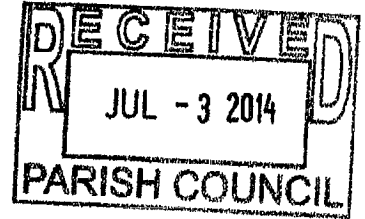




JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005



JUN 30 2014
OPINION 14-0087

22-1 DRAINAGE & DRAINAGE DISTRICTS

Mr. Paul J. Hogan, PE
Councilman, District IV
P.O. Box 302
Hahnville, LA 70057

La. Const. art. VI, § 5
La. R.S. 38:1664
La. R.S. 38:1614

La. Const. art. VI, § 16
La. R.S. 38:1669
La. R.S. 38:1607(C)(1)

Pursuant to La. R.S. 38:1607(C)(1), the St. Charles Parish designated the Council as the governing authority of the Sunset Drainage District. Under this appointment, the Council acquired all the functions and responsibilities previously performed by the Board of Commissioners of the Sunset Drainage District.

Dear Mr. Hogan:

As a member of the St. Charles Parish Council ("Council"), you have requested an Attorney General's opinion as to the accuracy of the following statements concerning the Sunset Drainage District ("SDD"), which have arisen in the course of the Council becoming the governing authority of the SDD:

- 1) that all property (buildings, tools, equipment, lands, canal bottoms, servitudes, right of ways, the Crawford Canal pumping station, etc.) owned by the SDD prior to the Council becoming its governing authority, remains property of the SDD;
- 2) that all said items owned by the SDD fall under the control and governance of the governing authority of the SDD;
- 3) that any agreements relative to the SDD's property, the usage of the SDD property, and the functions of the SDD require approval and authorization from the governing authority of the SDD; and
- 4) that the Council is required to fulfill all of the duties, responsibilities, requirements, and obligations incumbent upon it as the governing authority of the SDD, as defined in the applicable provisions of La. R.S. 38:1601 through 38:1681 and any applicable Parish ordinances.

Based on the foregoing, it is the opinion of this office that the four statements are accurate.

BACKGROUND

In 1911, the Police Jury of the Parish of St. Charles passed an ordinance creating the St. Charles Municipal Drainage District ("SCMDD"), for the purpose of draining and reclaiming marsh, swamp and overflow lands.¹ Subsequently, the Police Jury

¹ Parish of St. Charles Municipal Ordinance of 5-21-1911.

reorganized said district under the terms of Act No. 85 of 1921, naming it the "Sunset Drainage District." Section IV of Ordinance No. 4-17-24 stated:

the said reorganized district herein created (Sunset Drainage District) shall assume all of the obligations of the St. Charles Municipal Drainage District as well as all of the obligations of Sub-Drainage District Nos. 2, 3, and 4 of St. Charles Municipal Drainage District, and shall otherwise assume and perform each and every duty and obligation required or imposed upon it by and under Act 85 [of 1921] ...

Therefore, upon its reorganization, the SDD was statutorily governed by all provisions of Act 85.² This included any issues dealing with the power over the assets and liabilities of the SDD.

In 1977, St. Charles Parish adopted a Home Rule Charter ("Charter") as its form of government; thus, as a post-1974 Charter, the Parish operates under the authority of Article VI, Section 5 of the Constitution.³ Section 5(E) specifically provides that the powers and functions of the local government are subject to the state law and the Constitution.⁴ Accordingly, in order for a particular action or exercise of power by a home rule charter government such as the Parish of St. Charles to be considered official, it must be determined that the exercise of power complies with the Constitution and the laws of the State.

On August 5, 2013, by way of Ordinance No. 13-8-5, and pursuant to La. R.S. 38:1607(C), St. Charles Parish designated the Council as the governing authority of the SDD. Under this appointment, the Council acquired all the functions and responsibilities previously performed by the Board of Commissioners of the SDD.⁵

ANALYSIS

1) All property owned by the SDD remains as its property after the Council's appointment.

Relevant to your inquiry is La. R.S. 38:1664, which provides for the reorganization of existing drainage districts. This statute reads:

Any drainage district heretofore organized, or any drainage district now in process of organization, under any previous or existing law of the state....,

² La. R.S. 38:1664.

³ See St. Charles Parish Home Rule Charter, Article I.

⁴ La. Const. art. VI, § 5(E) states: "A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution."

⁵ Parish of St. Charles Municipal Ordinance No. 13-8-5.

may reorganize, or any two or more drainage districts may consolidate and reorganize under the provisions of this Part. The reorganized district shall be deemed created under this Part, and entitled to the benefit of all the provisions of this Part.⁶

(Emphasis added). La. R.S. 38:1669 specifically provides for the property and obligations of the pre-existing district upon its reorganization. The statute reads, in relevant part, as follows:

Drainage and reclamation works and improvements of the pre-existing district or districts, or any sub-district thereof, and all property, machinery, rights of way, canals, levees, holding basins and other works thereof shall become the property of the reorganized district or the respective sub-district thereof.⁷

Clearly, as a reorganized district, the SDD became entitled to all of the rights and obligations formerly embraced by the SCMDD, including buildings, tools, equipment, lands, canal bottoms, servitudes, etc. previously belonging to the SCMDD. Ordinance No. 13-8-5 did not transfer any assets to the St. Charles Parish, and the SDD continued to own its property because, besides having a separate corporate identity,⁸ for a consolidation or merger to be effective, it would require a vote of the people as described by La. Const. art. VI, § 16(A),⁹ which was apparently not done in this instance.

In a similar scenario, *Burmaster v. Gravity Drainage Dist. No. 2 of Parish of St. Charles*,¹⁰ explained that even though the St. Charles Parish passed an ordinance transferring the functions of the Board of Commissioners of the Gravity Drainage District No. 2 to the St. Charles Parish Council, "there was no merger between the Parish and Drainage District, [because of] the prerequisite of Article 6, Section 16(A) not having been met. He [the Court] did find, however, that a de facto merger had taken place."¹¹ The *Burmaster* case concluded: "[t]he sum of what has happened, as appears from the

⁶ La. R.S. 38:1664. The reorganization procedure is found at La. R.S. 38:1665; for the purposes of this review, we will assume that the same was properly followed.

⁷ La. R.S. 38:1669.

⁸ La. R.S. 38:1614 provides that once a drainage district is created it shall have both a corporate status and all the powers of a corporation. This provision gives the respective drainage districts complete control over and primary responsibility for all drainage matters within the district. As such, La. Atty. Gen. Op. No. 77-1394 found this to be the intent of the Legislature to allow the authority of the board of commissioners [the Council in this case] of the drainage district to supersede and to be independent of the local governing authority [the Parish administration] on matters of drainage within the designated drainage districts.

⁹ La. Const. art. VI, § 16(A) reads in part: "A consolidation and merger [between a local governmental subdivision and a special district] 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."

¹⁰ 602 So.2d 1045, 1049 (La. Ct. App. 1992) *writ denied*, 608 So.2d 167 (La. 1992).

¹¹ *Id.* at 1047.

record as a whole, is simply that the Council now performs the functions of the Commissioner of the Drainage District. There has been no fraud; there has been no transfer of assets, and the Drainage District continues to own its own property."¹² (Emphasis added).

2) The power over the business affairs of the SDD falls under the authority of the Council.

La. R.S. 38:1607(C)(1) provides unequivocally: "the St. Charles Parish Council may replace the board of commissioners of the Sunset Drainage District as the governing authority of the district by adopting an ordinance appointing and designating the St. Charles Parish Council as the governing authority of the district."¹³

Despite its power to create¹⁴ and abolish¹⁵ drainage districts, the parish governing body must conform to pertinent state laws.¹⁶ Indeed, with the transfer of responsibilities, the Council will have the sole authority over the business affairs of the SDD, and it will be entitled to execute any acts previously performed by the SDD's Board of Commissioners.

3) Any agreements relative to the SDD require approval from the Council.

La. R.S. 38:1614 grants the board of commissioners (in this case, the Council) specific authority to enter into agreements for the performance of its work. It provides, in relevant part, as follows:

in order to carry out this drainage work the drainage commissioners [the Council] are specially authorized to enter into contracts for the performance of this work..., and perform all other acts necessary to fully drain all the land in their district, or sub-drainage district, and maintain the drainage when established.¹⁷

(Emphasis added). Since La. R.S. 38:1607(C)(1) authorizes the Council to replace the board of commissioners as the governing authority of the SDD and therefore has the power to perform any acts on behalf of the SDD, then it follows that any agreements

¹² *Id.* at 1049-50.

¹³ Note that this provision establishes certain requisites in order to accomplish this objective. For the purposes of the present review, we will assume that the same have been satisfied.

¹⁴ La. R.S. 38:1602.

¹⁵ La. Const. Art. VI, Sec. 15.

¹⁶ See La. Atty. Gen. Op. No. 89-495 (Drainage district, although created by police jury, is a body corporate. Police jury cannot usurp powers of Board of Commissioners, and cannot seize funds or records of district, and have audit performed without consent of district commissioners); also see *Brasseaux v. Vermilion Parish Police Jury*, 361 So. 2d 35 (La. Ct. App. 1978) *writ denied*, 363 So. 2d 535 (La. 1978) (finding that drainage district was an "agency" within constitutional provisions, and the Vermilion Parish Police Jury's right to abolish agency did not include power to remove individual members).

¹⁷ La. R.S. 38:1614.

relative to the SDD's property, the usage of the SDD property, and the functions of the SDD require approval and authorization from the Council.

4) The Council is required to fulfill all of the duties, responsibilities, requirements, and obligations of the SDD.

As noted above, the Council replaced the Board of Commissioners of the SDD as the governing authority of the drainage district. Therefore, the Council is statutorily obligated to perform all the duties and responsibilities of the former board, including the holding of official meetings.¹⁸

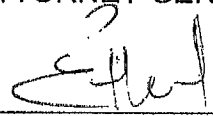
It is also worth noting that since a drainage district is a separate corporation from the parish governing authority, the Council members should exercise caution to differentiate when they are acting on representation of the SDD and on behalf of the Parish.¹⁹

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,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:



Ethel Solache Graham
Assistant Attorney General

JDC: ESG

¹⁸ As long as the Council complies with the notice requirements of the Open meetings Law, there is no legislative prohibition against conducting drainage business at its regular council meeting. See La. Atty. Gen. Op. No. 77-1614; also see La. Atty. Gen. Op. No. 84-383.

¹⁹ See La. Atty. Gen. Op. No. 87-202.

