



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

August 25, 2015
OPINION 15-0080

47-A-1 FIRE PROTECTION DISTRICTS

La. R.S. 24:513	La. R.S. 33:2101
La. R.S. 38:2211	La. R.S. 39:1302
La. R.S. 44:1A	La. R.S. 42:13

The Honorable Bryan J. Adams
State Representative, District 85
P.O. Box 1387
Gretna, LA 70054

Dear Representative Adams:

A 501(c)3 Volunteer Fire Department (VFD) is not a public entity. A VFD performing a governmental function and receiving public funds is considered a public body subject to the Louisiana Public Records Law (La. R.S. 44:1 *et seq.*), but only to the extent that its records are connected to the receipt or expenditure of public funds. Further, a VFD is considered a quasi-public entity subject to the Audit Law (La. R.S. 24:511 *et seq.*), if it meets at least one of the elements enumerated in La. R.S. 24:513(A)(1)(b)(i)-(v). However, a VFD is not subject to the Public Bid Law (La. R.S. 38:2211 *et seq.*), Open Meetings Law (La. R.S. 42:1 *et seq.*), or the Local Government Budget Act (La. R.S. 39:1301 *et seq.*).

You have requested an Attorney General's opinion as to whether a 501(c)3 Volunteer Fire Department ("VFD") performing firefighting services for a public entity, and receiving public funds, is considered a private, public or quasi-public entity. In addition, you ask whether a non-profit VFD must comply with state laws including, but not limited to, the Open Meetings Law, Public Records Law, Public Bid Law, Local Government Budget Act, etc.

As an initial matter, we note that the classification of a VFD as a private, public or quasi-public entity is a question of fact which depends on different factors, such as the manner in which the department was created, the extent of public funding and the degree of control, if any, by the public entity.¹ Because this office does not serve as a fact finder, we address your inquiry by describing the law applicable to VFDs in general.

In *State v. Smith*, 357 So.2d 505 (La. 1978), the Louisiana Supreme Court held that in order for an entity to be considered public, the following four factors must be considered: (1) whether the entity was created by the legislature; (2) whether its powers were specifically defined by the legislature; (3) whether the property of the entity belongs to the public; and (4) whether the entity's functions are exclusively of a public

¹ See La. Atty. Gen. Op. No. 02-36.

character and performed solely for public benefit.² Further, all four factors must be present in order for a court to determine that an entity is public.³

Your request states that the VFD is a private, non-profit organization.⁴ None of the facts indicate that the VFD was created by the legislature or that its powers are specifically defined by the legislature. Thus, since the VFD fails to meet the *Smith* factors, it follows that the VFD is not a public entity.

Whether a VFD can be considered a strictly private corporation or a quasi-public entity depends on the body of laws under analysis. To illustrate:

The Public Records Law (La. R.S. 44:1 *et seq.*) applies to all public bodies, including "a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function."⁵ The Supreme Court of Louisiana in *Guste v. Nicholls College Foundation*, 564 So. 2d 682 (La. 1990), and the First Circuit, on remand, at 592 So. 2d 419 (La.App. 1 Cir. 1991) *writ denied*, 593 So. 2d 651 (La. 1992), confirmed that intrinsically private, non-profit corporations, to the extent they take on the performance of a governmental function and use public funds and resources, are subject to the Public Records Act. The inspection of public records, however, is limited to those records related to the use of public funds.⁶ The *Nicholls* court stated:

If a private corporation accepts public money from a public body in the discharge of the latter's constitutional or legal duties, it must disclose records *concerning those transactions*, including the receipt and expenditure of those funds. If those corporations wish to avoid divulging nonpublic receipts and expenditures, they need only maintain separate and distinct books, accounts and records.⁷ (Emphasis added).

According to your request, the VFD performs a governmental function by providing firefighting services for a public entity in benefit of the community and receives public funds. As such, said VFD is subject to the Public Records Law.⁸

In contrast to the Public Records Law, the receipt or expenditure of public funds is not necessary to be considered a quasi-public entity under the Audit Law (La. R.S. 24:511 *et seq.*).⁹ La. R.S. 24:513(A)(1)(a) gives the Louisiana Legislative Auditor the authority

² *State v. Smith*, 357 So.2d 505, 507-08 (La. 1978).

³ *Property Insurance Association of Louisiana v. Theriot*, 09-1152 (La.3/16/10), 31 So.3d 1012, 1015 ("PIAL").

⁴ La. R.S. 33:2101 authorizes a parish or fire district to contract with a VFD to provide fire protection; however, "being paid for services by contract with public funds does not make a contracting party public." *PIAL*, *supra* at p. 1019.

⁵ La. R.S. 44:1(A)(1).

⁶ *Carter v. Fench*, 322 So. 2d 305, 307 (La. Ct. App. 1975) *writ denied*, 325 So. 2d 277 (La. 1976).

⁷ *Nicholls*, *supra*, at p. 689.

⁸ See La. Atty. Gen. Op. Nos. 06-0171, 02-36, and 79-858.

⁹ La. Atty. Gen. Op. No. 11-0189A.

to “compile financial statements and to examine, audit or review the books and accounts of...quasi-public agencies or bodies.” A quasi-public agency or body, pursuant to La. R.S. 24:513(A)(1)(b), is defined as follows:

- (i) An organization, either not-for-profit or for profit, created by the state of Louisiana or any political subdivision or agency thereof, any special district or authority, or unit of local government to perform a public purpose.
- (ii) An organization, either not-for-profit or for profit, that is a component unit of a governmental reporting entity, as defined under generally accepted accounting principles.
- (iii) An organization, either not-for-profit or for profit, created to perform a public purpose and having one or more of the following characteristics:
 - (aa) The governing body is elected by the general public.
 - (bb) A majority of the governing body is appointed by or authorized to be appointed by a governmental entity or individual governmental official as a part of his official duties.
 - (cc) The entity is the recipient of the proceeds of an ad valorem tax or general sales tax levied specifically for its operations.
 - (dd) The entity is able to directly issue debt, the interest on which is exempt from federal taxation.
 - (ee) The entity can be dissolved unilaterally by a governmental entity and its net assets assumed without compensation by that governmental entity.
- (iv) Any not-for-profit organization that receives or expends any local or state assistance in any fiscal year. Assistance shall include grants, loans, transfers of property, awards, and direct appropriations of state or local public funds. Assistance shall not include guarantees, membership dues, vendor contracts for goods and services related to administrative support for a local or state assistance program, assistance to private or parochial schools except as provided in R.S. 17:4022, assistance to private colleges and universities, or benefits to individuals.
- (v) Any organization, either not-for-profit or for profit, which is subject to the open meetings law and derives a portion of its income from payments received from any public agency or body.

Relevant to our analysis is *Louisiana High School Athletics Ass'n, Inc. v. State*, 12-1472 (La. 1/29/13), 107 So.3d 583 (*LHSAA*). In essence, the *LHSAA* decision focuses on whether La. R.S. 24:513(A)(1)(b)(v), defining a “quasi-public” agency or body for the limited purpose of being subject to the authority of the Louisiana Legislative Auditor, is applicable to the *LHSAA*. The Court reasoned that whether the statute applies to the *LHSAA* depends upon whether the *LHSAA* is subject to the Open Meetings Law and receives public funding.¹⁰

¹⁰ *LHSAA*, *supra* at p. 603.

After determining that the “connexity” factor is not one which should be considered in whether or not an entity is a “public body” under La. R.S. 42:13,¹¹ the court analyzed whether the LHSAA (1) performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) is funded by public money; and (3) exercises policy-making, advisory, and administrative functions. Ultimately, the court concluded that “the LHSAA is not a ‘public agency or body’ for purposes of the Open Meetings Law and therefore, cannot be a ‘quasi public agency or body,’ as defined in La. R.S. 24:513(A)(1)(b)(v).”¹²

Thus, a VFD will be classified as a quasi-public agency or body for purposes of the Louisiana Audit Law, and subject to the audit and oversight authority of the Legislative Auditor, if it meets at least one of the elements enumerated in La. R.S. 24:513(A)(1)(b)(i)-(v).¹³

Even if an entity is a quasi-public body for purposes of another set of laws, our office has opined that a VFD does not qualify as a “public entity”¹⁴ within the meaning of Public Bid Law (La. R.S. 38:2211 *et seq.*); as a “political subdivision”¹⁵ under the Local

¹¹ The LSHAA decision overruled *Spain v. Louisiana High School Athletic Association*, 398 So.2d 1386 (La. 1981), which included the connexity element as a relevant factor.

¹² LHSAA, *supra* at p. 609.

¹³ See La. Atty. Gen. Op. Nos. 06-0171, 02-36, 90-271 and 84-583.

¹⁴ The Public Bid Law, La. R.S. 38:2211(A)(11) states, in relevant part, as follows:

“Public entity” means and includes the state of Louisiana, or any agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, including but not limited to any political subdivision as defined in Article VI Section 44 of the Constitution of Louisiana, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision. “Public entity” shall not include a public body or officer where the particular transaction of the public body or officer is governed by the provisions of the model procurement code.

¹⁵ The Local Government Budget Act, La. R.S. 39:1302 reads, in pertinent part:

- (1) “Political subdivision” means any:
- (a) Parish governing authority and all districts, boards, or commissions created by such parish governing authority either independently or in conjunction with other units of government.
 - (b) Municipality and all boards and commissions created by such municipality, either independently or in conjunction with other units of government.
 - (c) School board.
 - (d) Special district created pursuant to and under the authority of Article VI, Section 16 or 19 of the Louisiana Constitution.
 - (e) City court.
 - (f) District public defender office.
 - (g) Housing authority.
 - (h) Mortgage authority.
 - (i) Political subdivisions of the state not included within the state's Comprehensive Annual Financial Reports.
 - (j) Registrar of voters.
 - (k) Independently elected parish offices, including the office of assessor, clerk of district court, coroner, district attorney, sheriff, and judges, but only insofar as their judicial expense funds, as provided for in Title 13 of the Louisiana Revised Statutes of 1950.

Government Budget Act (La. R.S. 39:1301 *et seq.*); as a "governmental body"¹⁶ under the Procurement Code (La. R.S. 39:1551 *et seq.*); or a "public body"¹⁷ under the Open Meetings Law (La. R.S. 42:1 *et seq.*).¹⁸

Specifically, when analyzing a VFD under the Open Meetings Law, we note that the fact that the VFD is set up as a private non-profit corporation is not dispositive of the question of whether it is a public body for the purpose of the Open Meetings Law. Moreover, the mere fact that the VFD receives public money does not make it a public body for the purpose of the Open Meetings Law.¹⁹

The facts presented in your request do not state that the VFD has any policy making, advisory, or administrative functions. Consequently, since the VFD lacks these types of functions to be considered a public body as defined in La. R.S. 42:13(A)(3), it follows that a VFD is not subject to the Louisiana's Open Meetings law.²⁰

In sum, it is the opinion of this office that a 501(c)3 Volunteer Fire Department (VFD) is not a public entity. A VFD performing a governmental function and receiving public funds is considered a public body subject to the Louisiana Public Records Law (La. R.S. 44:1 *et seq.*), but only to the extent that its records are connected to the receipt or expenditure of public funds. Further, a VFD is considered a quasi-public entity subject to the Audit Law (La. R.S. 24:511 *et seq.*), if it meets at least one of the elements enumerated in La. R.S. 24:513(A)(1)(b)(i)-(v). However, such a VFD is not subject to the Public Bid Law (La. R.S. 38:2211 *et seq.*), Open Meetings Law (La. R.S. 42:1 *et seq.*), or the Local Government Budget Act (La. R.S. 39:1301 *et seq.*).

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

¹⁶ The Procurement Code, La. R.S. 39:1556(24) defines a governmental body as an entity within the executive or judicial branch of state government.

¹⁷ The Open Meetings Law, La. R.S. 42:13(A)(3) provides, in relevant part, as follows:

"Public body" means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

¹⁸ La. Atty. Gen. Op. No. 06-0171.

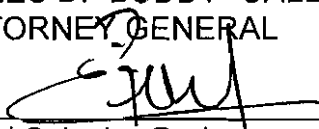
¹⁹ La. Atty. Gen. Op. No. 13-0043.

²⁰ See, for example, La. Atty. Gen. Op. No. 13-0043 (The Rapides Primary Health Care Center, Inc., a federally qualified health care center and non-profit corporation is not required to comply with the Open Meetings Law); and La. Atty. Gen. Op. No. 14-0106 (The Greater New Orleans Sports Foundation and the New Orleans Super Bowl XLVII Host Committee, which receive public funds, are not considered public bodies for purposes of the Open Meetings law).

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:


Ethel Solache Graham
Assistant Attorney General

JDC: ESG