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

NOV 03 2015
OPINION 15-0116

90-A-1 – PUBLIC FUNDS & CONTRACTS
La. Const. art. VI, § 33
La. R.S. 39:569

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The Cameron Parish School Board may use excess settlement proceeds to supplement the payment of general obligation bond debt as long as the payment is not prohibited by the settlement agreement; however, the School Board may not cease the levying and collection of ad valorem taxes sufficient to pay debt service on the general obligation bonds under La. Const. art. VI, § 33.

The Cameron Parish School Board may not use ad valorem taxes collected pursuant to a general obligation bond proposition to reimburse funds that were previously used to pay debt service on the general obligation bonds.

Dear Ms. Jones:

You have requested an opinion related to the payment of debt service on general obligation bonds of the Cameron Parish School Board (the "School Board"). Specifically, you have indicated that District Four of the School Board ("District 4") issued general obligation bonds in July of 2003 for the construction and improvement of a new elementary school in District 4. The proposition for the issuance of the general obligation bonds, which was approved by the voters of District 4, stated that the bonds would be payable from the levy of an ad valorem tax. According to your request, in 2013, the School Board settled several large "land legacy" cases, arising out of damage to immovable property owned by the School Board by oil companies who had leased the property in years past. Your request further indicates that the School Board passed a resolution in May of 2013 reducing the millage on the ad valorem taxes to zero and requiring that debt service payments on the general obligation bonds for District 4 be paid through the School Board's general fund. Accordingly, no millage has been assessed for the payment of debt service for general obligation bonds in District 4 since 2013.

You further indicated that the settlements of the "land legacy" cases did not specify that the funds received therefrom be used for any particular purposes. These funds are kept in separate accounts of the School Board and are distinct from the School Board's general fund account.

Given this background, you have asked for guidance on three questions from our office. First, you have asked whether the School Board may utilize the settlement proceeds from the "land legacy" cases to pay the debt service and/or payoff the bonds which were

issued in 2003. Second, you have asked whether the tax proceeds may be used to repay the settlement fund proceeds that were previously used to pay debt service on the general obligation bonds. Third, you have asked whether the School Board could, in the future, give a reduced share of the settlement proceeds to those districts that received settlement proceeds for the payment of debt service on the general obligation bonds.

Before we can address the questions posed in your request, we must first address the School Board's decision to halt the levying and collection of ad valorem taxes securing the payment of general obligation bonds for District 4. La. Const. art. VI, § 33 authorizes local political subdivisions, such as the School Board, to issue general obligation bonds after authorization by a majority of the electors voting at an election in the political subdivision. In addition to this authorization, La. Const. art. VI, § 33(B), specifically states, in relevant part, the following:

The governing authority of the issuing political subdivision **shall** levy and collect or cause to be levied and collected on all taxable property in the political subdivision ad valorem taxes sufficient to pay principal and interest and redemption premiums, if any, on such bonds as they mature.

(emphasis added).

Additionally, La. R.S. 39:569 specifically provides, in part:

The governing authority of any subdivision issuing bonds hereunder **shall** impose and collect annually, in excess of all other taxes, a tax on all property subject to taxation by the subdivision sufficient in amount to pay the interest annually or semiannually and the principal falling due each year, or such amount as may be required, for any sinking fund necessary to retire said bonds at maturity.

(emphasis added).

Thus, while the School Board was authorized to issue the general obligation bonds once they were approved by the voters, La. Const. art. VI, § 33 and La. R.S. 39:569 mandate that the School Board levy and collect sufficient ad valorem taxes to pay the debt service on the bonds. The use of the word "shall" in the constitution and statute indicates that the levy and collection of such ad valorem taxes is not optional, but rather, it is mandatory. Accordingly, the School Board must levy and collect sufficient ad valorem taxes to pay the debt service on current outstanding general obligation bonds, as required by La. Const. art. VI, § 33 and La. R.S. 39:569.

In your first question, you have asked whether the School Board could utilize the settlement proceeds to pay the debt service and/or pay off the School Board's general obligation bonds. As stated previously, the School Board was required to levy and

collect ad valorem taxes sufficient to pay the principle and interest on its general obligation bonds; however, these ad valorem taxes are not the sole security for the bonds. As general obligation bonds of the School Board, these bonds are secured by the full faith and credit of the School Board. La. Const. art. VI, § 33. Unlike revenue bonds, which are secured only by a specific stream of revenue, general obligation bonds are secured by the full faith and credit of the political subdivision issuing the bonds. Even though the School Board improperly failed to levy and collect sufficient ad valorem taxes to pay the debt service on the general obligation bonds, nothing prohibits the use of other available funds, such as the settlement proceeds¹, from being used for the payment of the general obligation bonds. Therefore the School Board is not prohibited from using the excess unrestricted settlement proceeds to defease the bonds or otherwise pay off the bonds.

In your second question, you have asked whether future ad valorem tax proceeds may be used to repay the settlement fund proceeds that were previously used to pay principle and interest on the general obligation bonds, after the general obligation bonds are fully paid.

As a preliminary matter, we must note that while the bonds are outstanding, tax proceeds collected pursuant to the general obligation bond proposition must be used solely for the purpose of paying principal and/or interest on the bonds or funding a sinking fund for the payment of the bonds at maturity. See La. Atty. Gen. Op. Nos. 88-281 and 89-313. While the intent may be to reimburse funds that were previously used to pay debt service on the bonds, your proposed payment would have the tax proceeds used for purposes other than what is authorized by La. Const. art. VI, § 33 and other than what the voters approved.

Once the bonds are paid off, the School Board cannot continue to collect the ad valorem tax, because the purpose for which the tax was authorized and levied no longer exists. Thus, the School Board must cease collecting the ad valorem tax once the bonds are paid in full. If there are any surplus tax proceeds remaining after the bonds are paid in full, the School Board must return the surplus proceeds pro-rata to the taxpayers if practical. La. Atty. Gen. Op. Nos. 04-0226, 04-0072, 03-0112, and 88-281. If the expenses of the pro-rata return make this impractical, the funds should be used for a purpose similar to those for which the bonds were issued and authorized by the electorate. *Id.*

You have also asked whether the School Board could allocate the settlement proceeds among the different districts by giving a reduced share to those districts in the amount

¹ Although your request states that there are no restrictions on the use of the settlement proceeds, we feel it important to mention that the use of settlement proceeds is subject to the terms of the settlement agreement and to the provisions of La. R.S. 30:29. Compliance with these provisions must be determined by the School Board in conjunction with its legal advisors, and such compliance is a factual determination outside the scope of this opinion.

already used to satisfy the bond obligations of those districts. While nothing in Louisiana law appears to prohibit such an action, this office has not examined the settlement agreement, and therefore, cannot determine whether such an action is prohibited by the settlement agreement executed by the School Board.

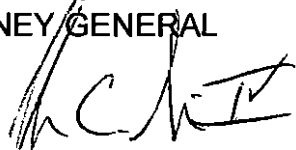
In conclusion, it is the opinion of this office that, based on the information contained in your request, the settlement proceeds from the "land legacy" cases can be used to assist in the payment of the outstanding general obligation bond debt of the School Board. However, the authority to use settlement proceeds in this manner does not excuse or exempt the School Board from levying and collecting ad valorem taxes sufficient to pay debt service on its general obligation bonds, as such is mandated by the La. Const. art. VI, § 33 and La. R.S. 39:569. It is also the opinion of this office that tax proceeds collected pursuant to a general obligation bond ad valorem tax may not be used for any purpose other than to pay the debt service on general obligation bonds, as required by La. Const. art. VI, § 33 and La. R.S. 39:569.

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,

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BY:



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