



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

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OPINION 15-0095

90-A-2 – PUBLIC FUNDS – Loan, Pledge, or Grants
La. Const. Art. VII, §14

The City of Opelousas may not donate public funds to the Opelousas High School Band to defray the costs of traveling to Washington D.C. for a performance, as such would constitute donation of public funds prohibited by La. Const. art. VII, § 14.

Jarvis J. Claiborne
City Attorney
City of Opelousas
814 North Main St.
P.O. Box 1033
Opelousas, LA 70571-1033

Dear Mr. Claiborne:

On behalf of the City of Opelousas (the "City"), you have requested an opinion concerning the use of public funds. Specifically, your request states that the Opelousas High School Band (the "Band") is seeking \$10,000 from the City in order to pay for the costs associated with the Band traveling to Washington D.C. to perform in the Memorial Day Parade. Your request states that the City has denied the request twice already as being in violation of La. Const. art. VII, § 14; however, the City is still considering the request. You have asked whether the City may give funds to the Band to pay for these traveling costs.

As your request acknowledges, the legality of such a use of public funds must be determined in light of the prohibitions contained in La. Const. art. VII, § 14. La. Const. art. VII, § 14, provides, in pertinent part:

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...

The Louisiana Supreme Court has held that a violation of Article VII, § 14(A) occurs "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, et al.*, 2005-2298 (La. 9/6/06); 938 So.2d 11 ("Cabela's"). In light of the Louisiana Supreme Court's decision in *Cabela's*, this office has consistently opined that in order for an expenditure of public funds to be permissible under La. Const. art. VII, § 14(A), the public entity must have the legal

authority to make the expenditure and must show: (i) a public purpose of the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) 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. See, e.g., La. Atty. Gen. Op. Nos. 10-0299, 10-0171, 09-0271, and 09-0260.

It appears that the first element of the test is not satisfied here. In the instant matter, it does not appear that expending public funds by the City for the public high school Band to travel to Washington D.C. satisfies a public purpose that comports with the governmental purpose for which the City has legal authority to pursue. The City is incorporated under the Lawrason Act (La. R.S. 33:321 *et seq.*), and its authority is governed by the applicable statutes. The general powers of a Lawrason Act municipality are set forth in La. R.S. 33:361, which states that a municipality is "authorized to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied by law." Schools located in the City of Opelousas, such as Opelousas High School, are not operated, controlled, or supervised by the City. Rather, Opelousas High School is likely governed by the St. Landry Parish School Board. Expending public funds to pay for the Opelousas High School Band to travel to Washington D.C. is not necessary or proper for the management of City's affairs, as the City has no authority over the schools. While funding extra-curricular activities of public schools is admirable, it does not appear to qualify as a public purpose for which the City has the legal authority to pursue.

Even if the public purpose element were able to be satisfied, it appears that the second element would also fail. The City expending public funds for the Band to travel to Washington D.C. appears to be entirely gratuitous. The *Cabela's* court placed particular emphasis on reciprocal obligations of the parties when determining whether a use of public funds is gratuitous. *Board of Directors of the Industrial Development Board*, 938 So.2d at 22. This office has concurred with the court, finding that the requirement of a reciprocal obligation renders the payment onerous, rather than gratuitous, since it ensures that the public entity will obtain some advantage in return. La. Atty. Gen. Op. No. 10-0299. Here, it does not appear that the Band will be giving anything to the City in exchange for the funds, and the City does not appear to be receiving anything of value in exchange for donating the funds. As nothing indicates that donating the City's public funds to the Band is anything other than gratuitous, the second element of the test must fail.

As both the first and second elements of the *Cabela's* test do not appear to be satisfied here, the City would not be able to donate public funds to the Opelousas High School Band under La. Const. art. VII, § 14. Such a conclusion is in line with prior opinions of this office prohibiting similar expending of public funds. See La. Atty. Gen. Op. No. 14-0175 (opining that the Town of Independence could not use public funds to pay on-duty police officers to accompany local public high schools to away athletic events); La. Atty.

Gen. Op. No. 09-0104 (opining that the Town of White Castle cannot use public funds to provide college scholarships to high school seniors); La. Atty. Gen. Op. No. 95-81 (opining that the City of Mandeville cannot donate public funds to the high school debate team to defray the expenses of a debate contest held in another state).

Considering the above analysis, it is the opinion of this office that the City of Opelousas may not donate its public funds to the Opelousas High School Band to defray the costs of traveling to Washington D.C. for a performance, as such would be a violation of La. Const. art. VII, § 14.

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

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



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JDC/JCMIV