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ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

September 3, 2015

OPINION 15-0075

Ms. Judy Pugh
Chairperson
Concordia Fire Protection District No. 2
413 Airport Road, P.O. Box 1150
Vidalia, LA 71373

Dear Ms. Pugh,

90-A-1 PUBLIC FUNDS & CONTRACTS

La. R.S. 39:704

La. R.S. 40:1501(A)(1)

Proceeds of an *ad valorem* tax levied by a Fire Protection District for the acquisition, construction, improvement, maintenance and/or operation of fire protection facilities and equipment may not be used to fund a cooperative endeavor agreement with other parish public entities which would provide parish wide helicopter ambulance services. However, other non-dedicated and available funds of the District may be used to fund such an agreement provided the District receives equivalent value in return for its expenditure.

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Concordia Fire Protection District No. 2 ("District"), you have asked this office to advise if the proceeds of an *ad valorem* tax may be used to partially fund an agreement with a privately owned business, Air Evac Lifeteam, Inc. ("Air Evac"), to provide helicopter ambulance services to all residents of Concordia Parish.

According to your request, Air Evac is interested in providing its helicopter ambulance service to Concordia Parish. In order to do so, Air Evac has proposed that certain parish public entities would enter into an agreement and that the District split the costs of providing such a service. You ask whether the District may use funds received from a parish millage in order to pay a portion of the fee that would be charged by Air Evac.

Article VII, § 14(C) of the Louisiana Constitution generally authorizes the state and its political subdivisions to enter into cooperative endeavor agreements and provides, in pertinent part, the following:

(C) Cooperative Endeavors. For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

However, the ability of the state and its political subdivisions to enter into cooperative endeavor agreements pursuant to Paragraph (C) is limited by the general prohibition against the loan, pledge, or donation of public funds contained in La. Const. art. VII, § 14(A). The Louisiana Supreme Court has determined that La. Const. art. VII, § 14(A) "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*, (La. 9/6/06), 938 So. 2d 11, 20 (the "Cabela's" case). This standard places a strong emphasis on the reciprocal obligations between the parties to ensure that public property or funds are not gratuitously alienated.

Our office has interpreted the *Cabela's* case to say that in order for the cooperative endeavor to be permissible under La. Const. art. VII, § 14(A), the public entity seeking to enter into the agreement 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.

La. R.S. 40:1492 designates fire protection districts as subdivisions of the state. The District, therefore, is permitted to enter into a cooperative endeavor agreement with public entities in Concordia Parish provided the agreement complies with the *Cabela's* standard. Pursuant to La. R.S. 40:1500(C), fire protection districts are permitted to enter into contracts deemed necessary or desirable to carry out the purposes for which they were created. La. R.S. 40:1500(B) allows fire protection districts to utilize fire equipment to transport any injured or ill person to a hospital or other place of medical care in an emergency situation where there is no reasonable expectation of the prompt response of an ambulance. Additionally, La. R.S. 40:1501(1) provides a fire protection district the ability to levy ad valorem taxes for purposes involving emergency medical service facilities, vehicles, and equipment. La. R.S. 40:1501(2) notes that a fire protection district has the ability to provide emergency medical services itself to the people within its service area. Furthermore, La. R.S. 33:4791.1, encourages local governing bodies to contract with private ambulance services. See also La. Atty. Gen. Op. Nos. 05-0061 and 08-0054.

The provision of ambulance services serves to promote the health, safety, and welfare of citizens within the District. Specifically, helicopter ambulance services will enhance the ability of the District to provide high quality emergency medical care and prompt response times. Considering the aforementioned statutes, such a promotion constitutes a public purpose for which the District has the legal authority to pursue. Accordingly, the District has the ability to enter into a cooperative endeavor agreement with public entities in Concordia Parish to enter into the proposed contract with Air Evac provided

that the transaction, taken as a whole, is not gratuitous and that the District has a demonstrative, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure of public funds. Provided the amount contributed is proportionate to the benefit received by the people within the service area of the District, it appears that the agreement is constitutionally permissible.

Having established that the District may enter into such an agreement, we now turn to whether the *ad valorem* tax proceeds may be used to fund the proposed agreement to provide helicopter ambulance services. The resolution of this question will turn on the specific language of the tax proposition passed by the voters within the District. We note that La. R.S. 39:704 requires "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."

The Millage Renewal Proposition ("Proposition"), which was approved by the electorate in a District-wide election held on May 1, 2010, provides, in pertinent part:

Summary: 10 year, 6.94 mills renewal tax for acquiring, constructing, improving, maintaining and/or operating fire protection facilities and equipment in and for Fire Protection District No. 2 of the Parish of Concordia, including the payment of all related personnel costs and the costs of obtaining water for fire protection purposes.

Shall Fire Protection District No. 2 of the Parish of Concordia, State of Louisiana ("the District"), levy a tax of six and ninety-four hundredths (6.94) mills on all of the property subject to taxation in the District (an estimated \$479,000 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 2011 and ending with the year 2020, for the purpose of acquiring, constructing, improving, maintaining and/or operating fire protection facilities and equipment in and for the District, including the payment of all related personnel costs and the costs of obtaining water for fire protection purposes?

The Proposition reviewed here authorizes the use of the Proposition revenues for the purposes of acquisition, construction, improvement, maintenance and/or operation of *fire protection facilities and equipment*. The Proposition was specifically levied for purposes related to fire protection and is silent with regard to emergency medical or ambulance services. While La. R.S. 40:1500(B) allows fire protection districts to "utilize their equipment to transport any injured or ill person to a hospital or other place of medical care in an emergency situation where there is no reasonable expectation of the prompt response of an ambulance or industrial ambulance," we are of the opinion that the Proposition does not envision the proceeds to be used to provide the emergency helicopter ambulance services contemplated by the agreement with Air Evac.

In accord are La. Atty. Gen. Op. Nos. 93-0292 and 08-0287, where we opined that the proceeds of *ad valorem* taxes levied for the construction, improvement, maintenance and operation of fire protection facilities and equipment may not be used to provide ambulance services.

While the district may not use the proceeds of the tax proposition as currently written to enter into a contract to provide ambulance services, we note that the district would be permitted to use funds obtained from other sources to enter into the proposed agreement with Air Evac. Additionally, the helicopter ambulance services contemplated by the agreement appear to be within the scope of functions that the District has the ability to levy a tax to provide pursuant to La. R.S. 40:1501. Therefore, the District is permitted to request voters within its service area to rededicate the proceeds of the tax to include emergency medical and ambulance services. Such a rededication election would need to be approved by the State Bond Commission.¹

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

With best regards,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: 
ANDREA BARIENT
Assistant Attorney General

¹ La. R.S. 39:1410.61 provides: "Before incurring any debt, holding any election to authorize the incurring of any debt or the levy of any special tax, borrowing any money for any purpose whatever, issuing any bonds or other evidences whatever of debt, levying any tax or pledging any tax or revenue or income for the payment of any such bonds or debt, where they are authorized so to do by the constitution and the laws of this state, every such governmental agency of the state of Louisiana named in R.S. 39:1410.60 shall obtain the consent and approval of the commission."