



RICHARD P. IEYOUS
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

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OPINION NUMBER 92-737

Honorable Carlo R. Ferrara
Mayor, City of Harahan
6437 Jefferson Highway
Harahan, LA 70123

Honorable John J. Doyle
Chief of Police
City of Harahan
6441 Jefferson Highway
Harahan, LA 70123

Gentlemen:

You have requested a joint opinion of the Attorney General's Office regarding the Harahan Railroad Fair (Fair) and the powers of the Harahan Chief of Police (Chief).

The facts as presented in your correspondence indicate that, in 1980, the citizens of the City of Harahan (City) established the Fair as a fund raiser. In 1987, the Fair was incorporated as a non-profit corporation.

Annual fund raising events include game booths, food and beverage concessions, amusement rides, beer concessions, and charitable gaming events--i.e., raffles and pull tabs. Proceeds derived from these sources are distributed evenly among seven non-profit organizations and the City. Conflicting information has been submitted as to whether the ninth participant is the Harahan Police Department (Department) or the Harahan Police Benevolent Association (Association).

On January 29, 1992, the City received three checks as its share of the proceeds from the 1991 fair:

1-A-1 Advertising
61-B Laws-Code of Ethics
15-A Constitutional Law
48 - Gambling
60 - Law Officers
71 - Municipalities
77 - Officers-Local & Municipal
90-A-2 Public Funds & Contracts
90-A-2 Public Funds-Loan, Pledge or Grants

Art. 7, Sect. 16
R.S. 33:4861.22; 33:4861.25; 33:361, 362, 404, 404.1;
43:111.1; 33:4873; 33:5062-5064; 33:423, 423.2; 42:1101

General discussion of the respective powers of the mayor and board of aldermen vis a vis the elected chief of police. Discussion of the constitutional/jurisprudential test applicable to the expenditure of public funds. Examines the legality of specific expenditures including those for plaques, gift certificates, savings bonds, Christmas parties, lunches for volunteers and non-municipal public employees, conferences, open houses, publications, radio and printed advertisements, removal of weeds, and Visa bills. Mayor has sole check-writing authority. While chief of police cannot maintain a separate account for the deposit of funds generated by the municipal police department, he may maintain a separate account for the deposit of private funds generated by police reserve units during off-duty hours. This fund should have sufficient accounting controls.

- (1) Check No. 433 in the amount of \$1,353.66 representing one-ninth of the Fair's net proceeds.
- (2) Check No. 423 in the amount of \$235.03 representing one-ninth of the pull tab and raffle sales.
- (3) Check No. 421 in the amount of \$79.00 representing one-half of the extra raffle ticket sales.

The City deposited these proceeds, as in years past, in its "Fair Account."

Records submitted with your request reflect that Fair proceeds received by the Department in 1984 and 1986, and by the Association in 1990, were deposited into the Harahan Police Benevolent Fund (Benevolent Fund). You have provided no information as to proceeds received by the Department and/or Association from the 1991 Fair.

During the hours of operation of the Fair, off-duty officers of the Department were compensated for providing security. The elected Chief was also compensated for working the Fair.

Your first question is whether the City may receive proceeds generated from the Fair's various fund raising activities. In answer to your question, I draw your attention to Attorney General Opinion No. 91-609. Therein, the questions under consideration were whether a municipality could legally conduct bingo games and/or receive a donation of bingo proceeds from a charitable organization, said proceeds to be deposited in the municipality's general fund.

The author concluded that the laws governing the licensing of charitable organizations to conduct games of chance, including bingo, raffles, and pull tabs, clearly excluded the municipality as a licensee. Further, in the absence of specific legislative authority, a municipal government could not receive a charitable organization's net gaming proceeds for general fund purposes. The author recommended that the municipality seek enabling legislation similar to that found at LSA-R.S. 33:4861.22 which authorizes Livingston Parish to use

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excess fees for the operation of parish government. We believe this opinion is dispositive of the issue at hand.

Thus, in the case at hand, the City was prohibited from accepting all or any portion of the net gaming proceeds from the Fair. This prohibition likewise extends to the Department, an integral component of city government. We see no legal impediment, however, to the City or the Department receiving a donation of Fair proceeds derived from events unrelated to charitable gaming. Once received by the City and/or Department, these funds become public funds subject to all state laws and local ordinances governing the deposit, expenditure, and audit thereof. See Attorney General Opinion No. 92-314.

It should be noted that Act 1010 of the 1992 Regular Session of the Louisiana Legislature enacted LSA-R.S. 33:4861.25 which became effective on August 21, 1992. It provides:

"Notwithstanding any other provision of law to the contrary, any monies collected by the governing authority of a municipality or parish from charitable organizations conducting bingo games in that municipality or parish pursuant to the rules and regulations of said governing authority which are in excess of the amount of monies necessary to pay the cost of adequate enforcement of such rules and regulations may be expended by said governing authority for purposes other than paying the cost of such enforcement, including but not limited to defraying the cost of operation of municipal or parish government."

As can be gleaned from the above, the City may now use monies collected in accordance with its rules and regulations in excess of the amount necessary to pay the cost of adequate enforcement of charitable gaming for its operations. Care should be taken that the monies generated are not materially and unreasonably excessive viz-a-viz the costs of regulation so as to be considered an unconstitutional tax. See Attorney General Opinion No. 90-677.

As stated above, the Fair proceeds are deposited by the City in a "Fair Account." You ask whether such an account is legally permissible.

The City is a Lawrason Act municipality and is governed by the provisions of LSA-R.S. 33:321, et seq. The powers of a municipality are set forth in LSA-R.S. 33:361. It provides, in pertinent part:

"A. Except as otherwise provided in this Part, a municipality shall be vested with all powers, rights, privileges, immunities, authorities, and duties heretofore possessed in accordance with all constitutional and statutory provisions with respect thereto. A municipality is further authorized to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied by law."
(Emphasis added.)

Section 362 designates the mayor as the chief executive officer of a municipality.

Section 404 provides for the duties of the mayor. It provides, in pertinent part:

"A. The mayor shall have the following powers, duties, and responsibilities:

(1) To supervise and direct the administration and operation of all municipal departments, offices, and agencies, other than a police department with an elected chief of police, in conformity with ordinances adopted by the board of aldermen and with applicable provisions of state law. All administrative staff shall be subordinate to the mayor.

* * *

(9) To have any other power or perform any other duty as may be necessary or proper for the administration of municipal affairs not denied by law."

As can be gleaned from the above, the mayor is the chief municipal administrative officer and is given the authority to supervise and direct the day to day operation of all municipal departments and agencies, with the exception of the Department. A review of the statutes defining the respective powers and duties of the mayor and board of aldermen reveal no prohibition against the mayor establishing a "Fair Account." Neither do we have evidence of any local ordinance prohibiting the establishment of the account.

We believe the establishment of the account constitutes a permissible mayorial executive function consistent with the premise that the Mayor's office has historically been responsible for daily banking transactions, receipts and disbursements of town monies, and the issuing of reports thereon. We now turn to the purposes for which the "Fair Account" monies are spent, and whether the expenditures conform to the statutory and constitutional provisions governing the disbursement of public funds.

Article VII, Section 14(A) of the Louisiana Constitution (1974) provides the following with regard to public funds:

"Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private."

The Supreme Court, adopting the jurisprudence interpreting an identical provision of the 1921 Constitution, has interpreted La. Const. Art. VII, §14 (1974) to be violated "whenever the State or a political subdivision seeks to give up something of value when it is under no legal obligation to do so." City of Port Allen v. Louisiana Risk Management, Inc., et al., 439 So.2d 399, 401 (La. 1983).

This requirement of a legal obligation to expend funds is the threshold but not the only predicate for the constitutionality of the expenditure. The expenditure must also be for a public purpose and create a public benefit proportionate to the cost. A public purpose and benefit is always presumed where the legal

obligation to expend the funds is established by constitutional or statutory mandate. To enjoy this presumption, the legal authorization must be an obligation or public duty authorized by law. In other words, the purpose and power for the expenditure must be sanctioned by laws. The public officer or entity acts as an instrument of the law, and pursuant to the authority granted by law, rather than his or its perception of the public good.

To allow unrestricted expenditures of public funds by any and all political subdivisions, public agencies, entities or officers as long as those entities or persons can imagine some species of "public good" or "public benefit" resulting therefrom, would be to authorize a fragmentation and incoherence in fiscal policy at all levels of state government. This, Art. VII, §14 seeks to prevent by requiring valid legal authority (even at the contractual level) for all alienations of public funds.

The effect of Art. VII, §14 as interpreted by the Supreme Court and the Attorney General is to give further constitutional protection and definition to the plenary power of the legislature over the public fisc, and to insure that political subdivisions conform to statewide general fiscal policy rather than formulate it on the basis of local expediency within their own territorial jurisdictions. The integrity of the legislative constitutional power over the public fisc is, therefore, sustained by a statewide constitutional norm requiring a legal obligation for public expenditures that is either ordained by law, by the legislature or constitution, or authorized (i.e. power to contract) by the same source of law.

The first category of expenditure is for plaques, gift certificates, and savings bonds. The City purchased a plaque honoring its Recreation Director. As previously held in Attorney General Opinion Nos. 85-700 and 76-1766, the giving of a plaque of moderate cost is an acceptable manner of recognizing an employee without violating any provision of law.

The gift certificates were purchased from a local merchant and given to City employees for redemption for Christmas turkeys. This office has previously opined that municipalities and other public bodies may not give Christmas turkeys and/or gift certificates to its employees. This practice violates Article

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VII, Section 14. See Attorney General Opinion Nos. 91-589-A, 76-1809, and 76-1492.

The savings bonds were awarded to essay and poster winners from local schools. Although the City's goals are admirable and creative, it is our opinion that the purchase of savings bonds constitutes a violation of Article VII, Section 14. The City may wish to purchase plaques, certificates of recognition, and/or trophies for future contest winners.

The City hosted Christmas and New Years Eve parties for public officials and employees and the general public. Prior opinions of this office have consistently held that the expenditure of city funds for such occasions is in contravention of Article VII, Section 14. This prohibition obviously extends to entertainment (e.g., bands) incidental to the parties. See Attorney General Opinion Nos. 91-589-A and 76-1680.

The City provided lunches for levee board employees in appreciation for their maintenance of neutral grounds along the shoulder of the roadway. This office finds no legal obligation or duty upon the City to purchase lunches for levee board employees. This finding may seem harsh at first, but, again, the legal duty principle safeguards the integrity of the public fisc.

City Alderman Karen Ranatza served as Vice-President of the Louisiana Municipal Association District "H." The City hosted the annual "LMA District H" meeting, and, in connection therewith, a dinner was held at a local country club. This office has previously recognized the public purpose inherent in the continuing education and training of state and local public officers and employees at conventions, seminars, and/or in-service facilities. The use of public funds to host a dinner for attendees is permissible. However, in order to meet the proportionality of the public benefit test, the expense must be reasonable and limited to attendees serving the LMA in their official capacities. In addition, the use of public funds for the purchase of alcoholic beverages would not be considered reasonable. See Attorney General Opinion No. 90-63.

The City paid for catering services for an open house at City Hall after the completion of renovations. Following the guidelines that test the constitutionality of the expenditure

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of public funds found in Attorney General Opinion No. 90-63, this office finds that the City has a legal obligation to maintain facilities from which its responsibilities and duties are exercised. These facilities must be accessible to public officials and employees and members of the general public. Should renovations be made to the extent that these facilities undergo major change, it may be necessary to familiarize those individuals (i.e., non-municipal public officials and employees and the general citizenry) with these new facilities. A function such as an open house would, under these limited circumstances, serve a public purpose and benefit. Again, the proportionality of the public benefit test requires the expense to be reasonable. As stated, by way of example in Opinion No. 90-63, "Champagne, alcoholic beverages, and caviar are unreasonable; coffee, soft drinks and doughnuts are reasonable."

The City hosted a luncheon for volunteers who assisted at City Hall during tax collection at which food and alcoholic beverages were served. While this is certainly commendable, we believe the activity to be contrary to Article VII, Section 14. As stated previously, the purchase of alcoholic beverages is an unreasonable expense. See Attorney General Opinion Nos. 92-314 and 90-63.

The City incurred printing and photographic expenses in publishing a "Report to the People" (i.e., a progress report on the City's accomplishments and operations) which it mailed to all of its residents. A sample of the report is attached for our review.

The statutory provisions governing the use of public funds for such publications are found at LSA-R.S. 43:111.1 and 33:4873. Section 111.1 provides:

"No public funds shall be used in whole or in part for the payment of the cost of any advertisement containing therein the name of any public official whether elected or appointed; provided, however, that the provisions of this section shall in no case be construed to apply to advertisements or notices required or authorized by law to be published or to any advertisements placed by any public agency or body authorized by law

to advertise in the furtherance of its functions and duties."

Section 4873 provides:

"Parish and municipal governing authorities may advertise by publications and radio and spend of their funds, not otherwise specifically allocated by law, sums prescribed as follows:

(1) Those serving territories exceeding one hundred thousand population may spend the sum of thirty thousand dollars annually.

(2) Those serving a territory with a population exceeding fifty thousand and not over one hundred thousand may spend the sum of fifteen thousand dollars annually.

(3) Those serving a population of less than fifty thousand may spend seventy-five hundred dollars annually."

In reviewing the publication in question, we note that it contains the names and photographs of the City's mayor and board of aldermen. Based on the above statutes and prior opinions of this office, we are constrained to hold that the City is prohibited from spending public funds to publish a progress report on the City's accomplishments when the name and/or photograph of a municipal officer is included in the publication. Further, the advertising budget must be limited to the amount prescribed by LSA-R.S. 33:4873. See Attorney General Opinion Nos. 76-173, 75-1111, and 75-589.

The City purchased floral arrangements for funeral services for former elected officials and a current employee who was hospitalized. We find this practice to be in contravention of Article VII, Section 14. See Attorney General Opinion No. 92-314.

The City made monetary donations for a "Fun Run" and program or sponsorship ads for local schools and civic organizations. Donations to a "Fun Run" are prohibited by Article VII, Section 14. As discussed, supra, radio and printed advertisements are

permissible if they do not contain the names and/or photographs of the City's officers. Further, the total cost of all advertisements in a given fiscal year must not exceed the budget limitations for advertising contained in LSA-R.S. 33:4873.

The City paid for grass cutting services on a vacant lot after notifying the property owner. This transaction occurred in October of 1986. The laws relating to the removal of noxious weeds or grass in effect in 1986 are found at LSA-R.S. 33:5062-5064. They require the existence of a health ordinance providing for the cutting, notification of the property owner by advertisement in the official journal or by registered mail, and a ten day grace period after said notice. Section 5063 requires the actual cost of the cutting to be collected as part of the property owner's taxes. Section 5064 requires the tax collector to maintain a record of the assessment of such charges.

The information submitted to this office relating to this transaction indicates that, at the time this lot was cut, the employee supervising grass cutting was terminated and the replacement employee did not pursue collection. It is the opinion of this office that the failure of the City to follow the statutory provisions discussed above and to collect the actual cost from the property owner constitutes a violation of Article VII, Section 14. By failing to pursue collection, the City, itself, paid for the improvements to private property.

The City paid a Visa bill incurred by the wife of an ex-alderman. The City considered the payment as reimbursement for film and processing costs related to the "Report to the People" publication. As previously discussed, the use of public funds for the payment of any expenses associated with the publication, in question, was in violation of LSA-R.S. 43:111.1. Assuming, arguendo, the expenditure was authorized, sound business and accounting practices suggest that the City should not have issued a check to the individual's Visa account. Rather, the individual should have submitted a bill for her time and expenses supported by the Visa receipt. The City should then have issued its check to the individual.

The City reimbursed the City Clerk for one-half of the expenses associated with her attending the annual International

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Institute of Municipal Clerks conference held in Halifax, Nova Scotia. It is the policy of the City to pay for membership dues, seminars, conventions, and conferences for city officials and employees, including the Chief and his employees. The expenses incurred totaled \$1,271.47. The Clerk was reimbursed \$635.74.

As discussed hereinabove, this office recognizes the public purpose inherent in the continuing education and training of state and local officers at conventions such as the one in question. Again, the expenses must be reasonable, adequately documented for audit purposes, and should not include reimbursement for alcoholic beverages. A review of the itinerary and a break down of the expenses do not suggest them to be unreasonable or disproportionate to the public purpose being served.

You next ask whether the Chief has check signing authority. LSA-R.S. 33:404 sets forth the mandatory duties, powers and responsibilities of the mayor. It provides in pertinent part:

"A. The mayor shall have the following powers, duties, and responsibilities:

* * *

(8) To sign warrants drawn on the treasury for money, to require that the municipal clerk attest to such warrants, to affix the municipal seal thereto, and to keep an accurate and complete record of all such warrants."
(Emphasis added.)

This office has consistently opined that the authority for signing checks is vested solely within the mayor as the executive officer and administrator of the municipality. See Attorney General Opinion No. 92-174. Further, there is no authority for the Chief to establish a separate fund for the deposit of monies generated by the municipal police department. Thus, the control, appropriation, and payment of expenses of the police department are within the power of the mayor, board of aldermen, and the Treasurer of the City. See Attorney General Opinion Nos. 92-720 and 87-540.

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It should be noted that the mayorial authority over municipal fund accounts does not extend to private funds generated by volunteer police reserve units. Attorney General Opinion Number 91-568 held that an elected chief of police could maintain a separate record for a police reserve unit comprising cash donations derived from their security activities at festivals, football games, etc. However, the opinion specifically notes that the fund, in question, had sufficient accounting controls.

Your next question pertains to off-duty police security detail. It is our understanding from the information furnished for our review that City ordinances require the sponsor of a function at which alcoholic beverages are served to have a police detail present for security purposes. The Chief assigns the details which are comprised of off-duty police officers. The sponsor pays the officers directly. Thus, the payments do not go through the City's accounts. The Chief maintains detailed time sheets reflecting the identity of the officer and the days, hours, and location at which the security detail occurs. In this case, the site was the Fair. You ask whether the Chief can participate and be paid for working security at the Fair.

We believe this issue falls under the jurisdiction of the Board of Ethics for Elected Officials. We are forwarding this information to the Board for its consideration.

Your final question pertains to the deposit of two checks issued by the Fair and made payable to the "Harahan Police Department". The checks were deposited in the Benevolent, Fund. As previously stated, confusion exists from the documents submitted with your request as to whether the Department or the Association participates in the Fair.

The Fair's Articles of Incorporation list the "Harahan Police Department" as an original member. However, we have been advised by the Chief that the Department no longer participates in the Fair. Rather, the Association is a member. We were further advised that the checks were erroneously made payable to the Department, and were, in fact, intended for the Association.

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Sound business and accounting practices dictate that the two checks should have been returned for reissuance to the proper party. In the alternative, they should have been deposited in the City's account and then reissued from that account to the Association with an appropriate written explanation for audit purposes. Assuming the Association is a private organization that does not receive federal, state, or local funds, it would not be subject to our State's audit laws. Finally, the Fair's Articles of Incorporation should be amended to accurately reflect the membership as it currently exists.

We hope this satisfactorily answers, your questions; however, if you need additional assistance, please do not hesitate to contact us.

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY:


~~ROBERT E. HARROUN, III~~
Assistant Attorney General

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