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DEPARTMENT OF JUSTICE
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OPINION 24-0158

62 - LEASES

Honorable Stewart Cathey, Jr.
State Senate, District 33
7268 Hwy 165 North, Suite 209
Monroe, LA 71203

La. R.S. 39:1594
La. R.S. 39:1643
La. R.S. 39:1644

La. C.C. art. 9
La. C.C. art. 13

When awarding real estate leases of at least 5,000 square feet where a state agency is the lessee, the Commissioner of Administration is authorized to renew or renegotiate those leases with the current lessor or one of the new proposers in accordance with La. R.S. 39:1644. Such renewed or renegotiated leases are subject to the same ten-year limitation as leases awarded pursuant to La. R.S. 39:1643(A).

Dear Senator Cathey:

You have requested an opinion from this office concerning the ten year limitation on real estate leases under La. R.S. 39:1643(A). Specifically, you have asked whether this ten-year limitation applies to leases that are extended or renegotiated under La. R.S. 39:1644. As detailed below, La. R.S. 39:1643(A), which states that “[n]o such lease shall extend beyond a period of ten years” applies to real estate leases renewed and/or renegotiated pursuant to La. R.S. 39:1644.

Louisiana Revised Statute 39:1461 provides the Commissioner of Administration (the “Commissioner”) the authority to approve leases of real estate used to house state agencies, their personnel, and their equipment.¹ The Commissioner is also authorized to develop uniform space standards, maintain an inventory of all leased space, and evaluate the utilization of all space leased by state agencies.²

As it pertains to the awarding of leases, La. R.S. 39:1643(A) mandates that any lease for the use of 5,000 square feet or more of space entered into by a state agency lessee shall be awarded via competitive sealed bidding.³ This statute also provides that no such lease, except those of higher education management boards, shall extend beyond ten years.⁴

Louisiana Revised Statute 39:1644 permits the renewal or renegotiation of an existing lease via a “competitive negotiation process,” rather than sealed bids.⁵ This competitive negotiation process requires an advertised solicitation for written proposals pursuant to

¹ La. R.S. 39:1641.

² La. R.S. 39:1642.

³ La. R.S. 39:1643(A); *see also* La. R.S. 39:1594.

⁴ *Id.*

⁵ La. R.S. 39:1644(A)(1).

La. R.S. 39:1594(C) and ultimately a discussion with at least three proposers (unless there are less than three proposers).⁶ The Commissioner then has the following two options based upon his determination of what would be in the state's best interest: (1) renegotiate and renew the present lease; or (2) enter into a lease with one of the other proposers.⁷ In making this determination, the Commissioner shall take into account rental rates, the amount of funds necessary to relocate, any geographical considerations particular to that state program, the amount of disruption to state business that may be incurred in moving to a new location, and any other relevant factors presented.⁸

Louisiana Revised Statute 39:1644, which authorizes this competitive negotiation process instead of sealed bids, makes no mention of a ten year limitation on a renewed or renegotiated lease. According to your request, since August 2022, the division of administration, office of facility planning and control, has begun the practice of renegotiating/renewing leases via this competitive negotiation process for a term beyond ten years. Thus, you have asked whether the ten year limit on these types of leases, which applies to any lease awarded via competitive sealed bids, applies to renegotiated or renewed leases.

In answering your question, it is helpful to briefly summarize this process as outlined by La. R.S. 39:1643(A) and La. R.S. 39:1644. The Commissioner is authorized to lease space for any state agency by awarding such leases via a competitive sealed bidding process and with a term not to exceed ten years.⁹ Upon the expiration of this original term, the Commissioner need not re-bid the lease.¹⁰ Instead, he may renew or renegotiate the lease via a *competitive negotiation process* involving discussions with at least three proposers (as outlined above).¹¹ He may then award the lease to either the existing lessor or one of the new proposers.

Turning to your specific question, we first note that while these statutes have been subject to some interpretation in the past, neither this office nor any Louisiana court has opined on this specific issue.¹² The issue, nonetheless, appears fairly straightforward. Laws that are clear and unambiguous and, when applied do not lead to absurd consequences, are to be applied as written and no further interpretation may be made in search of the intent

⁶ *Id.*

⁷ La. R.S. 39:1644(A)(2).

⁸ *Id.*

⁹ La. R.S. 39:1643(A); *see also* La. R.S. 39:1644 and La. R.S. 39:1594.

¹⁰ La. R.S. 39:1643(A).

¹¹ La. R.S. 39:1644.

¹² *See Coney v. State*, 385 So.2d 368, 370 (La. Ct. App.1980) (holding that the division of administration did not act arbitrarily or unreasonably in rejecting all the bids and calling for second bidding); *see also La. Atty. Gen. Op. No. 95-148* (opining that when there has been an advertisement for bids for lease of space as required by R.S. 39:1594(C) and there are no bidders in response thereto, an existing lease may be renegotiated with the present owner pursuant to R.S. 39:1644), *La. Atty. Gen. Op. No. 80-949* (opining that the division of administration may legally and lawfully exercise its discretion and renegotiate the lease with the existing lessor and award same to him), and *La. Atty. Gen. Op. No. 78-986* (opining that for those leases of office space in privately owned buildings less than 2500 square feet the procedures as set forth in R.S. 39:193 must be complied with in all manners).

of the legislature.¹³ Here, when referring to leases on behalf of state agencies, La. R.S. 39:1463(A) clearly and unambiguously states that “[n]o such lease shall extend beyond a period of ten years.”¹⁴ Simply put, no lease (whether awarded via sealed bids, renewal, or renegotiation) of 5,000 square feet or more of a privately owned building where a state agency is the lessee may be for a period beyond ten years.

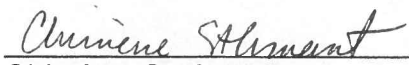
Furthermore, as statutes on the same subject matter, La. R.S. 39:1643(A) and La. R.S. 39:1644 must be read in *pari materia*.¹⁵ Thus, one must conclude that the ten year limitation on leases let out for bid under La. R.S. 39:1643(A) also applies to leases that are renewed or renegotiated under La. R.S. 39:1644. An interpretation of these two statutes that would require the Commissioner to select a lessor via competitive sealed bids, and place a cap on the term of that lease at ten years, but then allow the Commissioner to simply “renegotiate” a new lease with no cap on the term would seem rather absurd. If this were the case, the Commissioner would have to follow a competitive bidding process to enter into a ten year lease, but could subsequently bind the state via a 99 year lease that was merely negotiated absent any competitive bids. Such an interpretation clearly makes little sense. Instead, it is quite obvious that the legislature intended this ten year limitation to apply to all state agency real estate leases, both those awarded by competitive bids and those renewed or renegotiated.

Considering the foregoing, it is the opinion of this office that when awarding real estate leases of at least 5,000 square feet where a state agency is the lessee, the Commissioner of Administration is authorized to renew or renegotiate those leases with the current lessor or one of the new proposers in accordance with La. R.S. 39:1644. Those renewed or renegotiated leases, nonetheless, are subject to the same ten-year limitation as leases awarded pursuant to La. R.S. 39:1643(A).

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

Yours very truly,

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BY: 
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LM/CS

¹³ See La. C.C. art. 9.

¹⁴ La. R.S. 39:1643(A).

¹⁵ See La. C.C. art. 13; *see also* *Acurio v. Acurio*, 2016-1395, p. 4 (La. 5/3/17); 224 So.3d 935, 938; *Pierce Foundations, Inc. v. Jaroy Construction, Inc.*, 15-785, p. 7 (La. 5/3/16), 190 So.3d 298, 303.