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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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NOV 30 2015
OPINION 15-0100

Mayor Gene Paul
City of Oakdale
333 E. 6th Avenue
Oakdale, LA 71463

Dear Mayor Paul:

90 POLICE JURIES – Powers & Functions
90-A-1 PUBLIC FUNDS & CONTRACTS

La. R.S. 33:1236 La. R.S. 33:1324
La. R.S. 33:3689.1

Police juries have no direct responsibility for any type of work within the corporate limits of a municipality; however, the Allen Parish Police Jury and the City of Oakdale have authority to enter into an intergovernmental agreement to repair or maintain roads and ditches, cut the grass and install culverts within the city limits.

On behalf of the City of Oakdale (City), you have requested an Attorney General's opinion regarding the relationship between the City and the Allen Parish Police Jury (Parish) concerning the maintenance of roads, ditches, etc., located within the city limits.

According to the information provided by your office, the Parish used to cover all expenses related to municipal road maintenance (equipment, personnel, and paving material) but now is refusing to provide the City with material to pave municipal roads. The Parish receives a millage (ad valorem tax) from homes located within the City for the purpose of providing road maintenance under the following approved propositions:

Shall Road District No. 5 of the Parish of Allen, State of Louisiana (the "District"), continue to levy a ten (10) mills property tax on all the property subject to taxation within the District (an estimated \$260,000 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 2010 and ending with the year 2019, for the purpose of constructing, improving and maintaining Parish roads and bridges within the District, including acquiring, operating and maintaining equipment for said road and bridge purposes? [and]

Shall Road District No. 5 of the Parish of Allen, State of Louisiana (the "District"), be authorized to continue to levy a five and thirty hundredths (5.30) mills tax on all the property subject to taxation within the District (an estimated \$140,000 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 2013 and ending with the year 2022, for the purpose of constructing, operating and maintaining Parish roads and bridges within the District, said millage to represent an eighteen hundredths of a mill (.18) increase over the 5.12 mills tax authorized to be levied through the year 2012 pursuant to an election held on November 5, 2002?

You pose the following questions related to the obligations of the City and the Parish:

1. May the Parish perform the following services inside City limits: (a) repairs to streets and/or roads; (b) mowing public property; (c) ditch maintenance; and (d) culvert installation; and
2. If such services by the Parish are permissible, who bears the costs for supplies or labor required to perform the maintenance and/or installation?

Your letter asks these questions assuming the City and the Parish have entered into proper agreements to perform such services.

In addressing your first question, we note that under La. R.S. 33:3689.1(A), parishes have authority to "construct, pave, surface, or otherwise improve...the streets, roads...within their corporate limits and outside of municipal corporations...and shall have full power and authority to levy and collect local or special assessments on the real property abutting such improvements sufficient in amount to defray the total cost of said works..." (emphasis added). However, La. R.S. 33:1236(2)(c) provides that "the police juries may, upon request of the governing authority of any incorporated municipality, perform all or any part of the repair, maintenance and care of roads, streets, alleys, bridges and culverts and other drainage facilities, situated within and under the jurisdiction of such incorporated municipality..." (emphasis added). The word "may" makes this a permissible, as opposed to a mandatory, provision. As such, we have consistently opined that La. R.S. 33:1236(2)(c) allows, but does not compel, police juries to repair or maintain roads in municipalities located within their parishes.¹

Further, La. R.S. 33:1324 authorizes parishes and municipalities to act jointly for public projects when at least one of the parties to the intergovernmental agreement (Agreement) is authorized by law to undertake the activities needed to accomplish the project.² However, any time the police jury enters into an Agreement with a municipality, it has an obligation (as does the municipality) to ensure that the Agreement complies with Article VII, Section 14(A) of the Constitution.³ This constitutional provision prohibits

¹ La. Atty. Gen. Op. Nos. 04-0156 and 85-149.

² La. R.S. 33:1324(4) provides for the construction or acquisition or improvement, and operation, repair and maintenance of roads. The Agreement may provide for the joint use of funds, facilities, personnel or property or any combination thereof.

³ La. Atty. Gen. Op. No. 11-0163.

public funds or property being 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, 20 (the “Cabela’s” case). In order to ensure that the agreement does not violate La. Const. art. VII, Sec. 14(A), our office has consistently opined that a public entity spending the funds must have the legal authority to so do and must be able to show: (i) a public purpose for 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.⁴

In analyzing whether the Parish is permitted to mow public property within the city limits, we note that La. R.S. 33:1236(2)(c) allows, but does not compel, police juries to maintain roads, streets, alleys, bridges and culverts and other drainage facilities if a request is made by a municipality; however, this statute does not define the term “maintenance.” Consistent with the rules of statutory construction under La. C.C. art. 11, we need to consider its generally prevailing meaning. The Merriam-Webster Dictionary defines the term “maintenance” as the upkeep of property or equipment.⁵ Clearly, the upkeep of these public structures implies that they remain in a usable condition, which requires shrub and vegetation management. Thus, provided that the mowing of grass furthers the proper use and preservation of the streets, roads or drainage facilities maintained by the Parish, the Parish has authority to mow grass along such public property.

With respect to ditch maintenance, La. R.S. 33:1236(2)(c) also allows, but does not compel the Parish to perform the “repair, maintenance and care of...drainage facilities situated within [the municipality]...,” if a request is made by the City. Thus, provided that the ditch in question constitutes part of the City’s drainage facilities, the Parish has discretion to maintain such ditch.

Your question about culvert installation suggests putting in place new culverts, rather than repairing and maintaining them. Even though La. R.S. 33:1236(2)(c) permits the Parish to perform “repair, maintenance and care” of culverts if requested by the City, it appears that this statute does not provide for installation of new structures. Thus, we opine that such installation activity is not specifically authorized by this statute but it can be accomplished through an Agreement. Also, note that Chapter 82, Article VI of the Allen Parish Police Jury Code of Ordinances provides for the creation of Gravity Drainage Districts within the parish. Pursuant to La. R.S. 38:1764, these districts have the power to construct, maintain and operate works of improvement as flood prevention works. In La. Atty. Gen. Op. 1946-48, p. 399, we opined that a gravity drainage district is authorized to construct drainage canals and culverts in corporate limits of a

⁴ *Id.*

⁵ <http://www.merriam-webster.com/dictionary/maintenance>. (Last visited 10/08/2015).

municipality, where such works do not interfere with the authority of the municipality to conduct its own drainage program.

Turning our attention to your second question, in La. Atty. Gen. Op. No. 77-619 we outlined the process that the City needs to follow to cover expenses associated with the construction, repair, and improvement of its streets and roads. We stated that, after determining the total cost of the improvements to be made on the street, the municipality must determine how much, if any, of the cost of these improvements it wishes to bear. The remaining cost of the improvements must be assessed, by ordinance, against all lots or parcels or real estate adjoining the street or streets to be improved.

Whether the ad valorem tax triggers an obligation for the Parish to maintain and repair municipal roads depends on the text of the propositions. In other words, the use of the proceeds of a special tax is dictated solely by the language contained in the proposition approved by the voters.⁶ Clearly, the wording of the propositions cited above does not direct the Parish to maintain municipal roads, thus the Parish is not obligated to perform such a task.

To illustrate, in La. Atty. Gen. Op. No. 91-319, we concluded that the Town of Lecompte was not permitted to use Road District 3-A maintenance funds to build sidewalks within its corporate limits because “[t]he funds which were levied for 3-A maintenance constitute a trust fund to be used exclusively for the construction, maintenance, and repair of public roads, highways, and bridges of the district.” Thus, absent explicit language mandating or directing the Parish to maintain municipal roads, the determination as to which roads will be maintained with ad valorem tax funds rests with the governing authority of the Parish.⁷

Our office has stated that police juries have no direct responsibility for any type of work within the corporate limits of a municipality.⁸ Further, since the ad valorem tax levied by the Parish was approved by the voters of the parish as a parish-wide tax, even if the City passed an ordinance assessing costs against the properties within the municipality for the purpose of maintaining municipal roads, the property owners in the city will still be subject to the parish ad valorem tax. For example, in La. Atty. Gen. Op. No. 92-835 we opined that “a parish may levy a sales and use tax within a municipality, even if the services to be provided by the revenues generated from the tax will not be provided within the municipality.”

Considering these circumstances, it appears that the Parish is not intrinsically responsible for costs associated with supplies and labor of streets under the jurisdiction of the City but has discretion to use the ad valorem tax to cover such expenses.

⁶ La. Atty. Gen. Op. No. 04-0156.

⁷ *Id.*

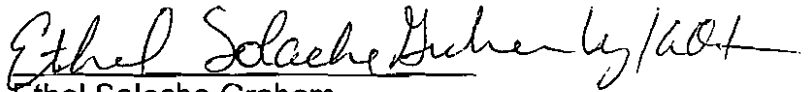
⁸ La. Atty. Gen. Op. No. 79-325.

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:

A handwritten signature in cursive script, appearing to read "Ethel Solache Graham", followed by a horizontal line and a date "6/20/15".

Ethel Solache Graham
Assistant Attorney General

JDC: ESG