



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

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OPINION 14-0083

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14
La. R.S. 33:4720.87

Mr. V.J. St. Pierre, Jr.
St. Charles Parish President
Post Office Box 302
Hahnville, Louisiana 70057

Pursuant to La. R.S. 33:4720.87, the St. Charles Parish Government has the authority to appropriate available funds for the purpose of providing technical or financial assistance to the property owner for the rehabilitation of blighted property. The Parish is also authorized to enter into agreements with homeowners whose property has been legally declared blighted whereby the Parish will provide a dumpster to the homeowner, but in order to avoid violating La. Const. art. VII, Sec. 14(A), the agreement must ensure that the homeowner covers the costs associated with the Parish providing the dumpster, either by direct payment to the Parish or through the filing of a lien against the homeowner's property.

Dear Mr. St. Pierre:

Your request for an opinion of the Attorney General has been forwarded to me for research and reply.

You have asked whether St. Charles Parish (the "Parish") may execute agreements with private homeowners whereby the Parish will provide a homeowner whose property has been legally deemed to be blighted with a dumpster so that the individual can tear down the blighted property himself. This type of agreement would only be offered to a homeowner once the Parish determines that paying the costs associated with providing the dumpster and allowing the homeowner to tear down the blighted structure would be less expensive and more efficient than the Parish tearing down the structure itself and then securing a lien against the property for the costs incurred by the Parish. It is our understanding that any agreement executed by a homeowner would not require the homeowner to pay any portion of the costs associated with the Parish providing the dumpster or hauling it away once full. In other words, all of those costs would be borne by the Parish. Alternatively, you state that if the Parish cannot provide the dumpsters to homeowners at no cost to them, it would like to provide dumpsters to homeowners whose property has been declared blighted and that under such an arrangement, the homeowner would agree to allow the Parish to place a lien against his property for the collection of the costs associated with the Parish providing the dumpster.

By way of background, our office issued La. Atty. Gen. Op. No. 13-0171 on November 26, 2013, which addressed the practice of the St. Charles Parish Government of providing dumpsters to private homeowners once their property had been declared blighted so that the private homeowner could remove the blighted structure himself instead of having the Parish do so. If the dumpster program was utilized by private homeowners, the costs for renting the dumpsters and hauling them away were borne by the Parish. No lien or repayment of any type was required of the private homeowner for

any amount the Parish paid in providing the dumpster. The opinion concluded that, under the St. Charles Parish Code of Ordinances, the Parish may provide dumpsters to homeowners as part of its blighted property program but must ensure that it secures payment or reimbursement from the private homeowner for all costs associated with providing the dumpsters.

La. Atty. Gen. Op. No. 13-0171 was addressed in light of the St. Charles Parish Code of Ordinances. However, La. R.S. 33:4720.81, *et seq.* also addresses the acquisition and sale of blighted property in St. Charles Parish. Pursuant to La. R.S. 33:4720.81, the Louisiana legislature has found and declared the following:

(1) There exists in St. Charles Parish, Louisiana, areas which have become slum and blighted because of the unsafe, unsanitary, inadequate, or overcrowded conditions of the structures therein, or because of inadequate planning of the area, or because of physically or functionally obsolete structures, or both, or because of excessive dwelling unit density, or because of the lack of proper light and air and open space, or because of faulty street or lot design, or inadequate public utilities or community services, or because of the conversion to incompatible types of land usage.

(2) Such conditions or a combination of some or all of them have and will continue to result in making such areas economic and social liabilities imposing onerous parochial burdens which decrease the tax base and reduce tax revenues and cause harm to the social and economic well-being of the parish, depreciating property values therein, and thereby depreciating further the general communitywide values.

(3) The prevention and elimination of slums and blight areas and their causes is a matter of public policy and concern in order that the parish shall not continue to be endangered by areas which are focal centers of economic and social retardation, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, and other forms of public protection, services, and facilities.

(4) The salvage and renewal of such areas, in accordance with sound and approved plans for their redevelopment, will promote the public health, safety, morals, and welfare.

* * *

B. The powers conferred by this Chapter *are for public uses, purposes, and utility for which public money may be expended* and expropriation authority utilized as necessary and in the public's interest and in conformity with the approved plans of the parish. The provisions provided by this Chapter shall apply for residential, recreational, commercial,

industrial, or other purposes and otherwise encourage the provision of healthful homes, a decent living environment, and adequate places of employment for the people in the parish. Such purposes are hereby declared as a matter of legislative determination.

(Emphasis added).

As you can see, the Louisiana Legislature has determined that clearing and rehabilitation of blighted property in St. Charles Parish to be a "public purpose . . . for which public money may be expended." *Id.* Specifically regarding blighted property, La. R.S. 33:4720.87 authorizes the Parish to do the following:

A. Notwithstanding any other provision of this Chapter, St. Charles Parish shall have the power to acquire by purchase, gift, bequest, expropriation, negotiation, or otherwise any blighted property as defined in this Section, either within or outside a designated community improvement area and, further, to hold, clear, manage, and dispose of said property, all in accordance with the procedures set forth in this Section, which procedures shall be exclusive for the acquisition of individual blighted property by the parish governing authority but shall not affect any other authority of the parish governing authority for acquisition of blighted property.

Paragraph (E)(3) of the statute states that prior to the Parish acquiring any properties declared blighted by the parish governing authority, the Parish "shall offer technical or financial assistance as may be available for rehabilitation to the property owner." Further, Paragraph (F) of La. R.S. 33:4720.87 states that "the parish governing authority may receive and utilize any federal, state, local, or other funds as may be appropriated or otherwise made available in order to effectuate the purposes of this Section."

If the Parish intends to acquire blighted property as it is authorized to do by La. R.S. 33:4720.87, it is authorized by Paragraphs (E) and (F) of the same statute to "offer technical or financial assistance as may be available for rehabilitation to the property owner" prior to acquiring the property. *Id.* To the extent that "federal state, local or other funds" are appropriated for the purpose of offering technical or financial assistance to private homeowners for the purpose of rehabilitation of blighted property, then the St. Charles Parish Government may spend public funds for that purpose without violating La. Const. art. VII, Sec. 14. We reach this opinion based upon the broad authority granted to the Parish by La. R.S. 33:4720.81, *et seq.*

In the event the Parish does not have funds appropriated to assist private homeowners in the rehabilitation of their blighted property prior to the Parish acquiring said property or if the Parish does not wish to acquire the property but only wants to have it cleaned up, then it remains the opinion of this office that the Parish may provide dumpsters to homeowners as part of its blighted property program but only if the homeowner pays the cost of providing the dumpster. As noted in La. Atty. Gen. Op. No. 13-0171, La. Const.

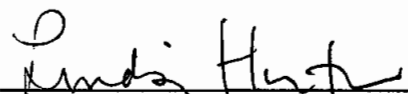
art. VII, Sec. 14(A)¹ prohibits a public entity from making a gratuitous expenditure of its funds or property. If the private homeowner agrees to pay the costs associated with the Parish providing the dumpster, either by direct payment or by the Parish placing a lien on the property for the costs associated with the Parish providing the dumpster, we believe that the Parish may enter into agreement with that homeowner without violating La. Const. art. VII, Sec. 14(A). Such an agreement must ensure that the homeowner covers all of the costs associated with the Parish providing the dumpster. If the Parish chooses to file a lien against the property in accordance with Section 16-51 of the St. Charles Parish Code of Ordinances for the costs associated with the Parish providing the dumpster, the Parish must ensure that such lien is not primed by other liens such that actual payment to the Parish will not occur, and that the lien is properly recorded and does not prescribe. The Parish should then take whatever steps are necessary to collect the lien so that it is reimbursed for the costs it incurred when providing the dumpsters to private homeowners.

Based on the foregoing, it is the opinion of this office that pursuant to La. R.S. 33:4720.87, the St. Charles Parish Government has the authority to appropriate available funds for the purpose of providing technical or financial assistance to the property owner for the rehabilitation of blighted property. The Parish is also authorized to enter into agreements with homeowners whose property has been legally declared blighted whereby the Parish will provide a dumpster to the homeowner, but in order to avoid violating La. Const. art. VII, Sec. 14(A), the agreement must ensure that the homeowner covers the costs associated with the Parish providing the dumpster, either by direct payment to the Parish or through the filing of a lien against the homeowner's property.

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.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: 
LINDSEY K. HUNTER
Assistant Attorney General

JDC/LKH/chb

¹ La. Const. art. VII, Sec. 14 provides, in pertinent part, as follows: "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" This constitutional provision "is violated 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, 20.