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DEPARTMENT OF JUSTICE
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BATON ROUGE
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April 9, 2015
OPINION 14-0202

15 Courts
71 Municipalities

La. R.S. 33:441
La. R.S. 33:453

The Honorable I. M. Shelton, Jr.
Mayor, City of Central
City of Central
13421 Hooper Rd., Ste. 8
Central, LA 70818

Neither Section 15(A) nor Section 20 of Article V of the 1974 Louisiana Constitution prohibits the legislature from enacting laws establishing new mayor's courts. La. R.S. 33:453, enacted in 2008 and creating the Mayor's Court of the City of Central with a territorial jurisdiction extending throughout the City of Central in East Baton Rouge Parish, is presumed constitutional and enforceable. To the extent inconsistent with this opinion, La. Atty. Gen. Op. Nos. 96-141, 89-263 and 77-170, are hereby recalled.

Dear Mayor Shelton:

You have requested an opinion as to whether the City of Central can establish and operate a Mayor's Court. The issue that you present is whether operation of the Mayor's Court of the City of Central, as established by the legislature, would be lawful under the provisions of the Louisiana Constitution that govern the establishment of new trial courts.

Louisiana Revised Statute 33:441(A)(1) provides, in pertinent part, that "[e]xcept as provided in Chapter 7 of Title 13 of the Louisiana Revised Statutes of 1950, there shall be a mayor's court in the municipality, with jurisdiction over all violations of municipal ordinances."

In 2008, the Louisiana Legislature also passed legislation, La. R.S. 33:453, creating and providing for the territorial jurisdiction of the Mayor's Court of the City of Central.¹

§453. Mayor's court, Central; establishment; jurisdiction

A. There is hereby created the Mayor's Court of the City of Central, the territorial jurisdiction of which shall extend throughout the city of Central in East Baton Rouge Parish.

¹ Since the effective date of the 1974 Louisiana Constitution, the Legislature has established Mayor's Courts for other municipalities. See, e.g., La. R.S. 33:441.32 (Village of Ida); La. R.S. 33:447 (Village of Forest in West Carroll Parish); La. R.S. 33:448 (Town of New Llano); La. R.S. 33:449 (Village of Heflin); La. R.S. 33:450 (Town of St. Gabriel); La. R.S. 33:451 (Town of Clarks); and La. R.S. 33:454 (Village of Hosston).

B. The general provisions of R.S. 33:441 and 442 shall be applicable to and shall govern and regulate the Mayor's Court of the City of Central, the jurisdiction of the court, and the power and authority of the mayor and other officers of the court.²

Statutes are generally presumed constitutional. When a court can reasonably do so, it must construe a statute so as to preserve its constitutionality. *Bd. of Comm'rs of N. Lafourche Conservation, Levee & Drainage Dist.*, 95-1353 (La. 1/16/96), 666 So. 2d 636, 639; *Bd. of Directors of Louisiana Recovery Dist. v. All Taxpayers, Property Owners, and Citizens of State of Louisiana*, 529 So.2d 384, 387 (La.1988). The legislature may enact any legislation that the state constitution does not prohibit; a constitutional limitation on legislative power may be not only express, but also implied. *Bd. of Comm'rs of N. Lafourche Conservation, Levee & Drainage Dist. v. Bd. of Comm'rs of Atchafalaya Basin Levee Dist.*, 666 So.2d at 639; *Chamberlain v. State through Department of Transportation and Development*, 624 So.2d 874, 879 (La.1993). Thus, La. R.S. 33:453 is presumed constitutional (as are 33:441 and 441.31).

Section 1 of Article V of the Louisiana Constitution of 1974 vests the judicial power in a supreme court, courts of appeal, district courts, "and other courts authorized by this Article." The other courts authorized by Article V are family, juvenile, parish, city, and magistrate courts (Section 15(A)) and mayors' courts and justice of the peace courts (Section 20). See *LeBlanc v. Altobello*, 497 So.2d 1373, 1375 (La. 1986). Section 20 of Article V of the Louisiana Constitution of 1974 provides specifically for the continuation of existing mayors' courts then existing, "subject to change by law."

Section 20. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law.

Although Section 20 provides expressly for the continuation of, and changes to, existing mayors' courts, it does not include an express or implied limitation or restriction on legislative authority to create additional mayors' courts.

Similarly, Section 15(A) of Article V of the Louisiana Constitution of 1974 provides for the retention of district, family, juvenile, parish, city and magistrate courts then existing. Section 15(A) further provides that the legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which

² Moreover, the Legislature also enacted La. R.S. 33:441.31 providing for court magistrates for the Mayor's Court of the City of Central:

§441.31. City of Central; mayor's court; appointment of court magistrate; duties; salary

The mayor of the city of Central may, from time to time, appoint an attorney who shall be designated as court magistrate and who shall serve at the pleasure of the mayor, to serve in his stead as the presiding official over the mayor's court. Whenever a magistrate is so designated by the mayor to preside over the mayor's court, he shall exercise the powers and authority of the mayor over said court. The magistrate shall receive a salary fixed and paid by the mayor and councilmen of the city of Central.

shall be uniform throughout the state.³ This Office has previously opined that this provision required that any new trial courts of limited jurisdiction established by the legislature must have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state.⁴

However, in *LeBlanc v. Altobello* the Louisiana Supreme Court was presented with the question of whether Act 101 of 1986, effective June 24, 1986, which changed an existing justice of the peace district and court by dividing it into two separate districts and courts, was constitutional. The Supreme Court, in upholding the Act, explained that "this provision [Section 15(A)] represents authorization for a *new type of court and does not represent a limitation or restriction of the authority of the legislature to make changes affecting the other existing types of courts of limited jurisdiction* authorized by Article V of the Constitution." *LeBlanc* at 1375 (emphasis added). Referring to Section 20, the Court found that "the constitutional provisions continuing the existing justice of the peace courts [and mayors' courts] and granting the legislature authority to make changes in these courts are clear and unambiguous." *Id.* at 1376. Concurring Justice Dennis, who also happened to be the chairman of the Judiciary Committee for the Louisiana Constitutional Convention of 1973 which addressed this provision, expounded upon the Court's interpretation of the constitutional provisions, writing that "the legislature is prohibited from creating a new type of justice of the peace court with different subject matter jurisdiction, *but the legislature is not restrained from making changes that merely perpetuate an existing class or category of courts.* *Id.* (Dennis, J., concurring)(emphasis added).

There is no reason apparent to this Office that the logic of *LeBlanc*, including Justice Dennis' concurrence, should not apply equally to mayors' courts as it does to justice of the peace courts. Thus, following the rule of *LeBlanc*, the legislature would not be prohibited from creating a new mayor's court, as such would merely perpetuate an existing class or category of courts, i.e. mayors' courts.

It is therefore the opinion of this Office that La. R.S. 33:453 creating the Mayor's Court of the City of Central and the related legislation referred to herein are presumed

³ Section 15.(A) **Court Retention; Trial Courts of Limited Jurisdiction.**

The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 21 of this Article, the legislature by law may abolish or merge trial courts of limited or specialized jurisdiction. The legislature by law may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. Effective January 1, 2007, the legislature by law may establish new judgeships for district courts and establish the new divisions with limited or specialized jurisdiction within the territorial jurisdiction of the district court and subject matter jurisdiction over family or juvenile matters as provided by law. The office of city marshal is continued until the city court he serves is abolished.

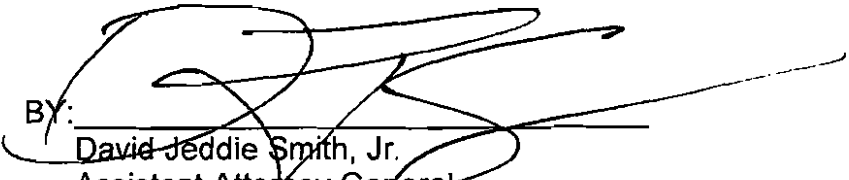
⁴ See La. Atty. Gen. Op. 96-141 (concluding that "La. R.S. 33:441 is inconsistent with the provisions of Art. V, Sec. 15, which only allows the legislature to establish 'trial courts of limited jurisdiction with parishwide territorial jurisdiction,' and Art. V, Sec. 20, which only continues those Mayor's Courts in existence and further subjects those to change by the legislature").

constitutional and, in the event that legislation is subject to a proper constitutional challenge, it would be found, pursuant to the holding in *LeBlanc v. Altobello*, 497 So.2d 1373, 1375 (La. 1986), not to contravene Sections 15(A) or 20 of Article V of the Louisiana Constitution of 1974. Prior opinions to the contrary, La. Atty. Gen. Op. Nos. 96-141, 89-263 and 77-170, are hereby recalled.

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,

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BY: 

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