



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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MAR 04 2015
OPINION 14-0210

Mr. Jack R. Crais
Vice President
Luling Volunteer Fire Department
67 St. Anthony Street
Luling, LA 70070

90-A-1 PUBLIC FUNDS & CONTRACTS

Lease payments derived from the use of privately owned property are properly classified as private funds.

Dear Mr. Crais:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Luling Volunteer Fire Department ("Luling"), you have asked for our opinion as to whether certain lease payments should be classified as public, or private funds.

According to your request, Luling is a private, not-for-profit corporation organized under Louisiana law and is a member of the St. Charles Parish Fireman's Association ("Association"). Your request indicates that the Association has a contract with St. Charles Parish to provide fire and other emergency services. The contract is funded through ad valorem and sales taxes.

Your request further indicates that Luling's main fire station is located on land that was donated to Luling several years ago. The title to the property is solely in Luling's name. However, the actual fire station was designed and constructed by St. Charles Parish and then leased to Luling. Several years after the fire station was built, a telecommunications company requested permission to build a tower on Luling's property. After an agreement was reached, the telecommunications company built a tower using its own funds. Your request goes on to state that initially the telecommunications company paid for use of the property by providing certain telephones and telephone services. However, the agreement was eventually changed to provide for monetary lease payments.

According to your request, somewhere along the way, a previous treasurer for Luling began depositing lease payments into Luling's public funds account, instead of its private funds account. This practice was discovered a few years ago, and upon discovery, Luling began depositing the lease payments into its private funds account. You have indicated that a dispute has arisen between Luling and its auditors as to what is the proper classification of these lease payments. As such, you now ask for our

opinion as to whether such lease payments are properly classified as public, or private funds.

This office has previously addressed the issue of whether certain funds are properly classified as public funds. In Attorney General Opinion Nos. 09-0156 and 10-0292, we noted that the Legislature, in various statutes, has defined public funds as "any funds obtained from legislative appropriation or any form of state or local taxation." In Attorney General Opinion No. 10-0292, we recognized that the general prevailing meaning of the term public funds includes those funds or monies that are either obtained from legislative appropriation, or any state or local taxation; judicial expense funds; funds self-generated by governmental units; other funds of federal, state, local, parish or municipal governments; and any other funds or monies derived from public funds.

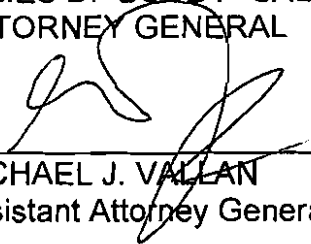
Turning attention now to the question presented, the lease payments at issue are derived from the use of privately owned property. As stated above, the telecommunications company built the tower on land privately owned by Luling. It is our understanding that the tower is located near the fire station, but is not connected to the fire station in any way. Further, you have indicated that the tower and its supporting building have separate utilities. Accordingly, since the lease payments at issue are not derived from the use of public funds or property, it is the opinion of this office that such funds are properly classified as private funds.

We trust this adequately responds to your request. If you should have any questions about the response contained herein, please feel free to contact our office.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



MICHAEL J. VALLAN
Assistant Attorney General

JDC/MJV/chb