

2015-0119

INTRODUCED BY: PAUL J. HOGAN, PE, COUNCILMAN, DISTRICT IV

A resolution requesting an Attorney General Opinion, as to whether or not the gratuitous spending of public money in violation of Louisiana Constitution Article VII, Section 14 (A) to the benefit of private individuals, which is the net result according to Attorney General Opinions 13-0171 and 14-0083 should the fund expended in association with the Blight Elimination Program created and implemented by the St. Charles Parish President (albeit with good intentions) be not collected, rises to the level of Malfeasance in Office, and to advise if the sending of a form letter (not a bill) addressed to "Resident" from the Parish President's Legal Director to these private individuals informing them of a financial obligation to the Parish (which does not include the amount owed, nor how to learn of the amount owed, but advises that the Parish has no means available to force collection of the money owed to the Parish) results in the elimination of the violation whether the funds are collected or not, and to advise on if the sending of these letters is an acceptable means of resolving the violation, and to advise as to whether or not the Parish President can or has to or should personally reimburse the Parish for the cost of the dumpsters in order to resolve the violation should the sending of the letters not resolve the violation, and if the opinion advises that the letters are insufficient and that there are no means available to the Parish President to resolve the violation and that it requires the attention and involvement of prosecutorial agencies, that the Attorney General provides an opinion as to the steps and/or procedures that are needed to be taken by the Parish Council and/or any other entities so as to have the prosecutorial agency or agencies address the violation, and to advise if there are any time limitations in which action by the Parish Council or other agencies must occur regarding having the violation addressed, and to advise if there is any statute of limitation on such a violation, and to advise if there are any circumstances, such having had good intentions or any other circumstances, which trumps the State Constitution with regards to the violation and provide examples of such.

WHEREAS, the Louisiana Constitution Article VII, Section 14. Donation, Loan, or Pledge of Public Credit (A) Prohibited Uses states that except 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; and,

WHEREAS, the St. Charles Parish President created a Blight Elimination Program which resulted in the gratuitous spending of public money in violation of Louisiana Constitution Article VII, Section 14 (A); and,

WHEREAS, the attached Attorney General Opinion 13-0171 dated November 26, 2013 stated "In light of the constitutional provision against donating public funds and the opinions cited above regarding the prohibition against using public funds for the benefit of private property owners, it is our opinion that the Parish may continue providing dumpsters as part of the procedures set forth in St. Charles Parish Code of Ordinances Sections 16-49 & 51 but the Parish must ensure that it is reimbursed for the costs associated with the dumpsters as failing to do so would amount to using public funds for the benefit of a private landowner in violation of Louisiana Constitution Article VII, Section 14"; and,

WHEREAS, the attached Attorney General Opinion 14-0045 dated June 30, 2014 stated "it is the opinion of this office that public entities must make reasonable attempts to collect debts owed to them as required by Louisiana Constitution Article VII, Section 14 (A).; and,

WHEREAS, the attached Attorney General Opinion 14-0083 dated July 14, 2014 stated "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"; and,

WHEREAS, the Parish did not have funds appropriated to assist private homeowners in the rehabilitation of their blighted property prior, nor did the Parish have any plans or interest in acquiring said property, and the Parish's only wanted to have the blight cleaned up; and,

WHEREAS, the gratuitous spending of public money, whereby it is taken from one taxpayer and given to another, is something that causes those who pay the taxes to have a distrust in the system and the taxing body; and,

WHEREAS, the Parish mailed form letters on March 20, 2015 to private individuals that received dumpsters.

NOW, THEREFORE, BE IT RESOLVED, THAT WE THE MEMBERS OF THE ST. CHARLES PARISH COUNCIL, do hereby request an Attorney General Opinion, as to whether or not the gratuitous spending of public money in violation of Louisiana Constitution Article VII, Section 14 (A) to the benefit of private individuals, which is the net result according to Attorney General Opinions 13-0171 and 14-0083 should the fund expended in association with the Blight Elimination Program created and implemented by the St. Charles Parish President (albeit with good intentions) be not collected, rises to the level of Malfeasance in Office, and to advise if the sending of a form letter (not a bill) addressed to "Resident" from the Parish President's Legal Director to these private individuals informing them of a financial obligation to the Parish (which does not include the amount owed, nor how to learn of the amount owed, but advises that the Parish has no means available to force collection of the money owed to the Parish) results in the elimination of the violation whether the funds are collected or not, and to advise on if the sending of these letters is an acceptable means of resolving the violation, and to advise as to whether or not the Parish President can or has to or should personally reimburse the Parish for the cost of the dumpsters in order to resolve the violation should the sending of the letters not resolve the violation, and if the opinion advises that the letters are insufficient and that there are no means available to the Parish President to resolve the violation and that it requires the attention and involvement of prosecutorial agencies, that the Attorney General provides an opinion as to the steps and/or procedures that are needed to be taken by the Parish Council and/or any other entities so as to have the prosecutorial agency or agencies address the violation, and to advise if there are any time limitations in which action by the Parish Council or other agencies must occur regarding having the violation addressed, and to advise if there is any statute of limitation on such a violation, and to advise if there are any circumstances, such having had good intentions or any other circumstances, which trumps the State Constitution with regards to the violation and provide examples of such.

The foregoing resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: HOGAN

NAYS: SCHEXNAYDRE, LEWIS, WILSON, WOODRUFF, BENEDETTO, COCHRAN, FISHER-PERRIER

ABSENT: FLETCHER

PROPOSED RESOLUTION FAILED FOR LACK OF A FAVORABLE MAJORITY ON APRIL 6, 2015.