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DEPARTMENT OF JUSTICE
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OPINION 15-0098

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90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, § 14

It would not be a violation of La. Const. art. VII, § 14 for an employee to receive more hours than was available in an agency crisis leave pool due to an administrative error by the agency. The agency should recover the deficit hours through future employee contributions.

Dear Ms. Bordelon,

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Louisiana State Civil Service ("Civil Service"), you have asked our opinion concerning an administrative error regarding management of a crisis leave pool established pursuant to Civil Service Rule 11.34.

Civil Service Rule 11.34 authorizes an agency to establish a policy to implement and administer a pool of shared annual leave which may be used by employees who cannot work due to a crisis situation and who have insufficient appropriate paid leave to cover the absence needed for the crisis situation. Such a policy must meet certain conditions and must be presented to the State Civil Service Commission for approval. Once established, employees are allowed to donate up to 240 hours of unused leave per year into such a crisis leave pool. Specifically, you have asked:

1. Does it constitute a gratuitous donation in violation of La. Const. art. VII, § 14 if an employee receives more hours than what was donated to the pool as a result of an administrative error?
2. If it does constitute a donation, must the receiving employee repay the hours received or can the employee retain the hours and the hours be subtracted upon additional hours being donated to the pool?

This office has previously concluded that pooling leave time is not expressly prohibited by any provision of state law and thus, may be permitted as a matter of office policy. See, e.g., La. Atty. Gen. Op. Nos. 91-0678, 94-0504, 94-0530, 00-0407, and 13-0216. Additionally, we have recognized that the payment of wages, which includes sick leave

benefits, constitutes an expenditure of public funds. La. Atty. Gen. Op. Nos. 92-0121 and 10-0256. As such, the payment of such benefits must be examined in light of La. Const. art. VII, § 14 which provides, in pertinent part, as follows:

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 determined that this constitutional provision "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). Our office has further interpreted *Cabela's* to say that in order to comply with La. Const. art. VII, § 14(A), a public entity cannot set-aside, reduce, or otherwise forgive a debt owed to the public entity. La. Atty. Gen. Op. Nos. 10-0264, 10-0287, 13-0079, and 13-0192.

Applying these principles to the facts you have presented, state agencies are permitted to establish a crisis leave pool and allocate available annual leave hours from the pool to an employee who has insufficient paid leave to cover the absence needed for a crisis situation. Civil Service Rule 11.34 assigns the responsibility of administering the crisis leave pool to the public entity. In the event of an allocation that creates a deficit in the pool and which is due to an administrative error by an agency, it is the opinion of this office that the agency, and not the employee who received the additional hours, should replace the deficit hours through future employee contributions to the pool.

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,

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By: 
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