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ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
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September 2, 2015  
OPINION 15-0068

Jan Kasofsky, PhD  
Executive Director  
Capital Area Human Services District  
4615 Government Street, Building 2  
Baton Rouge, LA 70806

90-A-1 PUBLIC FUNDS & CONTRACTS  
La. R.S. 28:826

La. R.S. 28:826 contains no prohibition against the Community and Family Support System Fund being used to pay deductibles for recipients of services provided by the Capital Area Human Services District.

Dear Dr. Kasofsky,

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of Capital Area Human Services District ("CAHSD"), you have requested an opinion of this office regarding whether CAHSD may use money provided to the agency from the Community and Family Support System Fund ("Fund") to pay for deductibles for recipients if CAHSD is the provider. According to your request, the funds are typically used to pay deductibles to third party providers for services which support the developmentally disabled. In this particular instance, a family has selected CAHSD Mental Health Clinic as the provider.

All questions regarding the use of public funds<sup>1</sup> must be considered in light of La. Const. art. VII, § 14, which specifically provides:

Section 14(A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Except as otherwise provided in this Section, neither the state nor a political

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<sup>1</sup> La. R.S. 28:902 creates CAHSD "as a special district which, through its board, shall direct the operation and management of community-based programs and services relative to public health, mental health, developmental disabilities, and substance abuse services for the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, West Baton Rouge, and West Feliciana." La. Const. art. VI, sec. 44 defines a political subdivision as "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." Therefore, CAHSD falls within the definition of a political subdivision of the state of Louisiana. As such the funds, credit, property, or things of value of CAHSD are considered to be public. See also La. Atty. Gen. Op. Nos. 03-0357 and 15-0001.

subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

(B) Authorized Uses. Nothing in this Section shall prevent (1) the use of public funds for programs of social welfare for the aid and support of the needy;

While La. Const. art. VII, § 14(A) generally prohibits the gratuitous donation of public funds, § 14(B)(1) contains an exception which permits the expenditure of funds for programs of social welfare to aid and support the needy. This office has consistently determined that in order to avail itself of this exception, the public entity must establish objective criteria to ensure that those assisted through such a program are, in fact, needy. See, e.g., La. Atty. Gen. Op. Nos. 11-0043, 05-0128, 03-0334, 00-14, 98-432. We have also interpreted La. Const. art. VII, § 14(B)(1) to permit public funds to be expended in the form of waivers or scholarships, provided the authority to expend the funds in such a way is statutorily authorized. La. Atty. Gen. Op. Nos. 81-1221, 92-0543, 09-0104, 10-0226, and 14-0052.

In La. Atty. Gen. Op. No. 81-1221, we determined that the Louisiana Real Estate Commission would not be constitutionally prohibited from providing scholarships to students classified as poor or needy. We noted that the Louisiana Real Estate Commission was statutorily authorized to assist and promote educational programs directly related to the real estate field and therefore was permitted to expend public funds pursuant to La. Const. art. VII, § 14(B)(1).

In La. Atty. Gen. Op. No. 09-0104, we concluded that the Town of White Castle was not permitted to use public funds to award college scholarships. There, we acknowledged that La. Const. art. VII, § 14(B) allows public funds to be spent for programs of social welfare. However, we noted that the Town of White Castle did not have the statutory authority to expend funds in such a way. Absent such authority, we opined that to conclude otherwise could easily result in an abuse of public funds under the guise of supporting the needy.

Here, La. R.S. 28:904 requires CAHSD to “be responsible for community-based programs and functions relating to the care, diagnosis, training, treatment, case management, and education of persons with developmental disabilities and persons with autism.” CAHSD therefore has the legal authority to spend public funds in order to support persons with developmental disabilities and autism. Accordingly, La. Const. art. VII, § 14(B) would not prohibit CAHSD from expending its funds to pay insurance deductibles for needy persons with developmental disabilities so long as an objective criterion is used to determine those recipients who are actually needy.<sup>2</sup>

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<sup>2</sup> We note that La. R.S. 28:824 requires the Louisiana Developmental Disabilities Council to “develop a plan to implement a Community and Family Support System in accordance with the principles contained

We now turn our attention to whether CAHSD may use money received from the Fund to pay deductibles for recipients where CAHSD itself is the provider.

La. Const. art. VII, § 10 provides that appropriations from the state treasury shall be made only in accordance with the law. This office has previously determined that money from a special fund may only be expended for the purposes set forth in the legislation which governs the fund. See La. Atty. Gen. Op. Nos. 09-0123 and 01-0347.

La. R.S. 28:826 establishes a special fund in the state treasury known as the Community and Family Support System Fund, and sets forth as follows:

A. There is hereby created, as a special fund in the state treasury, the Community and Family Support System Fund, hereafter sometimes referred to as "the fund."

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(2) Monies appropriated from the fund shall be used solely as provided by Subsection C of this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the fund following compliance with the requirements of Article VII, Section 9(B) relative to the Bond Security and Redemption Fund.

**C. (1) Subject to annual appropriation by the legislature, the monies in the Community and Family Support System Fund shall be used solely to improve the capacity of the state to meet the varying and complex needs of individuals with developmental disabilities, with emphasis on increasing the number of recipients of waiver services.**

(2) The monies in the fund shall not be used to displace, replace, or supplant appropriations from the state general fund for the state and Medicaid community-based developmental services below the amount of state general fund appropriations for the 2006-2007 Fiscal Year.

(3) For the purposes of this Section "waiver services" means Medicaid services provided under the New Opportunities Waiver, the Children's

Choice Waiver, or any other Medicaid home and community based waiver for persons with developmental disabilities as promulgated by rule by the Department of Health and Hospitals. (emphasis added).

As highlighted in the quoted provisions above, the language in La. R.S. 28:286 allows the Fund to be used solely for the purpose of meeting the needs of those with developmental disabilities within the state. There is no language which specifically requires money from the Fund to be paid to a particular type of provider. Provided the situation which you describe complies with the purpose set forth in La. R.S. 28:286(C), it appears that money from the Fund may be used to pay the CAHSD Mental Health Clinic deductible. Our office is not aware of, nor did research reveal, any provision of law which would prohibit the use of the Fund to pay the deductible for a recipient if CAHSD is the provider. Additionally, pursuant to La. R.S. 28:904(C), the CAHSD board is required to collect all money due to the district for services provided pursuant to statutory requirements. It is, therefore, the opinion of this office that CAHSD may use money provided by the Fund to reimburse itself the cost of the deductible charged by CAHSD Mental Health Clinic for services rendered. The amount of reimbursement paid to CAHSD should be commensurate with the deductible reimbursement typically paid to third party providers.

However, it should be noted that it is the policy of this office to refrain from addressing the potential applicability of the provisions of the Louisiana Code of Governmental Ethics, La. R.S. 42:111, *et seq.* Advisory rulings addressing questions under the Ethics Code are within with jurisdiction of the Louisiana State Board of Ethics. The Board may be contacted at the following address: P.O. Box 4368, Baton Rouge, Louisiana 70821, phone: 225-219-5600.

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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By:   
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