



LIZ MURRILL
ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

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OPINION 25-0019

Mr. Ronald F. Lattier, Esq.
Caddo Levee District
330 Marshall Street, Suite 317
Shreveport, LA 71101

63 Levees, Drainage District & Flood Control

La. R.S. 38:113	La. R.S. 38:306(A)
La. R.S. 38:291(C)	La. R.S. 38:325
La. R.S. 38:301(A)	La. R.S. 38:1764

La. Const., Art. VI, §41; La. Const. Art. VII, §14

Levee Districts are restricted in the performance of drainage work. Drainage work may be performed that is "incidental to" or "made necessary by" authorized levee projects, or that is subject to a cooperative agreement with a public entity, or that has been selected by resolution of the board.

Dear Mr. Lattier:

On behalf of your client, Caddo Levee District ("CLD"), you have requested an opinion as to whether the Levee District may expend its public funds to provide drainage work for four types of drainage channels within its territorial boundaries: (1) those subject to 1948 and 1964 agreements with the federal government, (2) those adopted by resolution of the CLD in 1953, (3) those subject to agreements in place with unidentified "other entities," and (4) those neither subject to an agreement with the federal government, selected by the district pursuant to La. 38:113, nor subject to a cooperative agreement with another public entity, and which are not "incidental to" or "made necessary by" an authorized levee project.

Based upon a subsequent conversation with you, it appears CLD is mowing grass and conducting certain maintenance activities along particular drainage channels within its territorial limits that CLD has determined are not "incidental to" or "made necessary by" an authorized levee project. These activities are for the purpose of preventing flooding. While these channels were not specifically identified in your request, for the following analysis, we have assumed that these particular public drainage channels are within CLD's territorial limits but not "incidental to" or "made necessary by" an authorized levee project. CLD is in the best position to make this determination.

Question 1: May a levee district expend public funds to conduct maintenance work, such as mowing and removing weeds, for particular drainage channels within its territorial boundaries subject to agreements with the federal government to "maintain and operate all the works" for said channels?

Conclusion 1: Yes. A levee district is required to conduct maintenance activities, such as mowing and removing weeds, for those drainage channels included in agreements with the federal government.

Attached to your opinion request are Acts of Assurances and resolutions enacted by CLD in 1948 and 1964 for Bayou Pierre (1948) and Twelve Mile Bayou (1964). Pursuant to those acts and resolutions, CLD entered into agreements with the federal government to “maintain and operate all the works as to said portion of the project[s] after completion in accordance with the regulations prescribed by the Secretary of the Army.” CLD thereby agreed to “take any and all proper steps to do any and all acts that may be necessary or proper in or about furnishing the assurances aforesaid.”

Louisiana Constitution Article VI, §41 (1974) (*formerly*, Article XVI, §5) authorizes the levee districts to cooperate with the federal government in construction and maintenance of the levees in this state, “on such terms and conditions as may be provided by the federal authorities and accepted by the governing authority.” This office has previously opined upon similar contracts with the federal government and held that the levee district is fully and legally empowered to fulfill its obligation as contracted for with the federal government.¹ La. Atty. Gen. Op. Nos. 1932-34, p. 487 (01/09/1933), 1938-40, p. 513 (08/23/1938), and 1938-40, p. 520 (10/21/1938). *See also*, *Bd. of Levee Comm’rs of Orleans Levee Dist. v. Kelly*, 225 La. 441, 417-418; 73 So.2d 299, 301 (1954). Maintenance normally includes such matters as “cutting grass, removal of weeds, local drainage, and minor repairs of main river levees.”² Accordingly, CLD is obligated to cut the grass and remove weeds for those drainage channels included in the Bayou Pierre (1948) and Twelve Mile Bayou (1964) Acts of Assurances.

Question 2: May a levee district expend public funds to conduct maintenance work, such as mowing and removing weeds, for particular drainage channels within its territorial boundaries that have been adopted by resolution of the levee district?

Conclusion 2: Yes. A levee district may expend public funds to conduct maintenance activities extending out 100 feet on each side of a public drainage channel duly selected by resolution of the levee board.

You provided a copy of a CLD resolution dated April 23, 1953, whereby the district selected certain enumerated public drainage channels with the recommendation and approval of the Department of Public Works, pursuant to La. R.S. 38.113.³ This statute gives levee districts control over all public drainage channels within the limits of their

¹ La. Atty. Gen. Op. Nos. 1932-34, p. 487 (01/09/1933), 1938-40, p. 513 (08/23/1938), and 1938-40, p. 520 (10/21/1938). *See also*, *Bd. of Levee Comm’rs of Orleans Levee Dist. v. Kelly*, 225 La. 441, 417-418; 73 So.2d 299, 301 (1954).

² Flood Control Act of 1928, 70th Congress, Sess. 1, Ch. 569, 45 Stat. 534 (May 15, 1928), and Flood Control Act of June 22, 1936; *see also*, 33 U.S.C. 701, et seq.

³ Note that in 1953, La. R.S. 38:113 (1904 La. Acts. No. 61, §1), required the recommendation and approval of the Department of Public Works to gain the servitude. The 1991 revision removed this requirement from the statute. (La. R.S. 38:113, 1991 La. Acts. No. 309, §2).

districts, which are selected by the district, and for a space of 100 feet on each side of the banks of such channels, and one hundred feet continuing outward from the mouth of such channels, whether the drainage channels have been improved by the levee or drainage district, or have been adopted without improvement as necessary parts of or extensions to improved drainage channels. The servitude authorized by La. R.S. 38:113 is applicable where the work is performed within a duly constituted levee district,⁴ includes as proper maintenance the mowing of grass along the drainage channel,⁵ and extends to a space of 100 feet measured from each side and not from the middle of the channel.⁶ Accordingly, the CLD is permitted to expend funds to mow the grass, extending out 100 feet, on each side of the public drainage channels enumerated in the April 23, 1953 resolution.

Question 3: May a levee district expend public funds to conduct maintenance work, such as mowing and removing weeds, for particular drainage channels within its territorial boundaries subject to cooperative agreements with other public entities to operate and maintain said drainage channels?

Conclusion 3: Yes. A levee district may expend public funds to conduct maintenance activities pursuant to a cooperative agreement with another public body as long as the expenditure is not gratuitous as a whole and it has a demonstrable, objective, and reasonable expectation of a benefit generally commensurate with its expenditure of public funds.

Your opinion request indicates that CLD “has agreements in place with other entities...to operate and maintain a small percentage of these drainage channels.” Neither the “other entities” nor the location of the work performed have been identified, and no cooperative agreements, other than the 1948 and 1964 agreements with the federal government, were provided to this office.

Cooperative activities with other public bodies for public purposes is an enumerated power of levee boards.⁷ Furthermore, La. Atty. Gen. Op. Nos. 97-59 and 14-0186 hold that a levee district may enter into a contract with other public entities to expend funds on projects located *outside* of its territorial limits as long as the expenditure protects property *within* its jurisdiction.

⁴ *Ortego v. First Am. Title Ins. Co.*, 569 So.2d 101, 104-05 (La. App. 4 Cir. 10/11/1990); *Chargois v. Grimmer & James*, 36 So.2d 390 (La. App. 1 Cir. 1948); La. Atty. Gen. Op. Nos. 79-415 and 1946-48, p. 424 (08/21/1947).

⁵ La. Atty. Gen. Op. Nos. 87-336 and 19-0041.

⁶ *Grayson v. Commissioners of Bossier Levee District*, 229 So.2d 139 (La. App. 2 Cir. 1969); La. Atty. Gen. Op. 79-415.

⁷ La. R.S. 38:325(A)(5); La. Atty. Gen. Op. Nos. 90-206 (cooperating with parish for flood control works), 97-59 and 14-0186 (cooperating with separate levee district for flood control works), and 97-213 (cooperating with port commission for flood control works).

However, La. Const. Art. VII, §14 prohibits the loan, pledge, or donation of funds by one political subdivision to another. In *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 09/06/06), 938 So.2d 11 (also known as the *Cabela's* case), the Louisiana Supreme Court created the standard by which the expenditure of public funds is to be examined. This office has interpreted the *Cabela's* standard and stated in order for an expenditure of public funds to be permissible under Art. 7, §14, the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure that comports with the governmental purpose for which the entity has legal authority to pursue; (ii) that the expenditure, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure of public funds.⁸

This office previously opined that mowing to maintain a drainage channel servitude serves a public purpose.⁹ Therefore, CLD may expend funds for mowing and other drainage maintenance services pursuant to a cooperative agreement so long as the expenditure is not gratuitous as a whole and it has a demonstrable, objective, and reasonable expectation of a benefit generally commensurate with its expenditure of funds, including assuring efficient drainage within channels under the authority of CLD. The determination whether the benefit is generally commensurate with CLD's expenditure of funds is a factual inquiry that exceeds the scope of this opinion.

Question 4: May a levee district expend public funds to conduct maintenance work, such as mowing and removing weeds, for particular drainage channels within its territorial boundaries which are neither subject to an agreement with the federal government, selected by the levee district pursuant to La. R.S. 38:113, nor subject to a cooperative agreement with another public entity, and which are not "incidental to" or "made necessary by" an authorized levee project?

Conclusion 4: No. A levee district is not authorized to perform drainage work that is not "incidental to" or "made necessary by" an authorized levee project, or where there is no legal obligation to perform the drainage work.

A levee district cannot render a service unless under a legal obligation to perform the service. The service cannot simply be because it benefits the public.¹⁰ Opinion No. 22-0133 held that levee districts are restricted in the performance of drainage work "incidental to" or "made necessary by" authorized levee projects.¹¹ The opinion further holds that work "incidental to" is restricted to drainage work that is "liable to happen as a consequence of" the authorized levee work, and "made necessary by" is restricted to

⁸ La. Atty. Gen. Op. Nos. 21-0054, 19-0090, and 14-0186.

⁹ La. Atty. Gen. Op. Nos. 87-336 and 19-0041.

¹⁰ La. Atty. Gen. Op. No. 98-228.

¹¹ La. R.S. 38:301(A) and 38:306(A).

drainage work that arises out of authorized levee work.¹² The determination as to whether work is “incidental to” or “made necessary by” authorized levee work is a factual inquiry generally within the expertise and knowledge of the levee district and exceeds the scope of this opinion. For drainage work not “incidental to” or “made necessary by” authorized levee projects, the levee boards are only authorized to perform such work where there is a legal obligation to perform the drainage work. Thus CLD is not authorized to expend funds to perform drainage work not “incidental to” or “made necessary by” authorized levee projects, even within its territorial limits, where there is neither a cooperative agreement with the federal government or a public entity for a public purpose nor selection by the levee board in accordance with La. R.S. 38:113.

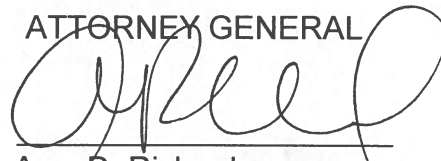
Lastly, you do not indicate in your letter the location of the drainage channels at issue, or whether said channels may be under the authority of another entity. The territorial limits of CLD are set forth in La. R.S. 38:291(C). It should be noted that Caddo Parish has created gravity drainage districts.¹³ This office has therefore not been provided with sufficient facts to determine if CLD is performing maintenance work (i.e., mowing) on drainage channels that lie under the authority of a Caddo Parish Gravity Drainage District or the parish in general. However, where a drainage district has been created, it has the exclusive authority to regulate drainage.¹⁴ Thus, CLD cannot expend funds to perform general drainage work within the territorial limits of a Caddo Parish gravity drainage district unless the work is subject to a cooperative agreement between the entities.

We trust that 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,

LIZ MURRILL
ATTORNEY GENERAL

BY:



Amy D. Richard
Assistant Attorney General

LM: ADR

¹² La. Atty. Gen. Op. Nos. 89-179 and 18-0036.

¹³ Caddo Parish Ord. §44-302 *et seq.*

¹⁴ La. R.S. 38:1764; *City of Shreveport v. Bd. of Comm'rs of Caddo Levee Dist.*, 143 La. 778, 782-83; 79 So. 401, 403 (1918); La. Atty. Gen. Op. 77-1394.