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State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
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May 18, 2016
OPINION 16-0070

Senator Gerald Long
District 31
P.O. Box 151
Winnfield, LA 71483-7525

90-A-2 – PUBLIC FUNDS – Loan, Pledge, or Grants
La. Const. Art. VII, §14
La. R.S. 34:3261, et seq.

The Cane River Waterway District may provide a portion of its property tax funds to Natchitoches Parish for road repairs if the road repairs relate to the maintenance and operation of the Cane River Waterway, the funds are not being gratuitously provided to the Parish, and the District has a demonstrable, objective and reasonable expectation of receiving equivalent value in exchange for providing funds to the Parish.

Dear Senator Long:

You have requested an opinion from this office regarding the use of public funds by the Cane River Water Way District (the "District"). Specifically, you have indicated that the District is considering entering into a cooperative endeavor agreement with Natchitoches Parish (the "Parish") wherein the District would provide the Parish with a portion of the proceeds of a six (6) mill property tax levied by the District. The funds provided to the Parish would be used for repairing and maintaining roads throughout the Parish. You have asked this office whether the District may legally provide a portion of its tax proceeds to the Parish for the purpose of repairing and maintaining roads in the Parish.

Your request concerns the use of public funds by the District, a public entity. Therefore, the legality of the proposed use of public funds must be determined in light of the prohibitions contained in La. Const. Art. VII, § 14. La. Const. Art. VII, § 14, provides, in pertinent part:

A. Prohibited Uses. 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 Louisiana Supreme Court has held that a violation of Article VII, § 14(A) occurs "when public funds or property are gratuitously alienated." *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. 9/6/06); 938 So.2d 11 ("Cabela's") In light of the Louisiana Supreme Court's decision in *Cabela's*, this office has consistently opined that in order for an expenditure of public funds to be permissible under La. Const. Art. VII, § 14(A), the public entity must have the legal

authority to make the expenditure and must show: (i) a public purpose of the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, 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 or transfer of public funds. See e.g., La. Atty. Gen. Op. Nos. 10-0299, 10-0171, 09-0271, and 09-0260.

Under the first element of the test, there must be a public purpose for the expenditure that comports with the governmental purpose for which the District has legal authority to pursue. The repair and maintenance of public roads clearly qualifies as a public purpose. The more specific issue here is whether it is a public purpose for which the District has legal authority to pursue.

The District was created by the Louisiana Legislature and is governed by state law at La. R.S. 34:3261, *et seq.* The District was created for the object and purpose of “establishing, operating and maintaining ... a navigable waterway system to be known as the Cane River Waterway....” La. R.S. 34:3262. Furthermore, the 6 mill property tax is collected by the District pursuant to La. R.S. 34:3269(8), which allows the tax to be used “for capital outlay, including the cost of acquisition of rights-of-way and compensation for such severance and other collateral damages necessarily incurred in connection with such acquisition, and for maintenance and operation of the waterway.” When considering these provisions, it would appear that the District would be authorized to expend its property tax revenues on any project that affects the ability of the District to operate and maintain the Cane River Waterway. The repair and maintenance of public roads does not expressly comport with the governmental purposes of the District or the purposes for which the property tax proceeds may be used. However, if the road repair and maintenance is needed to maintain and operate the Cane River Waterway, then the public purpose element would be satisfied.

Secondly, it must be determined whether the District’s use of property tax revenues, when taken as a whole, appears to be gratuitous. The *Cabela’s* court placed particular emphasis on reciprocal obligations of the parties when determining whether a use of public funds is gratuitous. *Board of Directors of the Industrial Development Board*, 938 So.2d at 22. This office has also opined that the requirement of a reciprocal obligation renders the payment onerous, rather than gratuitous, since it ensures that the public entity will obtain some advantage in return. La. Atty. Gen. Op. No. 10-0299. Based on the limited facts contained in the request, we are unable to determine whether the Parish’s proposed use of the District’s public funds is gratuitous. However, in order to avoid running afoul of this element of the test, the Parish must obligate itself under the cooperative endeavor agreement to provide some advantage to the District in exchange for the use of the District’s funds. If reciprocal obligations exists for both parties under the cooperative endeavor agreement, then the second element would be satisfied.

Third, the District must have a demonstrable, objective, and reasonable expectation of receiving equivalent value in exchange for providing funds to the Parish for road repairs. The facts and circumstances surrounding the proposed expenditure determine whether this element is satisfied. As a general rule, this office refrains from conducting such fact-intensive analyses and leaves such determinations to the public entity seeking to expend public funds. Thus, if the District determines it has a demonstrable, objective, and reasonable expectation of receiving equivalent value from the Parish in exchange for the funds provided to the Parish for road repairs, then this element will be satisfied.

Considering the foregoing, it is the opinion of this office that the District may provide its funds to the Parish for road repairs if the road repairs relate to the maintenance and operation of the Cane River Waterway, the funds are not being gratuitously provided to the Parish, and the District has a demonstrable, objective and reasonable expectation of receiving equivalent value in exchange for providing funds to the Parish.

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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