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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

August 25, 2023  
OPINION 23-0065

The Honorable Chad Pitre  
District Attorney  
St. Landry Parish  
P.O. Drawer 1968  
Opelousas, LA 70571

90-A-2 PUBLIC FUNDS  
90-A POLITICAL SUBDIVISIONS

La Const. art. VII, § 14(A)

Parish governments may not use public funds to conduct drainage operations on, or to acquire a right-of-way over, private property for the sole benefit of the owner of immovable private property, as this would amount to a gratuitous donation of public funds in violation of La Const. art. VII, § 14(A).

Dear Mr. Pitre:

Our office received your request for an opinion regarding whether St. Landry Parish may use public funds to conduct drainage operations on, or to acquire a right-of-way over, private property for the sole benefit of an owner of immovable private property. Your question is answered below.

Whether St. Landry Parish may use public funds to conduct drainage operations on, or to acquire a right-of-way over, private property for the sole benefit of an owner of immovable private property must be examined in light of La. Const. art. VII, § 14(A), which provides, in pertinent part, as follows:

Except as otherwise provided in 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.

Simply stated, gratuitous alienation of public funds violates La. Const. art. VII, § 14(A). *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*, 05-2298 (La. 9/6/06), 938 So.2d 11, 20 ("*Cabela's*"). In light of the Louisiana Supreme Court's interpretation of La. Const. art. VII, § 14(A), an expenditure of public funds is only permissible when the public entity has legal authority to make the expenditure, and when it can also show:

1. A public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has 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.<sup>1</sup>

This office has consistently opined that expending public funds for work on private property in the absence of any public benefit violates La. Const. art. VII, § 14(A). In La. Atty. Gen. Op. No. 89-335, we considered whether it was proper for the City of Port Allen to install yard drains on private property to alleviate flooding in certain older residential neighborhoods. We opined that using public funds to complete these drainage operations on private property would be an impermissible donation of public funds. Similarly, in La. Atty. Gen. Op. No. 04-0177, we considered whether the Parish of East Baton Rouge could use public funds to clean and maintain a drainage ditch located on private property. There, the drainage ditch was located on private property belonging to a single owner, but the 15 tenants occupying the property would benefit from improved drainage and mosquito control that would ostensibly result from cleaning and maintaining the ditch. We opined that maintaining the ditch would be an impermissible donation of public funds. *Id.* Conversely, in La. Atty. Gen. Op. No. 12-0233, we considered the appropriateness of a municipality's cleaning a drainage ditch located on private property. We opined that, because the ditch drained approximately one quarter of the municipality, it appeared that cleaning it would serve a public purpose that would not be a gratuitous expenditure of public funds because the work would benefit the municipality's taxpayers. *Id.* The distinction between these two results is whether the public or merely a private citizen is benefitted by the government action.

In your request, you explain that, after conducting a field survey during which he examined the site, St. Landry Parish's civil engineer opined that cleaning and improving the drainage ditch in question would benefit only the adjacent property owner. The engineer further opined that the drainage ditch is a natural drainage ditch, rather than a man-made one. Because parishes are under no obligation to enhance natural drainage on private property, doing so would be tantamount to a gratuitous donation. Similarly, expending public funds to institute and prosecute civil litigation to acquire a right-of-way over private property to enhance drainage on private property when the Parish's engineer has opined that only one property owner would benefit from the work would be a gratuitous donation. Such expenditures would not satisfy the first prong of the *Cabela's* analysis (*i.e.*, no public purpose would be served), and as such, there is no need to consider the second and third prongs.

Considering the foregoing, it is the opinion of this office that St. Landry Parish may not use public funds to conduct drainage operations on private property in the scenario described in your opinion request. Additionally, it is the opinion of this office that St. Landry Parish may not use public funds to institute and prosecute civil litigation to acquire a right-of-way over private property for the sole benefit of a private owner of immovable property.

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<sup>1</sup> See La. Atty. Gen. Op. Nos. 21-0118, 20-0077, 20-0074, 19-0134, 18-0075, 16-0198, and 10-0299.

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, I am

JEFF LANDRY  
ATTORNEY GENERAL

By:   
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JL/CSM