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ATTORNEY GENERAL

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

July 17, 2015
OPINION 15-0032

Mr. C. Berwick Duval, II
101 Wilson Avenue
P.O. Box 3017
Houma, LA 70361

Dear Mr. Duval,

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 39:704

The Terrebonne Parish Consolidated Government, not the Terrebonne Council on Aging, Inc., is the proper entity to collect, manage and administer the proceeds of a property tax to be used for the purpose of acquiring, constructing, operating and maintaining capital improvements to serve the elderly and may use the proceeds to renovate the old Houma School building for the purpose of providing apartments for seniors in Terrebonne Parish.

You have requested an opinion of this office on behalf of the Terrebonne Council on Aging, Inc. ("Council on Aging") regarding the administration of a special tax.

According to your request, the Council on Aging has been encouraged to provide funding for the renovation of the old Houma Elementary School building. The purpose of the renovation would be to provide apartments for seniors in Terrebonne Parish. The school building is owned by the Terrebonne Parish Consolidated Government ("TPCG"). The renovations will be performed by Renaissance Neighborhood Development Corporation ("Renaissance") pursuant to a long term lease with the TPCG. The Council on Aging is considering providing five and a half million dollars received from a parish millage levied in support of the Council on Aging to help fund this project. You ask whether the proposed transaction would be permissible.

At the outset, it is important to note that prior opinions of this office have stated that the Parish Police Jury is the proper entity to administer the proceeds of a special tax levied on behalf of a council on aging.

In La. Atty. Gen. No. 13-0228 our office addressed a similar issue regarding the ability of the St. Tammany Parish Government to manage and administer the proceeds from an *ad valorem* tax dedicated for the purposes of funding the Council on Aging in St. Tammany Parish. There, we recognized that art. VI, sec. 26 of the Louisiana Constitution authorizes a parish to levy *ad valorem* taxes for the support of parish councils on aging. However, the Parish, and not the Council on Aging, was the proper entity to administer the proceeds from the *ad valorem* tax.

Also in accord is La. Atty. Gen. Op. No. 02-0346 where we were asked by the East Feliciana Parish Police Jury whether a tax that was passed for the maintenance, support, and operation of a public library system required oversight and approval by the Parish Police Jury. We opined that because the Parish Police Jury, and not the public library system, was the entity that levied the tax, only the Parish Police Jury could budget and use the proceeds for the purposes set forth in the proposition.

Therefore, in regard to the tax proceeds levied in support of the Council on Aging, it is the opinion of this office that the TPCG is the proper entity to collect, use and administer the proceeds, as well as ensure that they are being used for the specific purposes outlined in the tax proposition.

Keeping that in mind, we now turn our attention to whether the special tax proceeds may be used to help fund the project described above. According to your request, in 2008 the voters in Terrebonne Parish approved the continuation of a special tax in support of the Council on Aging. The proposition provides, in pertinent part:

Summary: Authority to continue to levy a 10-year 7-1/2 mills property tax for the purpose of acquiring, constructing, operating and maintaining capital improvements to serve the elderly; and for operating and maintaining programs for the elderly and disabled persons in Terrebonne Parish through the Terrebonne Council on Aging Incorporated.

Shall the Parish of Terrebonne, State of Louisiana (the "Parish"), continue to levy and collect a special tax of seven and one-half (7-1/2) mills on all property subject to taxation in said Parish (an estimated \$4,475,000 reasonably expected at this time to be collected from the levy of the tax for an entire year) for a period of ten (10) years, beginning with the year 2010 and ending with the year 2019, for the purpose of acquiring, constructing, operating and maintaining capital improvements to serve the elderly; and for operating and maintaining programs for the elderly and disabled persons in Terrebonne Parish through the Terrebonne Council on Aging Incorporated?

La. R.S. 39:704 provides that "the proceeds of any special tax shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied."

Louisiana jurisprudence further provides that special tax authorizations must be strictly construed. *Police Jury of the Parish of Acadia v. All Taxpayers, et al.*, 653 So.2d 94 (La. App. 3 Cir. 3/29/95), *rehearing denied*, 657 So.2d 1032 (La. 6/30/95); *Hemler v. Richland Parish School Board*, 76 So. 585 (La. 1917); *Watkins v. Ouachita Parish School Board*, 136 So. 591 (La. 1931); *Hodnett v. Monroe City School Board*, 277 So.2d 598 (La. App. 2 Cir. 1972) and *Brock v. St. James Parish Council*, 407 So.2d 1265 (La. App. 4 Cir. 1981), *writ denied* 412 So.2d 1094 (La. 1982). It has consistently been the

opinion of this office that tax proceeds must be used solely for the purposes approved by the voters. See, e.g. La. Atty. Gen. Op. Nos. 13-0228, 13-0024, 12-0089, and 09-0150.

The tax proposition approved by voters in Terrebonne Parish specifically authorizes the TPCG to use its proceeds for the purposes of "acquiring, constructing, operating and maintaining capital improvements to serve the elderly." It appears that the renovation of the old Houma Elementary School falls within these authorized uses. Therefore, it is additionally the opinion of this office that tax proceeds levied in support of the Council on Aging may be used by the TPCG to fund the project as described above. The Terrebonne Parish Attorney agrees with this conclusion, as evidenced by a letter attached to this request, stating her opinion that the contemplated project "comports with the proposition approved by the electorate and is an appropriate use of the ad valorem tax collected by the [TPCG]."

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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