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90-A-1 -- PUBLIC FUNDS & CONTRACTS

L.a. Const. art. VII, § 14	L.a. Const. art. VIII, pmb1
L.a. Const. art. VIII, § 3	L.a. R.S. 17:81
L.a. Const. art. VIII, § 13	L.a. R.S. 17:100.7
L.a. R.S. 17:51	

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The Lafayette Parish School Board has the authority to expend funds to provide internet services and equipment necessary for such services to students within its system who remain home due to declared emergency and public health emergency resulting from COVID-19 provided it is able to demonstrate that the purchase of equipment and Internet services for its students will deliver a benefit generally commensurate with the expenditure of funds. Lafayette Parish School System will be required by La. R.S. 17:100.7 to adopt a policy for the use of equipment and Wi-Fi access in conformance with the statutory requirements and must utilize both device-based and Internet service provider technology that limits the use of the system to educational purposes as described in the statute and blocks access to harmful materials.

Dear Mr. Guice:

You have requested an opinion of the Attorney General on behalf of the Lafayette Parish School System concerning the expenditure of public funds to supply Internet and Wi-Fi to students enrolled in the Lafayette Parish School System during the 2020-2021 school year. In light of the declared emergency and public health emergency resulting from COVID-19, the Lafayette Parish School Board may find that it is necessary or advisable for students to receive online education during the period of these emergencies. Your request has been assigned to me for research and reply.

The Lafayette Parish School System (the "LPSS") is pursuing various methods by which the district could provide educational services to students at their individual homes during the period of time LPSS has determined, based on the declared emergencies, that it is necessary to require or encourage students to stay at home to protect the public health. One of the methods considered by LPSS would necessitate the ability for students to receive and transmit data in real time, which requires students to have Internet or Wi-Fi connectivity and a device by which to access it. Information you provided to this office indicates that thousands of students enrolled in the LPSS live in households that lack Internet connectivity or Wi-Fi. Therefore, LPSS intends to issue students chrome books and provide Wi-Fi access for students who live in areas without Internet access or who LPSS has determined meet certain low-income qualifications, until students can return to in-person learning at their schools. You ask the following questions concerning Lafayette Parish School Board's (the "School Board") capacity to provide this method of service.

- 1) In light of the need for the School Board to be able to provide distance learning during these emergencies, may the Lafayette Parish School Board legally pay**

for the costs of Internet, necessary equipment, and Wi-Fi service for the private homes of students who meet certain low-income qualifications or who live in areas without Internet access?

In order to answer this question, we must first look to whether the expenditure of funds complies with the Constitution. Questions regarding the use of governmental funds must be examined in light of La. Const. art. VII, § 14. This article states in relevant 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.

In *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.*, 05-2298 (La. 9/6/06), 938 So.2d 11 (the “Cabela’s” case), the Louisiana Supreme Court articulated the standard of review governing La. Const. art. VII, § 14(A) stating that this article “is violated when public funds or property are gratuitously alienated.”¹ In light of the Court’s interpretation of this constitutional provision, it is the opinion of this office that in order for an expenditure of public funds or property 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 all of the following:

1. A public purpose of the expenditure or transfer that comports with the governmental purpose for which the public entity has the legal authority to pursue;
2. That the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure or transfer of public funds.²

The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential.³ School systems receive funds through various means including taxes or appropriations from the legislature.⁴ Funds are specifically appropriated by the legislature to supply free schoolbooks and other materials of instruction prescribed by the State Board of Elementary and Secondary Education.⁵ City and parish school boards may provide for the necessary furniture, equipment and apparatus for their

¹ *Cabela’s*, 938 So.2d at 20.

² See e.g., La. Atty. Gen. Op. Nos. 19-0134, 18-0075, 17-025, 16-0198, and 10-0299.

³ La. Const. art. VIII, pmb1.

⁴ See La. Const. art. VIII, § 13.

⁵ La. Const. art. VIII, § 13(A).

schools.⁶ The School Board has the requisite authority to expend funds for the equipment necessary to provide learning environments that afford an equal opportunity to every enrolled student to develop to his or her full potential.

Concerning the first prong of the *Cabela's* test, the legality of providing the necessary equipment and costs related to real time electronic educational services (distance learning) to students within LPSS is contingent on whether the public purpose for the expenditure comports with the governmental purpose of the School Board. All school boards serve in a policymaking capacity and shall prioritize student achievement, financial efficiency, and workforce development on a local, regional, and statewide basis.⁷ The intent of providing Internet connectivity to LPSS students is explicitly linked to continuing to educate each student who is required or advised to stay at home for a period of time due to public health reasons related to COVID-19. Providing such equipment and services necessary to provide real time electronic educational services satisfies the first prong of the *Cabela's* test, since it comports with the School Board's governmental purpose of providing learning environments and educational services to its students.

To meet the second prong of the *Cabela's* test, the expenditure cannot appear to be gratuitous when considered in totality. As the *Cabela's* court has pointed out, the term *donation* in the Constitution can be equated to a gratuitous contract under the Civil Code,⁸ with an emphasis on the gratuitous intent of the parties.⁹ The Court also focused on the presence of a "counter-performance" and a "reciprocity of obligations" in determining whether the transaction was of a gratuitous, rather than onerous, nature.¹⁰ This office has consistently opined that where both parties to the arrangement derive some advantage or benefit in return for their performance, the arrangement is one of a non-gratuitous nature.¹¹ Students who receive equipment and Internet capability provided by the School Board will use these resources to continue their educational learning and instruction from their teachers and other school employees during the period LPSS has determined it is necessary to require or advise students to stay home. The School Board and LPSS will be able to continue teaching students enrolled in its schools through virtual instruction. These obligations are reciprocal in that students can continue learning and schools can continue teaching; thus, satisfying the second prong of the *Cabela's* test.

The third and final prong of the *Cabela's* test requires that the School Board must be able to effectively demonstrate that it has a reasonable expectation of receiving something real and substantial in exchange for the expenditure or transfer of public funds. As of the release date of this opinion, the School Board has not ascertained the total amount of funds necessary to arrange for the distance learning of all its enrolled students. Provided the School Board is able to demonstrate that the purchase of equipment and Internet services for its students will deliver a benefit generally commensurate with its expenditure

⁶ See La. R.S. 17:81(G).

⁷ La. R.S. 17:81(A)(1).

⁸ See La. C.C. arts. 1468 and 1910.

⁹ *Cabela's*, 938 So.2d at 22.

¹⁰ *Id.*

¹¹ La. Atty. Gen. Op. Nos. 19-0090, 18-0090 and 10-0299.

of funds, it would satisfy the final prong of the *Cabela's* test and appear permissible under La. Const. art. VII, § 14.

According to information relayed to our office, LPSS does not have adequate funds to provide Wi-Fi to all enrolled students and many of the enrolled students already have access to Wi-Fi in their households. Accordingly, LPSS intends to provide Wi-Fi access to students who live in areas without Internet access or who meet certain low-income qualifications until they can return to in-person learning at their schools. LPSS may establish some type of non-discriminatory parameters on the program as long as it is rationally related to a legitimate state interest. The State has an interest in providing learning environments and experiences that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential. Providing Wi-Fi access to these students for the time period that the School Board has determined that it is necessary or advisable for students to receive online education during the period of the emergency is rationally related to the State's interest in providing students this equal opportunity.

2) If the Lafayette Parish School System is able to pay for the cost of providing Internet access to these students, is it obligated to provide some form of content filtering for this service? If so, would LPSS be responsible for filtering the entire connection or would it be able to provide filtering only on the devices provided to students?

You advise that parents will be required to sign an acknowledgment accepting responsibility for overseeing their student's proper use of the chrome book and Internet service. The acknowledgment will require parents to acknowledge that the device/service shall only be used by the student for schoolwork. You further advise that each chrome book provided to a student will be equipped with a filter known as Lightspeed Relay. According to the website of Lightspeed Systems, the Relay platform has the capacity to, among other things, allow or block sites and apps, control device policies and web access, monitor and report on all activity.¹²

The provisions of La. R.S. 17:100.7 are applicable to your inquiries. That statute provides, in pertinent part:

(A)(1)Each governing authority of a public elementary or secondary school shall adopt policies, in accordance with policies adopted by the State Board of Elementary and Secondary Education, regarding access by students and employees to Internet and online sites that contain or make reference to harmful material the character of which is such that it is reasonably believed to be obscene, child pornography, conducive to the creation of a hostile or dangerous school environment, pervasively vulgar, excessively violent, or sexually harassing in the school environment all as defined by any applicable state or federal laws and the policies adopted pursuant to this Subsection. Such policies shall include but not be limited to prohibitions

¹² <https://www.lightspeedsystems.com/why-relay>, last accessed on July 8, 2020.

against accessing sites containing information on the manufacturing or production of bombs or other incendiary devices.

(2) Any policies adopted by a governing authority of a public elementary or secondary school pursuant to the provisions of this Subsection shall include the use of computer-related technology or the use of Internet service provider technology designed to block access or exposure to any harmful material as specified in Paragraph (1) of this Subsection, or both.

(3) The provisions of this Subsection shall not prohibit any authorized employee or student of a public elementary or secondary school from having unfiltered or unrestricted access to the Internet or an online service for legitimate scientific or educational purposes as determined and approved by the employing governing authority.

We apply customary principles of statutory interpretation in responding to your questions. As always, we start with the language of the statute itself.¹³ When the wording of a statute is clear and unambiguous and does not lead to absurd consequences, it should be applied as written.¹⁴

Applying these jurisprudential rules to La. R.S. 17:100.7, it is our opinion that the plain language of La. R.S. 17:100.7(A)(2) mandates that LPSS utilize technology to block access or exposure to harmful material. It is our further opinion that although the statute provides flexibility to LPSS in how to accomplish that mandate by the use of the disjunctive "or", nonetheless whatever technology or combination of services LPSS chooses to use must fulfill LPSS's statutory obligation to block access.

In the case where the School System is providing Wi-Fi in addition to the device, it is the opinion of this office that using only device-based content blockers on the chrome books itself would not be sufficient to satisfy the requirements of La. R.S. 17:100.7(A)(2) if the Wi-Fi access provided by LPSS is unrestricted. Unrestricted Wi-Fi access would not provide the requisite safeguards mandated in La. R.S. 17:00.7(A). Additionally, while it is our opinion that providing restricted Wi-Fi access to facilitate online education during the pandemic is permissible under the *Cabela's* rubric, we believe that providing unrestricted, unmonitored Wi-Fi access is not consistent with the public purpose that justifies the expenditure.

Based on the foregoing, the Lafayette Parish School System may provide the equipment necessary for distance learning and may legally expend funds to provide Internet service to students who live in areas without access or who meet certain low-income qualifications. However, LPSS and the School Board must be able to demonstrate that the purchase of equipment and Internet and Wi-Fi services for its students will deliver a benefit generally commensurate with the expenditure of funds during the period of time

¹³ *M.J. Farms, Ltd. v. Exxon Mobil Corporation*, 07-2371, p. 13 (La. 7/1/08), 998 So.2d 16, 27; *See also Kelly v. State Farm Fire & Casualty Company*, 14-1921, p. 10 (La. 5/5/15), 169 So.3d 328, 335.


¹⁴ La. C.C. art. 9; La R.S. 1:4; *Succession of Harlan*, 2017-1132 (La. 5/1/18), 250 So. 3d 220, 225.

LPSS has determined it is necessary to require or encourage students to stay at home to protect the public health. Furthermore, LPSS may establish non-discriminatory parameters on the program as long as it is rationally related to a legitimate state interest. Finally, Lafayette Parish School System would be required by La. R.S. 17:100.7 to adopt a policy for the use of student provided chrome books and Wi-Fi access in conformance with the statutory requirements. In order to satisfy this statutory requirement, as well as the *Cabela's* factors, LPSS must utilize both device-based and Internet service provider technology that limits the use of the system to educational purposes as described in the statute and blocks access to harmful materials.

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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