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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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July 16, 2015
OPINION 15-0077

71-1-B MUNICIPALITIES- Home Rule Charter

La. R.S. 39:1311

The Livingston Parish Charter entitles the Parish President to representation in his official capacity.

Mr. Christopher Moody
1250 S.W. Railroad Ave. Suite 170
Hammond, LA 70403

Dear Mr. Moody:

Our office received your opinion request submitted on behalf of the Livingston Parish Council ("Council") regarding the authority of the Parish President to hire an attorney to represent him in a lawsuit brought by the Council against the Parish President in his official capacity.

In La. Atty. Gen. Op. 13-0132, our office was asked whether public funds could be used to pay for the defense of lawsuits brought against two members of the Council who were sued in their individual capacities. This office stated that if the Council determined that the members performed the alleged actions in their official capacities, the Parish could be legally liable for the acts, and the Parish could provide an attorney to represent the members pursuant to the manner set forth in the Livingston Parish Home Rule Charter ("Charter"). We also stated that the Parish could wait and reimburse necessary and reasonable legal expenses after the lawsuit had concluded and resulted in a judgment of no liability for the members and/or a finding that the member's statements were made in the course and scope of their official duties.

On June 13, 2013, the Council passed Livingston Parish Resolutions 13-172 and 13-173 finding that the Council members in the above referenced lawsuits were acting in their official capacity, and resolving to pay their legal fees. The Council subsequently passed Livingston Parish Resolution 14-226 on July 24, 2014, which directed the Parish President to pay the legal fees of the attorney representing the members within 7 days. The Parish President did not pay the attorney representing the members within 7 days, and on September 23, 2014, the Council filed a Petition for Writ of Mandamus against the Parish President, Layton Ricks in his official capacity.¹ The lawsuit sought a writ of mandamus directing the Parish President to pay the attorney's fees of the members in accordance with Livingston Parish Resolution 14-226.

¹ See Paragraph 2 of the Writ of Mandamus in *Parish Council of the Parish of Livingston v. Layton Ricks in his Capacity as President of the Parish of Livingston*.

The Charter provides for representation of the Parish President in Section 4-02 which states:

A. The district attorney of the judicial district serving Livingston Parish shall serve as legal adviser to the council, president and all departments, offices and agencies and represent the parish government in legal proceedings.

B. No special legal counsel shall be retained by the parish government except by written contract for a specific purpose approved by the favorable vote of a majority of the authorized membership of the council. Such authorization shall specify the compensation, if any, to be paid for such services.²

Pursuant to Section 4-02 of the Charter, the Parish President in his official capacity is entitled to legal representation. However, the opinion request indicates that the District Attorney advised that, pursuant to 4-02 (A) of the Charter, he could not represent either the Council or the Parish President in the mandamus proceeding due to a conflict of interest. The Parish Attorney also advised that he could not represent either the Council or the Parish President because his contract requires him to represent the Parish, and representing one branch of government against another would result in a conflict of interest. Thereafter, the Council hired special counsel pursuant to 4-02 (B) of the Charter to institute action against the Parish President.

After receiving notice that both the District Attorney and the Parish Attorney declined to represent him in the mandamus proceeding, the Parish President hired an attorney for the limited purpose of representing the executive branch in the mandamus proceeding brought by the Council. The Parish President has indicated that the funds to pay the attorney are paid from the portion of the budget used to pay the executive staff. The Council objects to the hiring of the President's attorney without the approval of the Council and has asked whether the President's hiring of an attorney violates Section 4-02 of the Livingston Parish Charter.

Our office has previously concluded that the executive's power of administration includes signing contracts on behalf of the government pursuant to the parish president's duty to carry out the policies adopted by the Council.³ As a general rule, the chief executive, acting alone, is without the power to execute a contract incurring a debt in absence of an ordinance or resolution by the governing council authorizing him to do so.⁴ However, this approval may come through the budgeting and appropriation of funds performed in accordance with the Local Government Budget Act.⁵ The adopted

² Emphasis added.

³ La. Atty. Gen. Op. Nos. 14-0013, 10-0156, and 93-5.

⁴ *Smith v. Town of Vinton*, 209 La. 587, 597 (1946), *Sunray Services v. City of Minden*, 97-29260, (La.App. 2 Cir. 2/28/1997), 690 So.2d 970,973.

⁵ La. Atty. Gen. Op. No. 12-0133.

budget and any duly authorized amendments constitute the authority of the chief executive or administrative officers of the political subdivision to incur liabilities and authorize expenditures from the respective budgeted funds during the fiscal year.⁶

We first note this case presents unique factual circumstances including:

1. There is no dispute that the Parish President was sued in his official capacity.
2. The Charter clearly entitles the Parish President to representation in his official capacity.
3. The attorneys whose duty it is to represent the interest of the Parish declined to represent the Parish President due to a conflict of interest.
4. The Council has previously appropriated the funds being used to pay the Parish President's attorney.⁷

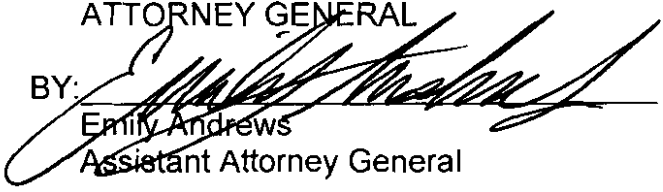
Accordingly, it is our opinion that under these specific circumstances, the Parish President may hire an attorney to represent him in his official capacity and pay the attorney from available appropriated and budgeted funds.

We hope that this opinion has adequately addressed the questions you have submitted. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:


Emily Andrews
Assistant Attorney General

JDC: EGA

⁶ La. R.S. 39:1311 (C).

⁷ We note that Section 5-06 (A) of the Charter states: "No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with the approved operating budget and capital improvement budget and appropriations duly made and unless the president or the president's designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable."