



ST. CHARLES PARISH

LARRY COCHRAN
CHAIRMAN
COUNCILMAN, DISTRICT V

March 13, 2012

Honorable James D. "Buddy" Caldwell
P.O. Box 94005
Baton Rouge, LA 70804

Re: Request for Attorney General Opinion

Dear Attorney General Caldwell:

As Parish Council Chairman for the Parish of St. Charles, I write to request an Attorney General Opinion seeking clarification and/or confirmation of the rights of the Parish of St. Charles as it pertains to an Airport Expansion Agreement entered into with the City of Kenner, City of New Orleans and the New Orleans Aviation Board, requiring the Mayor of New Orleans to appoint to the New Orleans Aviation Board a person designated by resolution of the St. Charles Parish Council.

Generally speaking, the New Orleans Aviation Board shall consist of nine members who shall be appointed by the Mayor with the approval of the Council for terms of five years, so arranged that the term of one or two members shall expire each year. *See*, Orleans Home Rule Charter 5-601.

In 1985, the New Orleans International Airport sought to expand its east/west runway into St. Charles Parish. In addition to compensation terms for the appropriation of St. Charles Parish property for the runway, additional consideration in the form of a permanent St. Charles Parish seat on the New Orleans Aviation Board, was negotiated and agreed to by the City of New Orleans, New Orleans Aviation Board, City of Kenner and St. Charles Parish Council. The formal, written, Airport Expansion Agreement provides:

The Mayor of the City of New Orleans shall provide an executive agreement stipulating that **the current appointee to the New Orleans Aviation Board representing the Parish of St. Charles will remain as the Parish appointee until his term of office expires or is removed in accordance with the law.** When the term of office of the current member expires, **the new appointee will**

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be designated by resolution of the St. Charles Parish Council and then appointed by the Mayor of the City of New Orleans. (Emphasis Supplied.)
See, Page 2 of Airport Expansion Agreement executed October 17, 1985.

On August 7, 1985, the New Orleans Aviation Board approved the Airport Extension Agreement-Second Draft, which was ultimately signed on October 17, 1985. *See*, Minutes of New Orleans Aviation Board Meeting of August 7, 1985.

In anticipation of execution, and as required by the Airport Expansion Agreement, then Mayor of New Orleans, Ernest N. Morial, submitted his executive acknowledgment to St. Charles Parish President, Kevin M. Friloux, on August 30, 1985. Said acknowledgment states:

“...in accordance with the Airport Expansion Agreement approved by the City of New Orleans, The New Orleans Aviation Board, the City of Kenner, and St. Charles Parish, **that when the term of the current appointee to the New Orleans Aviation Board representing the Parish of St. Charles either expires or is otherwise vacated in accordance with the law I will, as Mayor of the City of New Orleans, appoint a successor on the basis of a nomination submitted to me by resolution of the Parish Council.**” (Emphasis Added.) *See*, August 20, 1985 Letter from Mayor Morial

On October 7, 1985, the St. Charles Parish Council passed Ordinance 85-10-5, which approved and authorized the Parish President of St. Charles to enter into and execute an agreement with the City of Kenner, the City of New Orleans and the New Orleans Aviation Board to expand the East-West Runway of New Orleans International Airport into St. Charles Parish. *See*, Ordinance 85-10-5 The negotiated and approved provisions of the agreement were attached to Ordinance 85-10-5 as "Exhibit A". *See*, Exhibit A attached to Ordinance 85-10-5. A condition placed upon the City of New Orleans by the St. Charles Parish Council in the agreement is as follows:

[City of New Orleans] Will provide an executive agreement stipulating that the current appointee to the New Orleans Aviation Board representing the Parish of St. Charles will remain as the St. Charles Parish appointee until such time as the St. Charles Parish Council by resolution recommends the appointee be changed. When the term of office of the current member expires, the new appointee will be designated by resolution of the St. Charles Parish Council and then appointed by the Mayor of the City of New Orleans. **The Mayor shall not intervene in the appointment process.** (Emphasis Added.)

On November 18, 1985, the St. Charles Parish Council approved, and ratified, the Airport Expansion Agreement and recognized, among other things, that (1) the Mayor of the City of New Orleans provided the necessary documents to the Parish of St. Charles and the City of Kenner regarding appointments to the New Orleans Aviation Board and (2) that all parties assembled and executed the final document on October 17, 1985. *See*, Ordinance 85-11-10

The St. Charles Parish seat on the New Orleans Aviation Board is now vacant due to the passage of Mr. Henry Smith. On November 21, 2011, by Resolution No. 5864, the St. Charles Parish Council nominated Neal Clulee in a 6-3 vote as the St. Charles Parish Representative on the New Orleans Aviation Board. On November 28, 2011, the resolution was approved by Parish President V.J. St. Pierre. *See*, Resolution No. 5864.

Deviating from tradition, the Airport Expansion Agreement, and the resolution of the St. Charles Parish Council designating Neal Clulee as its representative, Mayor Mitchell J. Landrieu has requested that the St. Charles Parish “nominate” **four** individuals to serve on the New Orleans Aviation Board to fill the unexpired seat of Mr. Henry Smith. *See*, November 28, 2011 and February 1, 2012, letters from Mayor Landrieu.

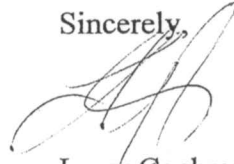
It is believed, but the Mayor of New Orleans has not made clear to the St. Charles Parish Council, that Mayor Landrieu is erroneously relying upon the Louisiana Supreme Court case of *Francis v. Morial*, 84-CA-0159 (La. 9/10/84), 455 So.2d 1168 (an action brought by the New Orleans Aviation Board seeking to declare State Act 25 of 1983 unconstitutional as it alters or affects the New Orleans Home Rule Charter by permitting the City of Kenner, Parish of Jefferson and Parish of St. Charles to choose four of the nine members of the New Orleans Aviation Board.) The Louisiana Supreme Court found this legislation unconstitutional as an unreasonable exercise of the state’s police powers.

The St. Charles Parish Council is firm in its conviction that the present situation is distinguishable from *Francis*. First, the Airport Expansion Agreement was entered into thirteen months after *Francis* between the very parties that brought that litigation. Second, the Airport Expansion Agreement is not an act of the legislature that would be an impermissible use of police powers. Third, the Airport Expansion Agreement between the City of Kenner, City of New Orleans, Parish of St. Charles and New Orleans Aviation Board, was confected pursuant to La. Civ. Code 3071, in order to resolve a controversy and objection to the proposed expansion of the east/west runway of the New Orleans International Airport into the Parish of St. Charles. By this compromise, the Mayor of New Orleans is contractually required to appoint the person designated by resolution of the St. Charles Parish Council to sit on the New Orleans Aviation Board. The plain language of the Agreement states that “the new appointee **will be designated** by resolution of the St. Charles Parish Council **and then appointed** by the Mayor of the City of New Orleans.” The use of mandatory terms, i.e., “will be designated” and “then appointed” leaves no room for nomination, consideration, or deviation by the Mayor of New Orleans.

As the Mayor of New Orleans appears to be acting in direct contravention of the Airport Expansion Agreement, the St. Charles Parish Council respectfully requests that the Attorney General review this letter and all documents attached hereto, and provide the Council with an Opinion as to the rights of the St. Charles Parish Council to designate and have appointed its chosen representative to the New Orleans Aviation Board without hindrance by the Mayor of New Orleans.

With best regards, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry Cochran', written in a cursive style.

Larry Cochran
Chairman-St. Charles Parish Council
Councilman District V

Enclosure

cc: Councilmember Schexnaydre
Councilmember Wilson
Councilmember Benedetto
Councilmember Fletcher

Councilmember Faucheux
Councilmember Tastet
Councilmember Hogan
Councilmember Nuss