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CIVIL DIVISION
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OPINION 23-0102

71-1-B MUNICIPALITIES - Home Rule Charter

La. Const. art. VI, § 4
La. R.S. 39:1310

The Honorable LaToya Cantrell
Mayor, City of New Orleans
1300 Perdido Street, Suite 2E04
New Orleans, LA 70112

Dear Mayor Cantrell:

The City of New Orleans is the client of the Department of Law of the City of New Orleans. The New Orleans City Council generally lacks the authority to direct the Department of Law and may not require the City Attorney to brief the Council prior to any substantive filing in pending federal court litigation that does not involve the Council. An amendment to the City's budget to redirect appropriations away from the Department of Law for the express purpose of allowing the Council to exercise oversight over the Department of Law is a violation of the Home Rule Charter, which reserves such oversight to the Mayor.

We received your request for the Attorney General's legal opinion on four questions, below, related to the relationship between the New Orleans City Council (the "Council") and the Department of Law of the City of New Orleans (the "City"). Your request indicates that the City, through the Department of Law, is involved in active federal litigation related to a previously entered consent decree regarding the operation of the New Orleans Police Department. Related to that litigation, the Council recently passed a motion that purports to require the Department of Law to either "brief" the Council on the City's position prior to the filing of any substantive pleading in the federal case, or, in the absence of a briefing, note in the filing that the Council has not been consulted. Motion No. M-23-164. The Council also introduced a proposed ordinance to "escrow" the previously budgeted appropriations to the Department of Law "so that the Council President and the Council can effectively review" the operations of the Department of Law. Proposed Ordinance, Calendar No. 34,355.

The City operates under a home rule charter adopted prior to the effective date of the 1974 Louisiana Constitution. See La. Const. art. VI, § 4. Thus, insofar as your questions all relate to the operation and distribution of powers within City government, the majority of our analysis will center on the provisions of the Home Rule Charter for the City of New Orleans (the "Charter").

While the Charter vests the Council with all legislative power for the City, the Mayor is "the chief executive officer of the City" and must "[e]xercise general oversight of the activities of boards and other agencies of City government," which includes the Department of Law. Charter, Sections 3-101(1) and 4-206(1). The Charter also establishes the Department of Law, headed by the City Attorney. Charter, Section 4-401. The Mayor appoints and, if necessary, removes the City Attorney. Charter, Sections 4-106(1) and 4-206(1)(d).¹

¹ The appointment of the City Attorney is subject to confirmation by the Council. Charter, Section 4-106(4).

The Charter at Section 4-401(1)–(6) sets forth the functions of the Department of Law:

- (1) Direct and supervise the legal affairs of the City.
- (2) Provide legal advice to the Mayor and Council when requested and when directed by the Mayor to all officers, departments, and boards concerning any matter affecting the interests of the City.
- (3) Have charge of all legal matters in which the City has an interest or to which the City is a party, with power and authority, when directed by the Mayor or the Council, to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as may be deemed necessary for the assertion or protection of the rights and interests of the City.
- (4) Prepare proposed ordinances when requested by the Mayor or any member of the Council.
- (5) Prepare or approve as to form and legality all contracts, documents and instruments creating any legal or conventional obligation affecting the City.
- (6) Perform all other duties required by this Charter, the Mayor or the Council and not inconsistent with the functions of this Department.

We now turn to your questions.

Pursuant to the Charter, who is the “client” of the Department of Law headed by the City Attorney? Are both the Council and the Mayor the “clients” of the City Attorney?

The Department of Law directs and supervises the legal affairs of the City, has “charge of all legal matters in which the City has an interest or to which the City is a party,” and prepares or approves all contracts and other documents that create obligations affecting the City. Charter, Section 4-401(1), (3), and (5). Thus, the Department of Law represents the City itself, and the City acts through the Mayor, the Council, and other officers, departments, and boards. See Rule 1.13(a) of the Louisiana Rules of Professional Conduct (“A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”).² Depending upon the specific facts of the legal matter at issue, the Department of Law may, at times, also represent the Mayor or the Council, or other individuals or entities within City government. See Rule 1.13(g) of the Louisiana Rules of Professional Conduct (“A lawyer representing an organization

² Comment 9 to Rule 1.13 of the American Bar Association’s Model Rules of Professional Conduct, which Louisiana’s rule mirrors, provides that “[t]he duty defined in this Rule applies to governmental organizations.”

may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7.”).

We also note that the Charter enumerates specific functions the City Attorney must perform relative to the Mayor and Council. The Charter requires the Department of Law to (1) advise the Mayor and the Council; (2) institute or intervene in any suit upon the direction of the Mayor or the Council; (3) prepare proposed ordinances for the Mayor or the Council; and (4) generally perform any duty assigned by the Mayor or the Council. Charter, Section 4-401(2), (3), (4), and (6).

Considering the foregoing, it is the opinion of this office that although the Charter provides both the Mayor and the Council with some measure of authority over the Department of Law, the primary client of the Department of Law is the City itself.

Does the Council have the authority to direct the Department of Law in the exercise of the duties and functions of the Department of Law as defined by Chapter 4, Section 4-401 of the Charter?

Although the Charter grants the Council some measure of authority over the Department of Law, Charter, Section 4-401(2), (3), (4), and (6), this does not imbue the Council with complete authority over the Department of Law in all matters. In view of the Department of Law’s specific authority over the City’s legal affairs, Charter, Section 4-401(1) and (3), and the Mayor’s general oversight over the operations of executive branch agencies, Charter, Section 4-206(1)(a), it is the opinion of this office that the Council generally does not hold the authority to direct the Department of Law in the exercise of the duties and functions of that department as defined by the Charter. The notable caveat to the foregoing is the Council’s ability to direct the Department of Law in certain factual scenarios, such as in litigation to which the Council is a named party or when the Council requests legal advice from the Department of Law.³ We also note that the Council may assign additional duties to the Department of Law beyond those set forth in the Charter, but only where those additional duties are not inconsistent with the duties already set forth in the Charter. Charter, Section 4-401(6).

Does the Council have the authority to direct the City Attorney to brief the Council prior to any substantive filing in pending federal court litigation that does not involve the legislative branch of the City?

Considering our response to your previous question regarding the Council’s authority to direct the Department of Law, we are of the opinion that the Charter does not grant the Council the power to require the City Attorney to brief the Council prior to the submission of filings in litigation to which the Council itself is not a party. Such a directive impinges upon the Department of Law’s express authority in the Charter, as well as the Mayor’s general authority to oversee the Department of Law.

³ See Rule 1.2(a) of the Louisiana Rules of Professional Conduct (“[A] lawyer shall abide by a client’s decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.”).

Does the City Council pursuant the Home Rule Charter of the City of New Orleans have the authority through the passage of an ordinance or motion to direct the Director of Finance to transfer previously appropriated funds from the Department of Law to Miscellaneous so that the City Council can effectively review the operations of the Department of Law?

The transfer of funds from the Department of Law's budget is an amendment to the City's annual operating budget.⁴ With regard to budget amendments, the Charter provides, in relevant part, as follows: "Amendments to the annual operating budget ordinance shall be considered and approved by the Council under the same procedures prescribed for its original adoption" Charter, Section 3-115(3). We were unable to locate any other provision of the Charter that restricts the Council's authority to amend a previously adopted operating budget.

In responding to this final question, we also look to the provisions of Louisiana's Local Government Budget Act (the "Budget Act"), La. R.S. 39:1301–1315, but only insofar as those statutes do not conflict with the Charter. See La. R.S. 39:1303(C) ("It is the intent of the legislature that this Chapter shall apply to political subdivisions operating under a home rule charter or plan of government adopted or in existence pursuant to and under the authority of Article VI of the Louisiana Constitution of 1974 only if and when it does not conflict with the terms of the home rule charter or plan of government.").⁵ The Budget Act sets "minimal requirements and shall not prevent a political subdivision from requiring more extensive financial planning and budgeting practices." La. R.S. 39:1303(A).

The Budget Act provides as follows regarding the amendment of a previously adopted budget by a governing authority, such as the Council:

When the governing authority has received notification pursuant to R.S. 39:1311, or there has been a change in operations upon which the original adopted budget was developed, the governing authority shall adopt a budget amendment in an open meeting to reflect such change. . . . In no event shall a budget amendment be adopted proposing expenditures which exceed the total of estimated funds available for the fiscal year.

La. R.S. 39:1310(A). Though there are few cases on the subject, Louisiana courts are divided on their interpretation of La. R.S. 39:1310(A) and whether the statute provides (1) the only two reasons to justify an amendment to an adopted budget, or (2) two reasons that mandate a budget amendment, with other amendments being permissive. See La. Atty. Gen. Op. No. 15-0111 (discussing *Tardo v. Lafourche Parish Council*, 476 So.2d 997 (La.App. 1 Cir. 1985) and *Yenni v. Parish Council of Parish of Jefferson through Evans*, 625 So.2d 301 (La.App. 4 Cir. 1993), *writ denied*, 627 So.2d 642 (La. 1993)). The

⁴ The proposed ordinance submitted with your request is phrased as an amendment to the previously adopted budget ordinance for the City. See Proposed Ordinance, Calendar No. 34,355.

⁵ See also *New Orleans Fire Fighters Pension & Relief Fund v. City of New Orleans*, 13-0873 (La.App. 4 Cir. 12/18/13), 131 So.3d 412, 425, *writ denied*, 14-0142 (La. 3/21/14), 135 So.3d 623 ("The City further argues that the trial court's mandamus violates the Louisiana Local Government Budget Act . . .").

prevailing law in the Fourth Circuit, the court of appeal with jurisdiction over the City, is that a governing authority operating under a home rule charter, like the City, may make any amendment to its budget that is not prohibited by such charter. *Yenni*, 625 So.2d at 306.⁶ However, the text of the proposed ordinance demonstrates that the Council's aim in redirecting the Department of Law's appropriation is to exert oversight and control over that executive branch department: "**WHEREAS**, the City Council desires to escrow the operating appropriation of the Law Department's budget so that the Council President and the Council can effectively review those operations[.]" Proposed Ordinance, Calendar No. 34,355. According to the Charter, oversight of executive branch agencies is a function dedicated to the Mayor; it is not an element of legislative power. Charter, Section 4-206(1)(a). As such, the proposed ordinance at issue here represents a violation of the Charter and its separation of powers among the branches of City government. It is therefore the opinion of this office that the Charter does not permit the Council to amend the Department of Law's budget as a means of exercising oversight authority over that executive branch department.

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:



Alexander T. Reinboth
Assistant Attorney General

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⁶ When the Fourth Circuit decided *Yenni*, La. R.S. 39:1309 contained the Budget Act's provision regarding amendments to a budget.