



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

August 11, 2015
OPINION 15-0031

Mr. Colt J. Fore
Attorney at Law
519 Florida Avenue, SW
Denham Springs, LA 70726

Dear Mr. Fore,

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const, art. VII, sec. 14
La. R. S. 33:3881 *et seq.*

Livingston Parish Sewer District No. 2 may reduce the impact fees to be charged to a developer in order to compensate for the increased costs of providing a larger infrastructure than necessary so long as the District will receive a benefit of proportionate value in exchange for the impact fee reduction.

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Livingston Parish Sewer District No. 2 ("District"), you have asked for our opinion concerning the installation of a mainline sewer collection line.

Your request states that the District wishes to request that a developer incorporate improvements into its design and construction in order to accommodate for future growth. Subsequent correspondence with your office has clarified that the specific scenario prompting the opinion request concerns a development planned within an area which will eventually be covered by an expansion plan adopted by the District. The District has adopted a plan to expand sewer collection lines within the District in order to provide services to additional individuals or areas not currently served by the District. This expansion plan will be funded by the District and proposes installation and replacement of sewer lines larger than those normally required by the District.

Specifically, you ask whether the District may request that the developer install a sewer collection line which would comply with the lines required by the expansion plan, which are larger than the lines normally required for a development of this nature. In exchange, the District proposes reducing the amount of impact fees normally assessed to the developer in an amount which would offset costs incurred by the developer beyond and above that which the developer would incur to install the size of sewer collection line normally required.

The District was created by the Livingston Parish Police Jury pursuant to La. R.S. 33:3881 *et seq.* which provides a sewerage district the authority to "maintain and collect rates, charges, or connection charges for any service rendered by the sewerage

district." Additionally, Livingston Parish ordinances grant the District the authority to charge connection fees and service charges. See, Ord. Nos. 05-33, § 17.250.12, 9-22-05; 09-19, § 2, 8-13-09; 09-24, 10-8-09; 13-18, 5-23-13.

Due to the fact that the proposed agreement concerns the District, a public entity, decreasing the amount of fees which would normally be assessed to a developer, the agreement must be examined in light of Louisiana Constitution art. VII, sec. 14, which generally prohibits the loan, pledge, or donation of public funds.

The Louisiana Supreme Court has determined that this constitutional provision "is violated when public funds or property are gratuitously alienated." *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales*, 05-2298 (La. 9/6/06), 938 So. 2d 11, 20 (the "Cabela's" case). Our office has interpreted *Cabela's* to say that in order for an expenditure or transfer of public funds to be permissible under art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show:

1. a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue;
2. that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and
3. that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.

Applying the *Cabela's* test to the facts you have presented, we are of the opinion that expansion of a sewer system in order to serve new customers within the District qualifies as a public purpose. It is also our opinion that the proposed transaction would not be gratuitous.

Our office has previously concluded it would violate La. Const. art. VII, sec. 14(A) for a public entity to set-aside, reduce, or otherwise forgive a debt. See, e.g. La. Atty. Gen. Op. Nos. 10-0264, 10-0287, 13-0079, and 13-0192. However, the opinions cited consider whether a public entity may forgive a debt without receiving anything in return. In the scenario you have presented, the District will receive a new sewer collection line which is larger than normally required by the District but which complies with the size required by the expansion plan. Your request states that the amount of the fees waived will be in proportion to the increased costs associated with providing the larger sewer collection line. This type of transaction would not be considered gratuitous because the District would receive a benefit of equivalent value to the amount of impact fees waived. Accordingly, it is the opinion of this office that the proposed transaction is legally permissible.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance, please do not hesitate to contact our office.

Yours very truly,

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Attorney General

By: 
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Assistant Attorney General