier, subsidiary, affiliated company or any other entity or divide into two or more utilities or carriers, where the values involved in such action exceed one percent (1%) of the gross assets of such regulated utility or carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right interest, asset, obligation, stock ownership, or control, involved in such action without prior full disclosure of the prior intentment and plan of such utility or carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Louisiana Public Service Commission. This section is intended to apply to any transfer of the ownership and/or control of public utilities and carriers regardless of the means used to accomplish that transfer. Any transfer accomplished without Commission approval is void.

(Emphasis added).

This rule specifically requires a public utility subject to the jurisdiction of PSC to obtain an official approval or official action of non-opposition from PSC before transferring ownership of a waterworks system to another party. As previously stated, Martin Water is subject to the jurisdiction of PSC. Accordingly, the donation of Martin Water's waterworks system would be a transfer of ownership that requires prior PSC approval. It is irrelevant that Martin Water intends to donate the waterworks system to a validly created waterworks district, as neither Section 501 nor any other PSC rule or regulation makes public exception for donations of waterworks systems to public waterworks districts.

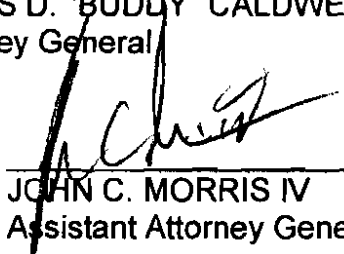
Accordingly, it is the opinion of this office that Martin Water System must obtain the official approval of the Louisiana Public Service Commission before it can donate its waterworks system to a public waterworks district created by the Red River Parish Police Jury.

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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Attorney General

By:



JOHN C. MORRIS IV
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