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State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
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June 30, 2023

OPINION 23-0019

Mr. Jack Anderson
Chairman, Board of LA River Port
Pilot Review and Oversight
2728 Athania Pkwy
Metairie, LA 70002

87A PILOTS – River

La. R.S. 34:1135

Discusses the investigatory authority of the Board of Louisiana River Port Pilot Review and Oversight relative to members of the Boards of Commissioners or Examiners.

Dear Mr. Anderson:

You requested the opinion of this office concerning the authority of the Board of Louisiana River Port Pilot Review and Oversight ("BOR") to investigate complaints made against the pilot members of the four boards BOR oversees: the Board of Examiners of Bar Pilots for the Port of New Orleans, the Board of River Port Pilot Commissioners for the Port of New Orleans, the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, and the Board of River Port Pilot Commissioners and Examiners (individually, a "Board of Commissioners or Examiners," or, collectively, the "Boards of Commissioners or Examiners").¹

Louisiana Revised Statutes 34:1135 vests BOR with oversight authority for certain actions taken by the Boards of Commissioners or Examiners, as well as appellate jurisdiction over the boards' formal disciplinary proceedings.² BOR also receives sworn complaints against a pilot for any conduct while in the performance of his duties as a pilot and has the authority to investigate those complaints:

The board shall receive sworn complaints against any pilot from any source for actions taken by a pilot while in the performance of his duties, including acts of misconduct, carelessness, incompetence, intoxication, negligence, or the refusal to offer timely pilotage services without just cause. In addition the board shall receive sworn complaints for abuse of legally prescribed medication and illegal use of controlled dangerous substances. The board may conduct investigations, refer the matter to the Board of Commissioners or Examiners for investigation, or conduct hearings pursuant to the Administrative Procedure Act and the rules adopted by the board. Following notice and a hearing, the board may acquit the pilot or may impose sanctions against the pilot, including but not limited to reprimand of the pilot, order the pilot to participate in remedial training, impose a probationary period, impose a fine not to exceed ten thousand dollars, order the pilot to

¹ See La. R.S. 34:941, 991, 1041, and 1072.

² La. R.S. 34:1135(C)–(F).

period, impose a fine not to exceed ten thousand dollars, order the pilot to pay the costs of the hearings inclusive of attorney fees, or recommend to the governor that the pilot's commission be suspended or revoked. The board shall have the authority to suspend a pilot's commission in the event of an emergency pursuant to the emergency procedures of the Administrative Procedure Act.

La. R.S. 34:1135(G).

"It is well settled that an administrative board or agency has only the power and authority expressly granted by the constitution or statutes. Nevertheless, some power and authority may be implied as necessary or appropriate to effectuate the express powers granted to, or imposed upon, such board or agency." *De villier v. State, Dep't of Pub Safety & Corr.*, 634 So.2d 884, 890 (La.App. 1 Cir. 1993). Thus, BOR, like other regulatory boards, holds only the authority specifically set forth in law and any implied power necessary to exercise such authority.

Your first question is whether BOR has the authority to investigate a member of a Board of Commissioners or Examiners in a member's capacity as a pilot. Louisiana Revised Statutes 34:1135(G) grants BOR the express authority to investigate any pilot acting in their capacity as a pilot, and we were unable to locate any provision of relevant law or administrative rule that immunizes members of the Boards of Commissioners or Examiners from investigations into the performance of their duties as pilots. It is therefore the opinion of this office that the authority set forth in La. R.S. 34:1135(G) extends to investigations of individual members of the Boards of Commissioners or Examiners when acting in their capacity as pilots.

Next, you ask whether BOR has the authority to investigate a complaint against a pilot member of a Board of Commissioners or Examiners for conduct in their capacity as a member. A review of the relevant statutes does not reveal any authority of BOR to investigate a complaint made against a member of a Board of Commissioners or Examiners in their official capacity as a commissioner or examiner. Furthermore, La. R.S. 34:1134(N) shields members of Boards of Commissioners or Examiners from testifying in their official capacity and states in pertinent part, "No member of the board or the Board of Commissioners or Examiners shall be subject to deposition or other discovery, or otherwise testify in such proceedings relevant to the performance of their duties on the board or Board of Commissioners or Examiners." Having found no authority, express or implied, and in conjunction with the directives of La. R.S. 34:1134(N), it is the opinion of this office that BOR is without authority to investigate a member of the Board of Commissioners or Examiners acting in their official capacity as a commissioner or examiner.

However, members of the Boards of Commissioners and Examiners are appointed by the governor and are subject to removal by the governor. Louisiana Revised Statutes 40:946 provides that members of the Board of Examiners of Bar Pilots for the Port of New Orleans which fail or refuse to perform their duties "may, upon written statement signed by a majority of the commissioned bar pilots stating their cause of complaint, be removed from

office by the governor..."Louisiana Revised Statutes 40:991 states that members of the Board of River Port Pilot Commissioners for the Port of New Orleans "shall serve at the pleasure of the governor" Louisiana Revised Statutes 40:1042 and 1072 both provide that members of the Board of Examiners for New Orleans and Baton Rouge steamship pilots for the Mississippi River and the Board of River Port Pilot Commissioners and Examiners may only be removed by the governor for cause.

Your final question relates to whether BOR may investigate, pursuant to La. R.S. 34:1135(G), a recent complaint against a member of a Board of Commissioners or Examiners. The answer to this question turns on a fact-specific analysis of whether the member performed the conduct at issue while acting in their official capacity as a board or commission member or in their capacity as a pilot. The Attorney General's Office generally refrains from conducting factual evaluations, and we decline to do so here. For this and any other complaint that BOR receives regarding a member of a Board of Commissioners or Examiners, BOR must determine, on a case-by-case basis, whether the conduct alleged in the complaint arises out of the member's conduct as a pilot, generally, or their status as a board member, specifically.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
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