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Attorney General

State of Louisiana

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

January 4, 2024
OPINION 23-0084

The Honorable Jason Ard
Sheriff, Livingston Parish
P.O. Box 850
Livingston, LA 70754

16 CRIMINAL LAW- Crimes & Offenses

La. R.S. 14:139 La. R.S. 14:139.1

The construction of the Livingston Parish Emergency Response and Evacuation Center does not fall under the purview of the payroll padding prohibition of La. R.S. 14:139 and La. R.S. 14:139.1.

Dear Sheriff Ard:

You have requested an opinion from our office regarding the application of La. R.S. 14:139 and La. R.S. 14:139.1 with respect to an acquisition of land by the Livingston Parish Sheriff's Office ("LPSO"). The land will be used to construct the Livingston Parish Emergency Response and Evacuation Center ("Center"). Your request has been assigned to me for research and reply.

During the 2022 regular session, the legislature appropriated a total of \$34,120,000.00 for the "Planning and Construction" of the Center.¹ The planning stages for the Center began as early as November of 2021.

In order to construct the Center, LPSO must purchase immovable property on which to build the facility. LPSO has located property with a purchase price of \$4,100,000.00. Should LPSO proceed with purchasing the subject property, it will represent an increase of more than fifteen percent (15%) of LPSO's average expenditures in the month it is purchased, as compared to the average of LPSO's expenditures for each of the months of the first six months of the twelve months preceding the gubernatorial election this year. As such, you would like to know if this purchase will violate the Political Payroll Padding statutes contained in La. R.S. 14:139 and La. R.S. 14:139.1.

Political payroll padding is committed when any public officer, including a sheriff, increases the payroll or other *operating expenses* of his office more than fifteen percent (15%) over its average amount of such expenditures for each of the months of the first six of the twelve months next preceding the election.² The Political Payroll Padding statutes are intended to prevent a sheriff from "unreasonably increasing the size of his staff to enhance the power and prestige of his office in an election year" and to restrict "a sheriff's payroll actions to those that are absolutely necessary to maintain performance of his official duties during the election year."³

¹ 2022 La. Acts No. 117.

² La. R.S. 14:139(A)(2) and 14:139.1(A)(2).

³ See La. Atty. Gen. Op. No. 84-0398.

Next, we examine whether the construction of the Center is an “operating expense.” Our office has previously found that an on an ongoing project such as a reconstruction or renovation falls outside of the purview of day-to-day operating expenses and therefore do not fall within the reach of the statute’s prohibitions.⁴ The prohibitions in La. R.S. 14:139.1 must be strictly construed since the violation of La. R.S. 14:139.1(A) constitutes a felony.⁵ This office has previously found that, in the context of a similar prohibition for other elected officials, La. R.S. 14:139, remodeling or physical improvements to an office, are not operating expenses.⁶

Our office has previously stated that for an ongoing project such as a reconstruction/renovation is not the kind of corrupt activity that the prohibition in La. R.S. 14:139 is designed to prevent.⁷ The same can be said for the construction of the Center, which has been planned since at least November of 2021.

Additionally, the Legislative Auditor's office has advised that for accounting and auditing purposes, the term “operating expenses” includes furniture, fixtures and other movable items of equipment.⁸ Whereas, the construction of the actual Center would be considered, instead, as a capital improvement.

Based on the following, it is the opinion of this office that the construction of the Livingston Parish Emergency Response and Evacuation Center does not fall under the purview of the payroll padding prohibition contained in La. R.S. 14:139.1. Therefore, the Livingston Parish Sheriff’s Office would not be in violation of La. R.S. 14:139 or La. R.S. 14:139.1 by funding the on-going construction project including the purchase immovable property for said construction within six months of the 2023 gubernatorial election.

We trust that this adequately responds to your request and the issue that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,
JEFF LANDRY
ATTORNEY GENERAL

BY:



Brett A. Robinson
Assistant Attorney General

JL/BAR

⁴ La. Atty. Gen. Op. No. 99-62.
⁵ La. R.S. 14:139.1(D).
⁶ La. Atty. Gen. Op. Nos. 03-0227 and 99-62.
⁷ *Id.*
⁸ See La. Atty. Gen. Op. No. 99-62.