



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

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OPINION 15-0141

Mr. Mayson Foster, Chairman
Louisiana Housing Corporation
2415 Quail Drive
Baton Rouge, LA 70808

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, § 2.1

La Const. art. VII, § 2.1 requires that any increase in the fee schedules of the Louisiana Housing Corporation must be approved by a two-thirds vote of the elected members of each house of the Louisiana Legislature.

Dear Mr. Foster,

Your request for an Attorney General's Opinion has been assigned to me for research and reply. The Louisiana Housing Corporation ("LHC") is seeking the approval of a schedule of fees and fines associated with the allocation of low income housing tax credits (LIHTCs) and the on-going compliance monitoring by the LHC's Asset Management Department. The LIHTC Program, governed by Section 42 of the Internal Revenue Code of 1986, is an indirect Federal subsidy used to finance the development of affordable rental housing for low-income households. The LHC serves as the administrator of the LIHTC program for the State of Louisiana. On behalf of the LHC, you have asked our opinion in order to determine whether the LHC can increase fees related to its statutory authority without seeking and obtaining a two-thirds approval of the Louisiana Legislature.

Relevant to your request is La. Const. art. VII, § 2.1(A), which states:

(A) Any new fee or civil fine or increase in an existing fee or civil fine imposed or assessed by the state or any board, department, or agency of the state shall require the enactment of a law by a two-thirds vote of the elected members of each house of the legislature.

The LHC, formerly the Louisiana Housing Finance Agency ("LHFA"), was created in 2011 by the Louisiana Housing Corporation Act, La. R.S. 40:600.86 *et seq.* La. R.S. 40:600.110, as it existed in 2011, permitted the LHC to charge only those fees as were being charged previously by the LHFA, and stated as follows:

A. The corporation may charge only those fees as are being charged by the entity on the date that the entity is, in accordance with this Chapter, transferred to the corporation or made a subsidiary thereof.

B. The corporation shall, in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, promulgate the schedule of fees to be charged by the corporation in connection with the programs administered by it. Such schedule shall be submitted to and subject to approval of the Joint Legislative Committee on the Budget.

Accordingly, the LHC currently operates under a fee schedule which was established prior to its incorporation, as set forth by La. R.S. 40:600.110 (2011). In 2014 La. R.S. 40:600.110 was amended to delete paragraph A. The Board of Directors of the LHC is now inquiring as to whether La. Const. art. VII, § 2.1(A) requires all fee schedules to be statutorily established and increased by the enactment of a law passed with a two-thirds vote of the elected members of each house of the Louisiana Legislature, or whether a law which provides the authority to establish and increase a fee schedule by rule is sufficient to meet this standard.

A review of the legislative history behind La. Const. art. VII, § 2.1 is helpful here. This amendment to the Louisiana Constitution was added in 1995 by La. Acts No. 1324 in response to an increase in the amount of fees charged by the state and its various boards and commissions. *Minutes: April 25, 1995 Hearing on H.B. 320 Before the House Committee on Ways and Means*, pg. 7, 1995 Regular Session, Act 1324, (La. 1995) (statement of Representative Gunn, Member, House Committee on Ways and Means). Floor debates surrounding the amendment expressed concern over the fact that the majority of the fee increases were imposed through the Administrative Procedure Act and not voted on by the legislature. *Id.* Act No. 1324 was intended to provide the same legislative review over fees as La. Const. art. VII, § 2 provides for taxes. *Id.* (statement of Representative Reilly, Member, House Committee on Ways and Means). Thus, the language used in Act 1324 mimics that of La. Const. art. VII, § 2, which requires “[t]he levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by a two-thirds vote of the elected members of each house of the legislature.” It logically follows that any fee increased after the adoption of La. Const. art. VII, § 2.1 must be statutorily established and approved by a two-thirds majority of the elected members of each house of the Louisiana Legislature and not through rule promulgation under the Administrative Procedure Act. To the extent that La. R.S. 40:600.10 conflicts with La. Const. art. VII, § 2.1 then the provisions of the constitution will prevail.

The fee schedule currently in place by the LHC was established prior to this constitutional amendment. Considering the clear disapproval of the ability to increase fees by rule promulgation, it is the opinion of this office that La Const. art. VII, § 2.1 requires that any new fee or increase in existing fees requires a two-thirds vote of the elected members of each house of the Louisiana Legislature. In order to increase the

current fee schedule, the LHC will need to present the proposed increase to the Louisiana Legislature and obtain approval by a two-thirds majority of the elected members of each house.

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,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By: 
Andrea Barient
Assistant Attorney General