

RS 39:1301

CHAPTER 9. LOUISIANA LOCAL GOVERNMENT BUDGET ACT

§1301. Short title

This Chapter may be cited as the "Louisiana Local Government Budget Act."

Added by Acts 1980, No. 504, §1, eff. Sept. 1, 1980.

RS 39:1410.60

PART IV. LOCAL GOVERNMENT FINANCES

§1410.60. Approval of application; incurring indebtedness

A. No parish, municipality, public board, political or public corporation, subdivision, or taxing district, and no road or subroad district, school district, sewerage district, drainage or subdrainage district, levee district, waterworks or subwaterworks district, irrigation district, road lighting district, harbor and terminal district, or any other political subdivision, taxing district, political or public corporation, created under or by the constitution and laws of the state shall have authority to borrow money, incur debt, or to issue bonds, or other evidences of debt, or to levy taxes, or to pledge uncollected taxes or revenues for the payment thereof, where they are authorized by the constitution or laws of the state so to do, without the consent and approval of the State Bond Commission.

B.(1) The provisions of this Section shall not apply to purchases made in the ordinary course of administration on terms of credit not to exceed ninety days.

(2) In order to facilitate the review process for approval of financing of the purchases of movables, the State Bond Commission shall adopt rules and regulations to provide for an expedited review procedure for certain categories of such financing and shall determine which financing is to be reviewed under the expedited procedure.

C.(1) As used in this Section, the term "debt" or "evidence of debt" shall not include a lease of a movable or an installment purchase agreement financing the purchase of a movable if the lease or installment purchase agreement contains a nonappropriation clause, and does not contain an anti-substitution or penalty clause; provided that if such lease or installment purchase agreement is entered into in conjunction with the issuance of bonds, notes, certificates, or other obligations which would otherwise be required to be approved by the State Bond Commission, State Bond Commission approval of such financing transaction shall continue to be required.

(2) In order to facilitate the review process for approval of leases of movables that are not excluded from the term "debt" as provided in this Section, the State Bond Commission shall adopt rules and regulations to provide for an expedited review procedure for certain categories of such leases and shall determine which leases are to be reviewed under the expedited procedure.

Acts 1990, No. 500, §1, eff. July 18, 1990; Acts 1991, No. 653, §1; Acts 1997, No. 360, §1; Acts 1999, No. 1364, §1.

LANCE MARINO
Clerk of Court Ex-Officio Recorder
Parish of St. Charles
Hahnville, LA 70057
783-6632

Date: NOV 2, 2016

To: MICHAEL RICCI

THOMAS ANZELMO

Case Number: 82,015

In Reference: PAUL J. BOGAN

VS.

LARRY COCHRAN IN HIS CAPACITY AS THE PRESIDENT OF ST. CHARLES PARISH

Dear: MICHAEL RICCI, THOMAS ANZELMO

Notice is hereby given that, in the above numbered and entitled cause, judgment was rendered,
read and signed ~~XXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~, a true and
certified copy of said judgment is attached hereto.

Respectfully,

LANCE MARINO
Clerk of Court

Theresa Mendenhall
Deputy Clerk of Court

I hereby certify that a copy of the foregoing notice was this day mailed by me to the counsel of
record for all parties and to such of the litigants, if any, who are not represented by counsel,
which notices were, addressed to them, respectively, at their last known address, with postage
prepaid.

Theresa Mendenhall
Deputy Clerk of Court

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO.: 82,015

DIVISION C

PAUL J. HOGAN

VERSUS

LARRY COCHRAN, IN HIS CAPACITY AS THE PRESIDENT OF ST. CHARLES PARISH

REASONS FOR JUDGMENT

FILE FOR RECORD
CLERK OF COURT
ST. CHARLES PARISH, L.A.
2016 OCT 27 PM 3:45
Deputy Clerk

FACTS

In 2009, the vessel *Pretty Boy* sank in Bayou Des Allemands in St. Charles Parish. In 2015, the St. Charles Parish Council allocated \$30,000.00 in its annual budget to raise the *Pretty Boy*. Said funds were apparently not expended, because funding for the removal was also included in the 2016 budget, adopted by the Council by Ordinance Number 15-11-22.¹

In September 2015, Couvillion Group, LLC submitted a bid to St. Charles Parish for \$29,000 for removal of the *Pretty Boy*. In January 2016, then-Parish President V.J. St. Pierre introduced a proposed ordinance to "approve and authorize the execution of a contract with Couvillion Group, LLC for removal and disposal services associated with Parish Project No. P160101 PRETTY BOY REMOVAL & DISPOSAL." The ordinance failed to pass by a vote of 3-6.²

In February 2016, Councilman William Billy Woodruff introduced a second proposed ordinance to "approve and authorize the execution of a contract, albeit not a requirement to enter into a professional disposal contract, with Couvillion Group, LLC for removal and disposal services associated with Parish Project No. P160101 PRETTY BOY REMOVAL & DISPOSAL, and also approve and to authorize the disposal of the vessel by any other means available to the Parish should the Parish decide to undertake an alternate mean of disposal, and to authorize and request that the Parish President seek

¹During the budget process of 2016, Amendment No. 7 which provided for the inclusion of said funds in the 2016 budget, was presented to the Council at public hearing. The motion for the inclusion of same was carried unanimously. On November 16, 2015 the 2016 budget was approved by the Council and adopted by Ordinance Number 15-11-22.
² Exhibit Parish-1.

recovery of the funds expended for its disposal from the vessel owner irrespective of whatever means of disposal is undertaken." Again, the ordinance failed to pass the Council by a vote of 3-6.³

Current Parish President Larry Cochran has not taken any action on the matter since taking office in January 2016; he has not sought any bids to remove the vessel nor has he taken any alternative actions regarding same. The instant suit was thus filed by Paul Hogan, personally and as duly elected Councilman-At-Large for Division B of the St. Charles Parish Council.

PETITION FOR WRIT OF MANDAMUS

Petitioner seeks a Writ of Mandamus compelling St. Charles Parish President Larry Cochran to secure a professional service provider to raise the sunken vessel *Pretty Boy*. Petitioner asserts that the Parish President *must* fulfill his ministerial duty to adhere to the Council's mandate to find and implement a professional service provider to raise the sunken vessel. The petition specifically alleges that the Parish President is in derogation of his duty as chief executive of St. Charles Parish because he has:

- (1) refused to hire and/or use the professional service provider who met all of the requirements of the parish's specifications and who submitted a fixed cost letter bid below the amount appropriated by the Council;
- (2) refused to take any other action to find a different service provider who can provide the service for the same or lower sum; and
- (3) stopped all action in regards to raising the sunken vessel.⁴

APPLICABLE LAW: ST. CHARLES PARISH HOME RULE CHARTER

St. Charles Parish operates under Home Rule Charter adopted in 1978.⁵ The powers and duties of the Parish Council and Parish President are set forth in Article III of the Home Rule Charter. Article III provides in pertinent part:

**ARTICLE III
ORGANIZATION, STRUCTURE AND
DISTRIBUTION OF
POWERS AND FUNCTIONS**

SECTION A. THE GOVERNING AUTHORITY

.....
7. Power and Duties of the Parish Council

³ Exhibit Parish-2.

⁴ Petition for Writ of Mandamus, paragraph 26.

⁵ Joint Exhibit-1-St. Charles Parish Home Rule Charter.

- a. The Parish Council shall be vested with and shall exercise all legislative power in the Parish of St. Charles.
- b. The Parish Council may enact any ordinance necessary, requisite or proper to promote, protect, and preserve the general welfare, safety, health, peace and good order of St. Charles Parish not inconsistent with the Constitution of the State of Louisiana or denied by general law or by this Charter.
- c. Without limitation of the foregoing authority or other powers given to it by the Charter, the Council may:
 - i. Levy and collect taxes, special assessments, service charges, license charges, fees and other revenues, and borrow money in such manner and subject to such limitations as may be provided by law.
 - ii. Make appropriations for all Parish purposes.
 - iii. Require periodic and special reports from all Parish officers concerning the affairs of their respective departments, offices, agencies or special districts, which reports shall be submitted by and through the Parish President in the case of departments, offices, agencies and special districts subject to his jurisdiction.
 - iv. Make investigation of Parish affairs and make inquiries into the conduct of any department, office, agency or special district of the Parish, including the investigation of the accounts, records and transactions of the department, office, agency or special district; and for the purpose of investigation, subpoena witnesses, administer oaths, take testimony and require the production of books, papers and other evidence; and any person who fails or refuses to obey any lawful order of the Council shall, upon conviction, be punished in such manner as the Council shall fix by ordinance.
 - v. Create Parish departments, offices or agencies in addition to those created by this Charter.
 - vi. By ordinance, abolish or consolidate any Parish department, office, agency, board or commission or provide for the consolidation and transfer of any of the functions of such departments, offices, agencies, boards or commissions.
 - vii. Enter into contracts with other governmental units within or outside the boundaries of the Parish for joint performance or performance by one unit in behalf of the other of any authorized function or activity.
 - viii. By ordinance, establish, merge, reorganize, consolidate and/or abolish special districts

within which may be provided fire protection, recreation, police protection, water, streets, drainage, sidewalks, street lighting, waste and garbage collection and disposal, sewerage and sewerage disposal systems and other similar facilities and services. All Parish funds for such districts shall be provided by service charges, special assessments, general tax levies or as otherwise provided by law, within such districts only. When acting as the governing body of special districts as provided by this Charter, the Parish Council shall have the same jurisdiction and powers as when acting as the Council.

ix. Provide, in manner and in amounts consistent with State law, penalties for the violation of this Charter and of Parish ordinances.

x. Provide budgetary, fiscal and other controls over all special boards, commissions, agencies, districts or any device having governmental functions which it or its predecessor has created to insure the maximum possible coordination of government at the local level in St. Charles Parish.

xi. Perform any other acts consistent with State law deemed to be for the best interest of the people of St. Charles Parish.

d. The Council shall have the power of eminent domain and the right to expropriate property for public purposes as provided by law. The Council shall make fair and just compensation for any properties acquired in the exercise of its powers, duties or functions.

SECTION B: THE PARISH PRESIDENT

.....

3. Powers and Duties

a. Except as otherwise provided in this Charter, the 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, the heads of which are appointed by him. The Parish President shall submit for confirmation, by a majority vote of the Council, the Department Head designee within Parish government. A confirmation hearing shall be held within (30) days to confirm or reject such designee.

b. The Parish President shall have the following powers, duties and responsibilities:

i. He shall appoint and remove, subject to the

provisions of this Charter or any personnel rules adopted by the Council pursuant thereto; all administrative officers and employees of the Parish responsible to him; or he may, at his discretion authorize the head of a department or office responsible to him to appoint and remove subordinates in such department or office, subject to the provisions of this Charter, or personnel rules adopted by the Council pursuant thereto.

ii. He shall attend all Council meetings and shall have the right to take part in discussion but may not vote.

iii. He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or officers subject to his direction or supervision, are faithfully executed.

iv. He shall prepare and submit an annual operating budget and capital outlay program to the Council and shall be responsible for executing the budget and capital program after adoption by the Council.

v. He shall submit to the Council and make available to the public monthly reports on the finances and administrative activities of the Parish. No later than three months following the close of each fiscal year, he shall present the Council with a complete financial and operating report on the affairs of the Parish for the fiscal year just ended.

vi. He shall make such other reports as the Council may require concerning the operations of Parish departments, offices and agencies subject to his direction and supervision.

vii. He shall keep the Council fully advised as to the financial condition and the needs of the Parish and shall make recommendations to the Council concerning the affairs of the Parish.

viii. He shall perform such other duties as are specified in this Charter or which may be required by the Council.

The Home Rule Charter also provides that an act of the Council which is to have the force of law shall only be enacted by ordinance: Article IV provides:

ARTICLE IV ORDINANCES AND RESOLUTIONS

SECTION A. ACTS REQUIRING AN ORDINANCE

An act of the Parish Council which is to have the force of law shall only be enacted by ordinance. An act requiring an ordinance shall include but not be limited to one which:

1. Provides for the reapportionment of the Parish Council of the Parish;
2. Levies taxes or assessments;
3. Appropriates funds or adopts a budget;
4. Grants, renews, modifies, or extends a franchise;
5. Provides for raising revenue;
6. Regulates the rate or other charge for service by the Parish;
7. Incurs debt in any manner;
8. Abandons any property owned by the Parish;
9. Conveys or leases or authorizes a conveyance or lease;
10. Acquires real property on behalf of the Parish;
11. Adopts or modifies the official map, plat, subdivision ordinance, regulations, or zoning plan;
12. Amends or repeals any ordinance previously adopted;
13. Proposes amendments to this Charter;
14. Creates, abolishes or consolidates any Parish department, office, agency, or provides for the consolidation and transfer of any of the functions of such department, office or agency; or
15. Provides a fine or penalty or establishes a rule or regulation or violation of which a fine or other penalty may be imposed.

DISCUSSION

There is no question that the allocation of the funds to raise the vessel was a legal appropriation. The Council adopted the 2016 budget by ordinance and the facts clearly show that the funding for \$30,000.00 needed to raise the vessel was included in the 2016 budget via Amendment No. 7. The issue before the Court is whether the Parish President is mandated to expend the budgeted allocation in light of the refusal of the Council to authorize the execution of the contract associated with said allocation. Stated another way, does the Parish President have the authority to execute a contract to remove the vessel after the matter was expressly rejected by the governing authority, the Parish Council?

Previously cited Article III of the Home Rule Charter clearly sets forth the powers and duties of the Parish Council and Parish President. Article III, Section A (7)(a) provides that the Council shall be the governing authority and shall be vested with all legislative power within St. Charles Parish, including the power to make appropriations which is specifically set forth in Article III, Section A (7)(c)(ii). The executive authority of the President is stated in Article III, Section B (3)(a). It provides 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..."⁶ Article III, Section B (3)(b)(iii) states, "He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or officers subject to his direction or supervision, are faithfully executed." Further, Section B (3)(b)(iv) provides, "He shall prepare and submit an annual operating budget and capital outlay program to the Council and shall be responsible for executing the budget and capital program after adoption by the Council."

Under the foregoing relevant provisions of the Charter, the Parish President is clearly responsible for carrying out the policies adopted by the Parish Council and for executing the budget and capital programs after adoption by the Council.⁷ Thus, it follows that the Parish President is obligated to execute the authorizations set forth in the budget, including the expenditure of funds for specific appropriations. It also follows that the Parish President has the authority to select professional services for the Parish as part of his duties to execute the budget.

However, the executive power to execute the budget is not absolute. Home Rule Charter Article IV, Section A (7) specifically requires an ordinance from the Council to incur a debt. Thus, it would follow that when entering a contract for a payment involving expenditure of allocated funds, the Parish President must obtain legislative approval prior to executing same.

In the case at hand, the facts show that the former Parish President had requested bids for the removal of the vessel. Thereafter, he presented an ordinance to the Council for the approval and authorization to execute the contract; however, the ordinance failed

⁶ Joint Exhibit-1-St. Charles Parish Home Rule Charter Article III, Section B (3)(a).

⁷ Petitioner points out that the St. Charles Parish officials are also subject to La. RS 39:1301, *et seq*, the Louisiana Local Government Budget Act; however, the St. Charles Home Rule Charter is controlling in this matter.

to pass. In essence, the legislative body refused to authorize the execution of a contract for the expenditure of the funds. Notably, a second ordinance (subsequently presented by a council member) attempted to accomplish the same purpose. Said proposal also failed to be passed by the Council. These actions by the Council clearly indicate a refusal of the governing body of St. Charles Parish—the Parish Council—to expend the funds related to the allocation.

Petitioner suggests that the *current* Parish President is obligated by the Charter to fulfill the will of the Council (under its appropriation) and seeks a mandamus ordering him to take action toward same. There is no question that the Parish President is obligated to execute the budget under the Charter; however, the Parish President is also obligated by the Charter to faithfully execute and carry out the will of the Council. The Parish President cannot override the refusal of the Council to authorize the contract herein by signing a contract to expend the funds. Rather, the Parish President is obligated by the Charter to faithfully execute and carry out the Council's express wishes.

Simply put, this Court finds that, under the terms of the St. Charles Parish Home Rule Charter, the Parish President cannot unilaterally contract with a third party to remove the vessel even though the Council had previously passed a budget allocation for same. The Court further finds that, inasmuch as execution of such a contract would involve incurring a debt, the St. Charles Parish Home Rule Charter requires Council authority to do so. In light of the Council's refusal to approve any contract regarding same, the Parish President has no authority or obligation to take any action, including seeking bids, toward the removal of the *Pretty Boy*.

RULING

Mandamus is an extraordinary remedy under the law and is used to compel something that is clearly required by law and only where it is the sole available remedy or where the delay occasioned by the use of any other remedy would cause an injustice. (Louisiana Code Civil Procedure Article 3862)⁸. Mandamus is to be used only

⁸ La. Code Civ. Proc. Art. 3862. Mandamus; issuance of


A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice; provided, however, that no court shall issue or cause to be issued a writ of mandamus to compel the expenditure of state funds by any state department, board or agency, or any officer, administrator or head thereof, or any officer of the state

when there is a clear and specific legal right to be enforced or a duty which ought to be performed.

In the case at bar, the Council has twice refused to authorize a contract to remove the sunken vessel. Under the facts of this case, the Parish President has no power to take any action toward the removal of same. Since there is no clear and specific legal right to be enforced or duty which ought to be performed, the Court finds that the issuance of a writ of mandamus would be inappropriate herein.

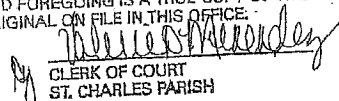
There will be judgment in accordance with the foregoing reasons.

Hahnville, Louisiana, this 27th day of October, 2016.



EMILE R. ST. PIERRE, JUDGE

STATE OF LOUISIANA
PARISH OF ST. CHARLES
I HEREBY CERTIFY THAT THE WITHIN
AND FOREGOING IS A TRUE COPY OF THE
ORIGINAL ON FILE IN THIS OFFICE.



CLERK OF COURT
ST. CHARLES PARISH

of Louisiana, in any suit or action involving the expenditure of public funds under any statute or law of this state, when the director of such department, board or agency, or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO.: 82,015

DIVISION C

PAUL J. HOGAN

VERSUS

LARRY COCHRAN, IN HIS CAPACITY AS THE PRESIDENT OF
CHARLES PARISH

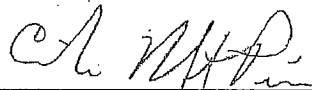
JUDGMENT

This matter came before this court for hearing on September 27, 2016.

When, after considering the pleadings, the record herein, and argument of counsel, and for the reasons attached hereto and made a part hereof, wherefore

IT IS ORDERED, ADJUDGED AND DECREED that the Petition for Writ of Mandamus filed herein be and is hereby denied at Plaintiff's cost.

JUDGMENT READ, RENDERED AND SIGNED at Hahnville, Louisiana, this 27th day of October, 2016.

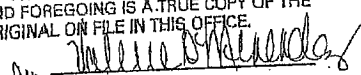


EMILE R. ST. PIERRE, JUDGE

PLEASE NOTIFY ALL COUNSEL/ PARTIES BY MAIL

FILE FOR RECORD
CLERK OF COURT
ST. CHARLES PARISH, LA.
2016 OCT 27 0PM 3:45
DEPUTY CLERK

STATE OF LOUISIANA
PARISH OF ST. CHARLES
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