



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

DEC 04 2015
OPINION 15-0115

90-A **POLITICAL SUBDIVISIONS – Officers, Agents & Employees**
LEVEES, DRAINAGE DISTRICT & FLOOD CONTROL

La. R.S. 24:14; La. R.S. 38:330.12 1

Cornelia Ullmann
Chief Operating Officer
Non-Flood Protection Asset
Management Authority
6514 Spanish Fort Blvd.
New Orleans, LA 70124

An individual who was appointed a member of the Non-Flood Protection Asset Management Authority during a recess of the legislature but not confirmed by the Senate during the legislative session following his appointment may not be appointed to the same office during any subsequent recess of the legislature, even if a vacancy exists after a subsequent appointee to the office was confirmed by the Senate and held the office before resigning

Dear Ms. Ullman:

You have requested an opinion from this office concerning whether Rodger Wheaton ("Wheaton") may serve as a member of the Non-Flood Protection Asset Management Authority (the "NFPAMA") pending confirmation of his appointment by the Senate during the 2016 legislative session.

FACTS

In December 2013, Wheaton was appointed a member of the NFPAMA pursuant to La. R.S. 38:330.12.1C(5) (providing that two members of the NFPAMA be appointed jointly by the presidents of the Lakeshore, Lake Vista, Lake Terrace, and Lake Oaks property owners' associations). Wheaton served as a member of the NFPAMA, but was not confirmed by the Senate during the legislative session following his appointment. That session ended on June 2, 2014.

Because Wheaton was not confirmed, the property owners' associations appointed Dieter Hugel ("Hugel") a member of the NFPAMA. Hugel served as a member of the NFPAMA and was confirmed by the Senate during the legislative session that ended on June 11, 2015. Hugel resigned as a member of the NFPAMA effective July 1, 2015.

By letter dated June 22, 2015 to the Senate President, the property owners' associations again appointed Wheaton as a member of the NFPAMA pursuant to La. R.S. 38:330.12.1C(5), effective July 1, 2015 for a term running through August 15, 2018. Wheaton has not yet been confirmed by the Senate. The Senate presumably will

act on Wheaton's appointment during the 2016 legislative session, the next regular session following his appointment.

DISCUSSION

The NFPAMA is a political subdivision of the State of Louisiana. It possesses "full corporate power to manage, control, regulate, operate, and maintain any non-flood protection facility or improvement asset or function within a levee district within the jurisdiction of a flood protection authority." La. R.S. 38:330.12.1A. The NFPAMA oversees facilities, assets and functions within the Orleans Levee District. The Orleans Levee District is within the jurisdiction of the Southeast Louisiana Flood Protection Authority – East. The NFPAMA is domiciled in Orleans Parish. La. R.S. 38:330.12.1E.

The NFPAMA is composed of members subject to Senate confirmation. La. R.S. 38:330.12.1C. Two of the members are appointed jointly by the presidents of the Lakeshore, Lake Vista, Lake Terrace, and Lake Oaks property owners' associations. La. R.S. 38:330.12.1C(5). Members of the NFPAMA serve four-year terms. La. R.S. 38:330.12.1D(1).

Wheaton was appointed a member of the NFPAMA under La. R.S. 38:330.12.1C(5) in December 2013. Wheaton served as a member of the NFPAMA, but was not confirmed by the Senate during the legislative session that followed his appointment. Because Wheaton was not confirmed by the Senate, his appointment expired at the end of the regular legislative session following his appointment (June 2, 2014), and a vacancy immediately was created for his position. La. R.S. 24:14G. Had Wheaton been confirmed, he would have served for four years, until 2018. La. R.S. 38:330.12.1D(1).

Any vacancy occurring on the NFPAMA "shall be filled in the same manner as the original appointment for the unexpired portion of the position vacated." La. R.S. 38:330.12.1D(1). Thus, the property owners' associations properly appointed Hugel to fill the vacancy created by Wheaton's non-confirmation. Once Hugel was confirmed by the Senate, he would serve for the unexpired portion of the position vacated by Wheaton (until 2018). Hugel was confirmed by the Senate during the legislative session that ended on June 11, 2015.

Hugel never served out Wheaton's term. Instead, shortly after he was confirmed, Hugel resigned as a member of the NFPAMA, effective July 1, 2015. Hugel's resignation created a vacancy for his position on the NFPAMA, to "be filled in the same manner as the original appointment for the unexpired portion of the position vacated." La. R.S. 38:330.12.1D(1). Accordingly, the property owners' associations again had the opportunity to appoint a member of the NFPAMA, and they again appointed Wheaton. Wheaton's appointment was effective July 1, 2015 (during a recess of the legislature). If confirmed, Wheaton's term would run through August 15, 2018 (the unexpired portion of the position vacated by Hugel). Wheaton has not yet been confirmed by the Senate.

In pertinent part, La. R.S. 24:14G provides:

The appointment of any appointee who is not confirmed by the Senate . . . during the regular session shall expire at the end of the regular session and a vacancy shall be immediately created for that position. **The appointee shall not be appointed to the same office during any recess of the legislature.** [emphasis added]

La. R.S. 24:14G prohibits the appointment of a non-confirmed appointee to the same office for which he was not confirmed during **any** recess of the legislature, not just during the recess immediately following the session in which the appointee was not confirmed. Thus, the statute prohibits the reappointment of a non-confirmed appointee to the same office for which he was not confirmed during any legislative recess, regardless of whether some other appointee was confirmed (and held the office) after the non-confirmed appointee first was not confirmed.

As a result, Wheaton may not serve as a member of the NFPAMA pending his confirmation by the Senate during the 2016 legislative session. The proper statutory procedure was followed to fill the vacancy created by Wheaton's non-confirmation. The proper statutory procedure also was followed to fill the vacancy created by Hugel's resignation. However, La. R.S. 24:14G prohibits Wheaton from being appointed during a recess of the legislature as a member of the NFPAMA (the same office for which Wheaton first was not confirmed).

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By: 
RICHARD L. TRAINA
Assistant Attorney General

JDC/RLT/jb