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Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
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BATON ROUGE
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APR 08 2016
OPINION 16-0022

90-A-2 – PUBLIC FUNDS – Loan, Pledge, or Grants
La. Const. Art. VII, §14

Mr. E. Pete Adams
Executive Director
Louisiana District
Attorneys Association
1645 Nicholson Dr.
Baton Rouge, LA 70802-8143

La. Const. Art. VII, § 14 does not prohibit a district attorney from providing equipment, personnel, membership fees, and other resources to the Louisiana District Attorneys' Training Foundation, as long as the Foundation is obligated to provide training, guidance, education or other services to the district attorney, and the district attorney has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value from the Foundation in exchange for the resources provided to the Foundation.

Dear Mr. Adams:

On behalf of the Louisiana District Attorneys Association, you have requested an opinion from this office regarding the legality of providing public resources to the Louisiana District Attorneys' Training Foundation (the "Foundation"). According to your request, the Foundation is a non-profit charitable corporation, which was created to promote and further the governmental purposes of the various district attorney offices throughout the State of Louisiana. Under the scenario stated in your request, some district attorneys in the state are contemplating entering into a cooperative endeavor agreement with the Foundation wherein the Foundation would be authorized to use a portion of the district attorney's staff, office space, furniture, fixtures, equipment and supplies in exchange for the Foundation using its best efforts to supplement and support the programs and services of the district attorney. Specifically, the efforts made by the Foundation would include the following:

1. Providing education, training, manuals, publications and information to Louisiana prosecutors, their support staff and other law enforcement personnel;
2. Conducting and sponsoring forums, lectures, debates and other such programs for Louisiana prosecutors, their support staff and other law enforcement personnel;
3. Educating and informing the public on crucial criminal justice issues;
4. Engaging in and supplementing programs designed to develop and implement "best practices" or new and innovative approaches to the operation of the Criminal Justice System;
5. Providing funding and scholarships for prosecutors and other members of the criminal justice system to attend conferences, seminars and training.

Under this factual background, you have asked this office: (1) whether a district attorney may enter into a cooperative endeavor agreement with the Foundation to provide equipment, personnel, and resources in exchange for training and educating a district attorney's staff, and (2) whether a district attorney may pay for his/her prosecutors to be associated with the Foundation through the payment of membership dues or fees.

As your request acknowledges, the legality of the proposed use of property and resources by the Foundation must be determined in light of the prohibitions contained in La. Const. Art. VII, § 14. La. Const. Art. VII, § 14, provides, in pertinent part:

A. Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private...

The Louisiana Supreme Court has held that a violation of Article VII, § 14(A) occurs "when public funds or property are gratuitously alienated." *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06); 938 So.2d 11 ("Cabela's") In light of the Louisiana Supreme Court's decision in *Cabela's*, this office has consistently opined that in order for an expenditure of public funds to be permissible under La. Const. Art. VII, § 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose of the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds. See e.g., La. Atty. Gen. Op. Nos. 10-0299, 10-0171, 09-0271, and 09-0260.

The first element of this test appears to be satisfied. The purpose of the Foundation appears to be limited to providing training, education, and guidance to district attorneys, their staff, and others working closely with the district attorney offices. Training and educating the various employees, including assistant district attorneys, of a district attorney office is important in ensuring the various duties of the district attorney are adequately and properly performed. Thus, it appears as though allowing the Foundation to use the property and resources of a district attorney office in furtherance of training and educating the staff of a district attorney would satisfy the public purpose element of the test.

Secondly, it must be determined whether the Foundation's use of property, funds, and other resources of a district attorney office, when taken as a whole, does not appear to be gratuitous. The *Cabela's* court placed particular emphasis on reciprocal obligations of the parties when determining whether a use of public funds is gratuitous. *Board of Directors of the Industrial Development Board*, 938 So.2d at 22. This office has

concurred with the court, finding that the requirement of a reciprocal obligation renders the payment onerous, rather than gratuitous, since it ensures that the public entity will obtain some advantage in return. La. Atty. Gen. Op. No. 10-0299.

According to your request, a district attorney would provide the Foundation with office space, personnel time, equipment, and money in the form of membership fees or dues, and, in exchange, the Foundation would be obligated to use its best efforts to provide certain training and education to the district attorney and his/her staff. Although a district attorney entering an agreement to provide these resources to the Foundation might expect to receive training and education in exchange, it appears as though the Foundation is only obligated to use its best efforts to provide training, guidance, and education. We have some reservations about such language, as the Foundation is not necessarily obligated to provide any services in exchange for the resources provided it. Under the proposed agreement, the Foundation could, despite its best efforts, fail to provide any services to a district attorney's office, yet still receive resources from that district attorney. Such scenario would render the district attorney's pledge of resources a gratuitous donation of public funds to the Foundation. Any cooperative endeavor agreement entered into with the Foundation must impose real obligations upon the Foundation in exchange for the resources it receives. As long as the cooperative endeavor agreement imposes obligations on the Foundation in exchange for the resources and membership fees provided to the Foundation, then it would appear that the agreement would not be gratuitous. In that case, the second element would be satisfied.

Thirdly, any district attorney office proposing to make such expenditure of resources and funds must have a demonstrable, objective, and reasonable expectation of receiving equivalent value in exchange for the supplemental payment. A determination of whether this requirement is satisfied depends on the facts and circumstances surrounding the proposed expenditure. As a general rule, this office refrains from conducting such fact-intensive analyses and leaves such determinations to the public entity seeking to expend public funds or property. Thus, if the district attorney entering into a cooperative endeavor agreement with the Foundation determines that his/her office has a demonstrable, objective, and reasonable expectation of receiving equivalent value from the Foundation in exchange for the property, funds, and resources provided to the Foundation, then this element will be satisfied.

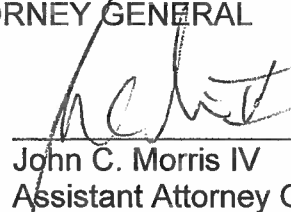
Considering the above analysis, it is the opinion of this office that La. Const. art. VII, § 14 does not prohibit a district attorney from providing space, personnel time, equipment, and money in the form of membership fees or dues to the Foundation, provided that the cooperative endeavor agreement imposes obligations on the Foundation to provide training, education, guidance, or other services, and the district attorney has an objective, demonstrable, and reasonable expectation that his/her office will receive a benefit commensurate with the value of the resources provided to the Foundation.

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,

JEFF LANDRY
ATTORNEY GENERAL

BY:



John C. Morris IV
Assistant Attorney General

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