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DEPARTMENT OF JUSTICE
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February 28, 2025
OPINION 24-0122

Honorable Louis Pomes
Parish President
St. Bernard Parish
8201 West Judge Perez Drive
Chalmette, LA 70043

Mr. Drew M. Heaphy
Executive Director
St. Bernard Port, Harbor and Terminal District
P.O. Box 1331
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15-A Constitutional Law

84 – Parishes

90-1 – Port Commissions

La. Const. Art. VI, §§ 16 and 43 La. R.S. 34:1701

The St. Bernard Port, Harbor and Terminal District, a deep-water district organized and constituted prior to January 1, 1974, whose continuing existence, powers, functions, structure, organization, and territorial jurisdiction falls within the protection of La. Const. art. VI, § 43 cannot be unilaterally merged and consolidated into the parish government by majority vote of the electorate.

Dear Parish President Pomes and Director Heaphy:

This office has received your requests for an Attorney General's opinion concerning the ability of the St. Bernard Parish Government (Parish Government) to consolidate the St. Bernard Parish Port, Harbor and Terminal District (the Port) into the Parish Government by majority vote of the electorate. We note, based on the opinion request submitted by Mr. Heaphy, that there is ongoing litigation involving the Port and the Parish Government. While this office would normally not issue an advisory opinion in situations where litigation is pending or likely, we have chosen to issue an opinion in this case because the issue of consolidation is not a subject of the litigation and we have opined on this issue before.

Question: Can the Parish Government consolidate the Port into itself by majority vote of the electorate?¹

Conclusion: It is the opinion of this office that the Parish Government cannot consolidate the Port into itself by majority vote of the electorate.

¹ We have consolidated the three questions asked by the Parish President into one question. The specific questions asked by the Parish President are: (1) Is the Port a "deep-water port commission" or "deep-water part, harbor, and terminal district" such that La. Const. art. VI, § 43 is applicable?; (2) If so, do the provisions of La. Const. art. VI, § 16 still enable a local governmental subdivision such as the Parish Government to effect a consolidation of the Port into the Parish Government by a majority vote of the electorate?; and (3) If not, would the provisions of La. Const. art. VI, § 16 enable a local governmental subdivision such as the Parish Government to effect a consolidation of the Port into the Parish Government by a majority vote of the electorate? We decline to answer the question asked by Director Heaphy concerning the propriety of the executive session conducted by the Parish Government.

The Parish Government and the Port each rely on different constitutional provisions to support their positions. The Parish Government relies on La. Const. art. VI, § 16(A), which provides:

A local governmental subdivision may consolidate and merge into itself any special district or local public agency, except a school district, situated and having jurisdiction entirely within the boundaries of the local governmental subdivision. Upon the consolidation and merger, the local governmental subdivision shall succeed to and be vested with all of the rights, revenues, resources, jurisdiction, authority, and powers of the special district or local public agency. A consolidation and merger shall become effective only if approved by a majority of the electors voting thereon in the local governmental subdivision as a whole and by a majority of the electors voting thereon in the affected special district. A local public agency shall be consolidated and merged only if approved by a majority of the electors voting thereon in an election held for that purpose in the local governmental subdivision in which the agency is located.

On the other hand, the Port relies on La. Const. art. VI, § 43(2), which states:

All deep-water port commissions and all deep-water port, harbor, and terminal districts as organized and constituted on January 1, 1974, including their powers and functions, structure and organization, and territorial jurisdiction, are ratified and confirmed and shall continue to exist, except that

(2) Only by law enacted by the favorable vote of two-thirds of the elected members of each house, may the legislature consolidate or abolish any such commission or district or diminish, reduce, or withdraw from any such commission or district any of its powers and functions and affect the structure and organization, distribution, and redistribution of the powers and functions of any such commission or district, including additions to or reductions of its territorial jurisdiction.

The Port was created as a public corporation and political subdivision of the State of Louisiana pursuant to the authority of Article XIV, § 31 of the 1921 Constitution and has territorial limitations with the Parish of St. Bernard. See La. R.S. 34:1701. In addition, the Supreme Court has recognized that it is a deep-water port. See *St. Bernard Port, Harbor Terminal District v. Violet Dock Port, Inc., LLC*, 2017-0434 (La. 1/30/18), 239 So.3d 243, 246 n.2. Therefore, the Port is subject to the provisions of La. Const. art. VI, § 43(2).

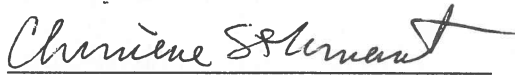
We note that this is not the first time that the Parish Government has attempted to consolidate and merge the Port into itself. In 1998, John F. Rowley, then the District Attorney for the 34th Judicial District, sent this office an opinion request on the same

issue. In that opinion request, the Parish Government also relied on La. Const. art. VI, § 16(A) as authority for its attempt to merge and consolidate the Port. However, this office determined that the Port was a deep-water port, harbor, and terminal district organized and constituted prior to January 1, 1974, whose continuing existence, powers, functions, structure, organization, and territorial jurisdiction fall within the protection of La. Const. art. VI, § 43. See La. Atty. Gen. Op. No. 98-160 (also numbered 178). Moreover, this office also relied on *Lake Charles Harbor & Terminal District v. Calcasieu Parish Police Jury*, 613 So.2d 1031, 1033 (La. App. 3 Cir. 1993) for the proposition that the State, through the legislature, had created and incorporated the Port to exercise the State's superior police powers over the navigable waterways and their banks and shores and other such State public property statutorily entrusted to it.

Accordingly, it is the opinion of this office that the Parish Government cannot merge and consolidate the Port into itself by majority vote of the electorate. We trust that this adequately responds to your request and the issues that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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