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DEPARTMENT OF JUSTICE

CIVIL DIVISION

P.O. BOX 94005

BATON ROUGE

70804-9005

July 31, 2023

OPINION 23-0081

Ms. Dianne Childress
Secretary/Treasurer
Caldwell Parish Police Jury
P.O. Box 1737
Columbia, Louisiana 71418

129 TAXATION - Levy & Assessment (ad valorem taxes)

La. R.S. 39:704

Discusses the proper allocation of a special ad valorem tax collected in Caldwell Parish.

Dear Ms. Childress:

You have requested an opinion from this office on behalf of the Caldwell Parish Police Jury concerning the collection of ad valorem taxes. Specifically, you have asked whether Caldwell Parish (the "Parish") has incorrectly allocated the avails of a certain ad valorem tax, and if so, what steps should the Parish take to remedy the situation.

In 1990, Caldwell Parish voters approved a 2 mil tax for a period of 10 years for the purpose of industrial operations, maintenance, and job inducement at the Caldwell Parish Industrial Park. The tax was rededicated in 1996 in order to create a reserve of \$50,000 for the purpose of industrial operations, maintenance, and job inducement at the Caldwell Parish Industrial Park. All remaining tax proceeds were to be used for operating and maintaining the 911 emergency telephone system in the Parish.

Since 1996, parish voters have renewed the tax every 10 years. The most recent ballot language, as approved on December 5, 2020, states the following:

Shall the Parish of Caldwell, State of Louisiana (the "Parish"), continue to levy a two and eighteen hundredths (2.18) mills tax on all the property subject to taxation in the Parish (an estimated \$140,610 reasonably expected at this time to be collected from the levy of the tax for an entire year), for a period of ten (10) years, beginning with the year 2021 and ending with the year 2030, for the purpose of (i) funding a reserve of \$50,000 for industrial operations and maintenance and job inducement at the Caldwell Parish Industrial Park and (ii) the remainder of the proceeds of the Tax to be used for the purpose of improving, maintaining and operating the 911 emergency telephone system in the Parish, including the acquisition and maintenance of the necessary facilities and equipment therefor?¹

You stated that since the 1996 rededication, the tax proceeds have been applied as follows: (1) \$50,000 allocated to the Parish's 911 Fund; and (2) the remainder allocated

to the Parish's Industrial Operations Fund. As a result, you believe the tax proceeds have been allocated incorrectly (i.e., \$50,000 should have been allocated to the Industrial Operation's Fund with the remainder of the proceeds allocated to the 911 Fund). You also indicated that there is a fund balance in the Industrial Operations Fund. Accordingly, you have asked how the Parish should resolve this situation.

The Louisiana Supreme Court has "consistently interpreted the constitution to prohibit the use of dedicated and special taxes for purposes other than those for which they were levied."² Furthermore, La. R.S. 39:704 requires that:

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. The records of the taxing authority shall clearly reflect the objects and purposes for which the proceeds of the tax are used.³

Simply put, the proceeds of the particular ad valorem tax at issue cannot be used contrary to what was approved by the voters. The Louisiana Supreme Court has made no exception to the general rule that tax proceeds must be used in accordance with the ballot language as presented to the voters.

By the plain language on the ballot as presented to the voters, the tax proceeds should have been allocated such that \$50,000 went to fund the reserve in the Industrial Operations Fund and the remainder of the proceeds should have been allocated to the Parish's 911 Fund. In other words, once the Industrial Operations Fund balance reaches \$50,000, the remainder should be allocated to the 911 Fund. It is clear that the Parish has allocated the tax proceeds incorrectly. As such, the Parish should immediately begin allocating tax proceeds per the ballot language (i.e., \$50,000 reserve to the Industrial Operations Fund and the remainder to the 911 Fund).

Next, we address the issue of how to remedy the erroneous distributions. You indicate that the Parish's tax records only go back to 2004; as such, it is impossible for the Parish to reconcile the accounts prior to 2004. Still, the Parish to the extent possible should use the records available from 2004 to today in order to reconcile the accounts and determine the proper allocation of taxes to each fund. To the degree this is impractical or impossible, the Parish should simply allocate any and all future tax proceeds in accordance with the proposition.

Upon reconciliation of accounts, in the event the fund balance in the Industrial Operations Fund is insufficient to account for the amount of taxes incorrectly allocated going back to 2004, the Parish need not attempt to "repay" the 911 Fund with any additional money from future tax collections. This "repaying" would require the Parish to allocate tax

² *W. Feliciana Par. Gov't v. State*, 2019-00878, (La. 10/11/19), 286 So.3d 987, 996; *City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund*, 2005-2548, (La. 10/1/07), 986 So.2d 1, *on reh'g.* (Jan. 7, 2008); *Orleans Parish School Board v. City of New Orleans*, 238 La. 738, 116 So.2d 505 (La.1959).

³ La. R.S. 39:704.

proceeds, once again, contrary to the ballot language. In the event, the Parish wishes to use future tax proceeds to account for prior years' incorrect allocation, the Parish must submit a new proposition to the voters indicating such.

Considering the foregoing, it is the opinion of this office that the Parish has incorrectly allocated the proceeds of the 2 mil tax in Caldwell Parish, most recently renewed on December 5, 2020. The proper allocation of tax proceeds according to the ballot language is a \$50,000 reserve in the Industrial Operations Fund with the remainder allocated to the 911 Fund. To the extent possible, the Parish should use its available records to correct the error as much as possible. To the degree this is impractical or impossible, the Parish should simply distribute any and all future tax proceeds in accordance with the proposition.

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

Best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY:


Craig P. Cassagne, Jr.
Assistant Attorney General

JL/CPC