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DEPARTMENT OF JUSTICE
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OPINION 15-0166

90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 33:1321 *et seq.*
La. R.S. 39:704
La. R.S. 33:9108

Mr. Stephen J. Gordon
Executive Director
Orleans Parish Communication District
118 City Park Avenue
New Orleans, LA 70119

The Orleans Parish Communication District ("OPCD") may enter into the proposed cooperative endeavor with the City of New Orleans. La. R.S. 33:9108 provides the OPCD immunity from liability resulting from the performance of any of its official functions and duties, including the expanded functions and duties pursuant to the proposed cooperative endeavor agreement. Additionally, the OPCD may use the funds it receives from an emergency telephone tax to fund the expanded operations of the OPCD pursuant to the proposed consolidation, which will include the operations of an emergency 911 call center.

Dear Mr. Gordon,

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Orleans Parish Communication District ("OPCD"), you have asked our opinion on several questions relating to a proposed cooperative endeavor agreement between the OPCD and the City of New Orleans.

The OPCD was created by Act 155 of the 1982 Regular Session of the Louisiana Legislature as a political subdivision of the State. Section 1 of Act 155 states that the purpose is to establish the number 911 as the primary emergency telephone number for use in Orleans Parish.

Act 155 was most recently amended by Act 726 of the 1995 Regular Session of the Louisiana Legislature. Act 726 expanded the purpose of the OPCD to include:

to provide for the identification of all streets, roads, highways, and dwelling places in such districts which are not otherwise designated by name and number, and to provide for other communication enhancements for law enforcement and public safety agencies to decrease response time and improve effectiveness.

According to your request, the OPCD has historically provided the infrastructure for an emergency 911 telephone number. The City of New Orleans has traditionally provided the operations of an emergency 911 call center (i.e. call takers and dispatchers) through its police, fire, and emergency medical services departments. A cooperative endeavor

agreement has been proposed between the City of New Orleans and the OPCD which would consolidate the 911 call takers and dispatchers under the OPCD, who would then be responsible for providing both the infrastructure and operations for an emergency 911 call center. The parties believe that the proposed consolidation will serve to improve the operations of the 911 call center.

A Cooperative Endeavor Agreement ("Agreement") between the parties is currently being drafted. The most recent version of that Agreement is attached to your request. The undersigned has reviewed the Agreement; however, this opinion only addresses the concepts set forth in the Agreement and not the specific terms and conditions thereof.

With regard to the proposed consolidation, you ask whether Act 155 or 726 provides the OPCD with the authority to enter into the Agreement with the City of New Orleans to assume responsibility for the operations of an emergency 911 call center and, if so, whether the liability of the OPCD or the OPCD Board of Commissioners would be affected. Additionally, you ask whether the OPCD is permitted to use funding it receives from an emergency telephone tax to fund the proposed consolidation.

This office has previously opined that communication districts can enter into intergovernmental agreements to provide dispatch services. See La. Atty. Gen. Op. Nos. 07-0230, 03-0289, and 96-97A. Moreover, the Local Services Law, La. R.S. 33:1321 *et seq.*, grants parishes, municipalities, and political subdivisions of the State of Louisiana the authority to contract with each other for the joint use of funds, facilities, personnel, or property for police, fire, and/or health protection "provided that at least one of the participants to the agreement is authorized... to perform such an activity." La. R.S. 33:1324. The terms of any such agreement must be formally reduced to writing, setting forth the reciprocal rights and obligations of each party. La. Atty. Gen. Op. No. 03-0289. La. R.S. 33:1233 provides for a liberal construction relating to such joint transactions in order to encourage "greater economy and efficiency in operation of local services" and to extend the benefits of such services. La. Atty. Gen. Op. No. 01-0300.

As noted above, Act 726 authorizes the OPCD "to provide for other communication enhancements for law enforcement and public safety agencies to decrease response time and improve effectiveness." Additionally, the laws governing communication districts generally provide the OPCD with the authority to respond to emergency calls. See La. R.S. 33:9105 (requiring communication districts to utilize at least one of four enumerated dispatch methods to respond to emergency calls). The OPCD is, therefore, authorized to perform these operational functions itself. Furthermore, La. R.S. 45:794 authorizes the City of New Orleans to perform these functions. Therefore, it is the opinion of this office that the OPCD may enter into the proposed Agreement with the City of New Orleans.

Turning our attention to the question of increased liability of the OPCD, it should be noted that La. R.S. 33:9108 provides for the indemnification and limitation of liability for communications districts and members of the board, and expressly states:

The parish governing authority creating the communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct.

Any liability of the OPCD and its Board of Commissioners resulting from actions taken within the course and scope of official functions and duties of the OPCD is required to be indemnified and defended by the parish governing authority. Because the OPCD is legislatively authorized to perform the operations of an emergency 911 call center, the functions and duties related to such operations would be within the scope of the official functions and duties of the OPCD. The only exception to the statutory indemnity provided relates to damage or injury caused by willful or wanton misconduct.

You have also asked whether funds received by the OPCD from an emergency telephone tax may be used to fund the proposed consolidation. This question must be addressed in light of La. R.S. 39:704, which provides "the proceeds of any special tax shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied." Louisiana jurisprudence further provides that special tax authorizations must be strictly construed. *Police Jury of the Parish of Acadia v. All Taxpayers, et al.*, 653 So.2d 94 (La. App. 3 Cir. 3/29/95), *rehearing denied*, 657 So.2d 1032 (La. 6/30/95); *Hemler v. Richland Parish School Board*, 76 So. 585 (La. 1917); *Watkins v. Ouachita Parish School Board*, 136 So. 591 (La. 1931); *Hodnett v. Monroe City School Board*, 277 So.2d 598 (La. App. 2 Cir. 1972) and *Brock v. St. James Parish Council*, 407 So.2d 1265 (La. App. 4 Cir. 1981), *writ denied* 412 So.2d 1094 (La. 1982). Also, it has consistently been the opinion of this office that tax proceeds must be used solely for the purposes approved by the voters. See e.g. La. Atty. Gen. Op. Nos. 13-0228, 13-0024, 12-0089, and 09-0150.

According to your request, the OPCD is funded by a special tax approved by the voters in 1982 that directs "the proceeds be dedicated to the Orleans Parish Communication District for establishment of the 911 emergency telephone system." Act 155 provides the OPCD with the authority to levy such a tax in order to fund the district. "Fund the district" is defined in Section 5(A)(8) of Act 726 as "to pay the expenses necessary to carry out *all purposes* of the district, including but not limited to... provid[ing] for other communication enhancement for law enforcement and public safety agencies to decrease response time and improve effectiveness." (emphasis added).

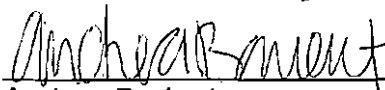
Because the establishment of a 911 telephone system can include providing both infrastructure and operations, it is the opinion of this office that the funds derived from emergency telephone tax may be used to fund the expanded operations of the OPCD. In accord is La. Atty. Gen. Op. No. 15-0025, wherein our office determined that tax proceeds dedicated to funding the general operations of a fire department could be used to fund expanded operations of the fire department pursuant to a consolidation with the parish EMS department.

In summary, it is the opinion of this office that the OPCD may enter into the proposed Agreement with the City of New Orleans. La. R.S. 33:9108 provides the OPCD with statutory indemnification from liability resulting from the performance of any of its official functions and duties, including the expanded functions and duties pursuant to the proposed Agreement, except for damage resulting from willful or wanton misconduct. Additionally, the OPCD may use the funds it receives from an emergency telephone tax to fund the expanded operations of the OPCD pursuant to the proposed consolidation, which will include the operations of an emergency 911 call center.

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,

JEFF LANDRY
ATTORNEY GENERAL

By: 
Andrea Barient
Assistant Attorney General