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ATTORNEY GENERAL

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

DEC 04 2015
OPINION 15-0111

Tiffany K. Clark
Secretary
St. Charles Parish Council
P.O. Box 66
Convent, LA 70723

71-1-B MUNICIPALITIES – Home Rule Charter
La. R.S. 39:1310
La. R.S. 39:1311

Pursuant to La. R.S. 39:1310, the St. Charles Parish Council may initiate post-adoption budget amendments without the Parish President requesting the amendment only when a change in operations upon which the original adopted budget was developed.

Dear Ms. Clark:

On behalf of the St. Charles Parish Council ("Parish Council"), you have requested an opinion from this office regarding the Parish Council's ability to make budget amendments. Specifically, you have asked whether the Parish Council can make any amendments to the annual budget following its adoption, or do all amendments have to originate from the Parish President requesting an amendment.

St. Charles Parish operates under a home rule charter form of government in accordance with La. Const. art. VI, § 5. Political subdivisions operating under a home rule charter form of government are subject to the minimum standards established in the Louisiana Local Government Budget Act, located at La. R.S. 39:1301 et seq. La. R.S. 39:1310 is pertinent to budget amendments and provides as follows:

When the governing authority has received notification pursuant to R.S. 39:1311, or there has been a change in operations upon which the original adopted budget was developed, the governing authority shall adopt a budget amendment in an open meeting to reflect such change. When an independently elected parish official has received notification pursuant to R.S. 39:1311(A), or when there has been a change in operations upon which the original adopted budget was developed, the independently elected official shall adopt a budget amendment and publish such amendment in the official journal as described by R.S. 39:1307(B). In no event shall a budget amendment be adopted proposing expenditures which exceed the total of estimated funds available for the fiscal year.

As noted above, La. R.S. 39:1310 states that a governing authority must amend its budget when it has received notification pursuant to La. R.S. 39:1311 or when there has been a change in operations upon which the original adopted budget was developed. As explained in La. Atty. Gen. Op. Nos. 09-0152 and 09-0107, Louisiana jurisprudence is not harmonious as to whether La. R.S. 39:1310 merely sets forth two situations where it is mandatory that the budget be amended but does not prohibit amending the budget for other reasons, or whether the two reasons noted in La. R.S. 39:1310 are the sole reasons a budget may be amended.

In *Tardo v. Lafourche Parish Council*, 476 So.2d 997 (La.App. 1 Cir. 1985), the First Circuit Court of Appeals addressed whether the Lafourche Parish Council could amend its budget prior to the start of the fiscal year. In that case, the parish home rule charter provided for amendment of its budget after adoption but prior to the beginning of the fiscal year only in cases of an emergency. *Id.* at 1001. The court determined that, under La. R.S. 39:1309 (now La. R.S. 39:1310), the governing authority can only amend the budget if a "change in operations" has occurred. Thus, *Tardo* indicates that the budget may only be amended when one of the two prerequisites of La. R.S. 39:1310 has been met (i.e., where the governing authority has received notification pursuant to La. R.S. 39:1311 or where there has been a change in operations upon which the original adopted budget was developed).

In *Yenni v. Parish Council of Parish of Jefferson through Evans*, 625 So.2d 301 (La.App. 4 Cir. 1993), *writ denied*, 627 So.2d 642 (La. 1993), the Fourth Circuit Court of Appeals considered whether the Jefferson Parish Council had the power to amend the budget during the fiscal year, despite the fact that the parish's home rule charter did not contain specific authority or requirements for making budget amendments. The court determined that La. R.S. 39:1310 merely provides for two instances where it is mandatory that the governing authority amend its budget. *Id.*, at 305. Thus, in the court's opinion, the council had the authority to amend the budget during the fiscal year for other reasons, because it was not otherwise specifically prohibited by the home rule charter or ordinance. *Id.* at 306.

Therefore, the First Circuit and the Fourth Circuit conflict in their interpretation of La. R.S. 39:1310 in that the First Circuit allows budget amendments only in one of the two circumstances identified in La. R.S. 39:1310 exist, and the Fourth Circuit allows budget amendments where there are no legal prohibitions against such amendments.

Post-adoption budget amendments are addressed in Article V, section F of St. Charles Parish's Home Rule Charter ("Home Rule Charter"), which provides:

Supplemental Appropriations: If during the fiscal year the president certifies that there are available revenues in excess of those estimated in the budget, he shall present a supplemental budget for the disposition of such revenues. The parish council by ordinance may make supplemental appropriations up to the amount of the excess.

Emergency Appropriations: To meet a public emergency affecting life, health, property, or the public peace, the parish council may make emergency appropriations. The appropriations may be made by emergency ordinance in accordance with the provisions of Article IV, Section E. To the extent that there are no available unappropriated revenues, the governing authority may borrow money to meet the emergency. The repayment shall be a fixed charge upon the revenue of the following year and shall be included in the operating budget for that year.

Reduction of Appropriations: If during the fiscal year it appears probable that the revenues available will be insufficient to meet the amount appropriated, the president shall report to the parish council without delay, indicating the estimated amount of the deficit, any remedial action taken and recommendations as to any other steps to be taken. In any event, the parish council shall take action as it deems necessary to prevent any deficit. The repayment shall be a fixed charge upon the revenue of the following year and shall be included in the operating budget for that year.

Transfer of Appropriations: During the fiscal year the president may transfer part or all of any unencumbered appropriation balance among programs within a department or office of the parish council. Upon written request by the president, the parish council may transfer part or all of any unencumbered appropriation balance from one department or office to another.

Limitations and Effective Date: No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The ordinance authorizing the supplemental appropriation, or a reduction or transfer of appropriations may be made effective immediately upon adoption but may not be adopted at the same meeting as introduced.

Under the *Tardo* court's analysis, the Parish Council's authority to make post-adoption budget amendments would be limited to the instances contained in La. R.S. 39:1310 (i.e., where the governing authority has received notification pursuant to La. R.S. 39:1311 or where there has been a change in operations upon which the original adopted budget was developed). Notices under La. R.S. 39:1311 are received from the executive officer, or the Parish President, and thus, post-adoption budget amendments made under this provision must derive from the Parish President. However, if there is a change in operations, post-adoption budget amendments may be made without the budget amendment originating from the Parish President, as La. R.S. 39:1310 does not impose such a requirement. The Local Government Budget Act does not define the

phrase "change in operations," and the *Tardo* court found that such a determination is a fact-intensive inquiry. However, the *Tardo* court did suggest that certain things, such as curtailing, eliminating or adding a particular service for the people or the adoption of additional revenue producing measures may qualify as a "change in operations." *Tardo*, 476 So.2d at 1002,1003.

Under the *Yenni* court's analysis, the Parish Council's authority to make post-adoption budget amendments would not be limited to the instances contained in La. R.S. 39:1310. Rather, the Parish Council would be authorized to make any post-adoption budget amendments that are not prohibited by the Home Rule Charter. In La. Atty. Gen. Op. No. 09-0152, this office was asked whether a post-adoption budget amendment requiring the transfer of all funds in the budget representing salaries for vacant positions to a reserve fund was authorized. This office determined that, under *Yenni*, the amendment was not proper, because the charter vested the authority to transfer unencumbered appropriations with the parish president. In the instant matter, a similar amendment by the Parish Council would likewise be improper, as the Home Rule Charter vests the authority to transfer unencumbered appropriations with the Parish President. However, the Home Rule Charter does not state that the amendments identified in Article V, section F are the sole instances in which post-adoption budget amendments may be made, and thus, under *Yenni*, the Parish Council may make post-adoption budget amendments that do not originate with the Parish President as long as it does not offend one of the provisions found in Article V, section F of the Home Rule Charter.

As St. Charles Parish is under the jurisdiction of the Fifth Circuit Court of Appeals, rather than the First or the Fourth Circuit, neither the *Yenni* nor *Tardo* cases are directly authoritative. Considering that fact, as well as the broad and general nature of your request, it is the opinion of this office that the more conservative approach reached by the court in *Tardo* should be followed by St. Charles Parish Council in making post-adoption budget amendments. Accordingly, it is our opinion that St. Charles Parish Council may make post-adoption budget amendments only as authorized under La. R.S. 39:1310.

La. R.S. 39:1310 allows for budget amendments to be made in two instances: (1) when a notice is received from the executive officer, or Parish President, pursuant to La. R.S. 39:1311, and (2) there has been a change in operations upon which the original adopted budget was developed. Under La. R.S. 39:1310, the Parish Council could make post-adoption budget amendments that do not originate from the Parish President only when a change in operations has occurred, as such a budget amendment is not required to originate from the Parish President.

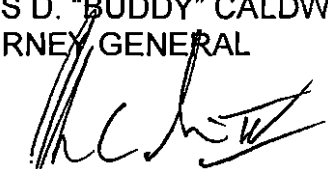
Considering the foregoing, it is the opinion of this office that the St. Charles Parish Council may make post-adoption budget amendments without the Parish President requesting the amendment only when a change in operations upon which the original adopted budget was developed, pursuant to La. R.S. 39:1310.

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 black ink, appearing to read "John C. Morris IV", written over a horizontal line.

John C. Morris IV
Assistant Attorney General

JDC/JCMIV