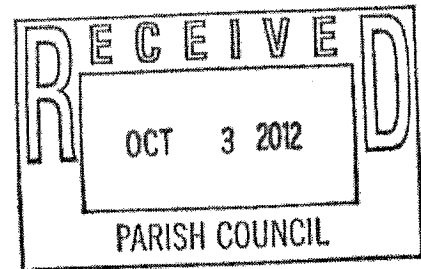




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October 3, 2012
OPINION 12-0133

71-1-B-MUNICIPALITIES-HOME RULE CHARTER

La. Const. art. VI § 5

La. R.S. 39:1301 *et seq.*

La. R.S. 33:404(1)(A)

Calli T. Madere
Acting Council Secretary
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The Parish President has the authority to select and hire consulting engineers and contract for architectural services for the Parish based on the St. Charles Parish Home Rule Charter. This authority is limited in that the funds for the services must be appropriated by the Parish Council.

Dear Ms. Madere:

Our office received your request for an opinion concerning the authority of the St. Charles Parish President ("President") and the St. Charles Parish Council ("Council") to select and hire firms for professional services. Specifically, you have inquired as to whether the Council, through St. Charles Parish Ordinance § 2-12, can limit the President's ability to select and hire consulting engineers or contract for architectural services.

St. Charles Parish Ordinance § 2-12(b) states in pertinent part: "[a]ny contract for consulting engineering or architectural services which would result in an engineering or architectural fee in an amount of twenty thousand (\$20,000.00) or more shall be awarded by ordinance of the parish council."

St. Charles Parish operates under a home rule charter, which came into existence following the enactment of Article VI, § 5 of the Louisiana Constitution (1974). La. Const. Art. VI §5 provides that:

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.

St. Charles Parish is therefore governed by the St. Charles Parish Home Rule Charter ("Charter"), to the extent the provisions are consistent with state law and the state constitution.

The Charter clearly defines the executive authority of the President in art. III § B (3a). It states in pertinent part that:

[T]he parish president shall be the chief executive officer of the parish and shall be vested with the executive power of the parish. He shall be responsible for carrying out the policies adopted by the Parish Council and for the administration, direction and supervision of all parish departments, offices, agencies and special districts.

Charter, art. III § B (3a) (emphasis added).

Similar executive authority has been discussed in prior opinions of this office regarding home rule charter political subdivisions. See La. Atty. Gen. Op. Nos. 10-0156 and 93-5. This office has previously opined that the selection and hiring of professional service firms for a parish is an executive power reserved for the President. La. Atty. Gen. Op. Nos. 10-0156, 09-0264, 07-0087 and 98-58.¹

Yet, since each home rule charter political subdivision must be analyzed by its specific charter, we must ascertain if the charters our office looked at previously use the same terminology as the underlying Charter. Although La. Atty. Gen. Op. Nos. 10-0156 and 09-0264 specifically address different authority than the Charter,² the executive power and authority language in both is similar to that of the Charter. The power granted to Plaquemines Executive Authority is to "supervise and direct all activities and functions of parish government." La. Atty. Gen. Op. No. 10-0156. Further, the Lawrason Act gives the executive authority the power "[t]o supervise and direct the administration and operation of all municipal departments, offices, and agencies" of the municipality. La. R.S. 33:404(1)(A). The Charter here grants similar authority, making the President responsible for the "administration, direction and supervision of all parish departments, offices, agencies." Charter, art. III § B (3a). It is likely within the authority of the President to select and hire firms for professional services based on the authority granted in the Charter. Thus, the provisions of the St. Charles Parish Ordinance § 2-12(b) that limits this authority of the President is invalid. However, the Charter may be amended, in accordance with Art. VIII, in order to restrict the abilities of the President as was sought with this ordinance.

¹ La. Atty. Gen. Op. Nos. 10-0156, 09-0264, 07-0087 and 98-58 address both home rule charter political subdivisions as well as Lawrason Act municipalities.

² La. Atty. Gen. Op. No. 10-0156 addressed the Plaquemines Parish Home Rule Charter, whereas La. Atty. Gen. Op. No. 09-0264 addressed a Lawrason Act municipality.

Yet, while the President does have the authority to select and hire firms for professional services, it is not absolute. If hiring a firm for professional services requires the spending of municipal funds or incurring a debt by the municipality, the President must have the approval of the Council to enter into such a contract. La. Atty. Gen. Op. Nos. 11-0084, 10-0245 and 00-439.³ The approval could come through the budgeting and appropriation of funds performed in accordance with the Local Government Budget Act, La. R.S. 39:1301 *et seq.*⁴, or from a separate approval request. Once the funds are appropriated, the Council no longer has a role to play in the contract process,⁵ unless given the specific authority to be further involved by the Charter.

The Charter gives the Council the specific authority to contract with other governmental units and to select special counsel. Article III § A (7) of the Charter expressly allows the Council to "enter into contracts with other governmental units within or outside the boundaries of the parish," (emphasis added). The ability to select special counsel is granted by Article III § C (3a) which provides in pertinent part: "In special matters, the Council may retain special attorneys to represent the Parish or perform certain duties subject to the restrictions imposed by the statutes of this State." Such specific grants of authority lend credence to the idea that if the drafters of the Charter meant for the Council to have the authority to enter into any other type of contract for professional services, the Charter would have said that and not given such a specific grant of authority in these two particular instances.

In conclusion, the President has the authority to select consulting engineers or contract for architectural services for the Parish. In hiring the contractors, the President must obtain approval of the Council prior to signing the contract if it requires spending municipal funds or incurring a debt. Therefore, any part of the St. Charles Ordinance § 2-12 that usurps the authority of the President is void. Further, any aspect of that Ordinance which asserts authority already granted to the Council is redundant.

³ Although these opinions apply the Lawrason Act, they articulate an important concept for all political subdivisions whether governed by a home rule charter or the Lawrason Act.

⁴ St. Charles Parish is subject to the Local Government Budget Act because it is a home rule charter that came into effect after 1974. La. R.S. 39:1303. The Local Government Budget Act requires the executive authority of a political subdivision to submit a budget for all general and special revenue funds to the legislative authority of the political subdivision. La. R.S. 39:1305. Thus, the executive authority cannot spend special revenue or general funds prior to their appropriation by the legislative authority.

⁵ La. Atty. Gen. Op. No. 03-0036.

We hope that this opinion has adequately addressed the legal issues you have raised.
If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY: 

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JDC: JMPT