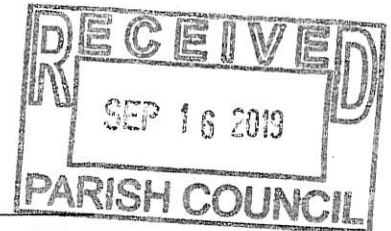


PETITION TO ADDRESS THE COUNCIL

St. Charles Parish Council Chairman
P. O. Box 302
Hahnville, LA 70057
(985) 783-5000

Today's Date: Monday 9/16/19



Dear Chairman:

Please place my name to address the Council on:

DATE: Monday 9/23/19

SPECIFIC TOPIC: AG Opinion 18-0040 with respect to governing authority's responsibilities as per La.

R.S. 33:1236(13) & AUTHORITY TO REMOVE TREE (OBJECTS) FROM

(*See specific guidelines on the reverse side and refer to Parish Charter Article VII Sec. I) DAMAGE SERVICE

DOCUMENTS, IF ANY: YES ~~XXX~~ see .pdf and other attachments
DOCUMENTS MUST BE ATTACHED AT THE TIME OF SUBMISSION

NAME: Victor L. Buccola

COMPANY / ORGANIZATION: 107 Burguières Lane

MAILING ADDRESS: 105 Burguières Lane, Destrehan, La. 70047

PHONE: 504-810-1717 EMAIL ADDRESS: vlbakala55@gmail.com

SIGNATURE: *Victor L. Buccola*

Dear Constituent:

Thank you for your active participation. Your views and comments will be considered by the Council in making our decisions. The Council has a considerable amount of business to conduct in a limited amount of time, therefore, please note the following items that are expected of you:

- The Home Rule Charter provides for citizens to address the Council. **All requests and pertinent information must be received in writing by the Council Secretary at least one (1) week prior to the scheduled meeting; request may be hand-delivered, mailed, emailed (scpcouncil@stcharlesgov.net), or faxed (985-783-2067) to be received by 4:00 pm. It makes no provision for initiating debate, discussion, or question and answer sessions with Councilmembers or Administration Officials.** Your right is also guaranteed to examine public documents as you prepare your presentation. Should you have any questions for Councilmembers and/or Department Heads as you prepare, please forward such inquiries to the Council Office to insure a timely response. Should you wish to speak to any Official or Department personally; a complete list of contact information will be furnished at your request.
- Please be brief and limit your comments to the specific subject matter on which you have requested to address the Council. Please reference the Council guidelines for time limit specifications.
- Please forward supporting documents to the Council Secretary for distribution to the Parish Council at the time your form is submitted in order for the Council to prepare themselves, if necessary.
- Upon completion of your allotted time to address the Council, please respect the time given to Councilmembers to respond to your comments by not interrupting or interjecting remarks.
- Slanderous remarks and comments will not be tolerated. If slanderous remarks or comments are made, your opportunity to address the Council will end, regardless of the remaining time left to address the Council.
- Repetitious comments and subject matter will be strictly limited.

A confirmation letter will follow when your name is placed on the agenda.

Sincerely,
Julia Fisher-Perrier
JULIA FISHER-PERRIER
COUNCIL CHAIRMAN



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE

CIVIL DIVISION

P.O. BOX 94005

BATON ROUGE

70804-9005

June 11, 2018

OPINION 18-0040

Mr. Craig Romero
Executive Director
Port of Iberia District
P.O. Box 9986
New Iberia, LA 70562

22-1 Drainage and Drainage Districts
63 Levee, Drainage Districts & Flood Control
La Const. Art. VII § 14

Liability for risks to health and safety occurring on private lands covered by public servitudes may be mitigated by the parish governing authority and public funds may be expended in these efforts.

Dear Mr. Romero:

You have requested an opinion from this office concerning whether the parish of New Iberia may remove trees that are situated within a publicly recorded drainage servitude over private land. Specifically, your request deals with a drainage servitude established covering Drainage Channel L-2D-1 ("the drainage servitude") that includes within its boundaries an adjacent road, all situated on private property ("the servient estate"). For the purposes of this opinion, the parish governing authority is the dominant estate, and the servient estate is the private property upon which a part of the drainage servitude is situated. The road in question falls completely within, and is burdened by, the drainage servitude and is used primarily by the businesses that own the servient estate. At some point, an employee of one of the businesses situated on the servient estate was traversing the road in a large forklift and, in order to avoid overhanging limbs from several trees located on the servitude, moved to the right of the road, and the forklift overturned into the drainage canal, resulting in injury. This accident prompted your request for an opinion from our office as to whether it is permissible for the Parish to remove the trees from within its servitude.

According to the information and documents provided to this office, the servitude or right of way in question was established by agreement in 1992 as a part of a drainage project undertaken by the Parish. The servitude agreement grants the Parish a servitude 100' in width on each side of the drainage channel in consideration of "the benefits and improvements to our [property owner's] lands derived from the operation and maintenance of the drainage project . . .", and for the recited consideration, the Parish is given "the right, liberty, and authority to enter upon and to construct, operate and maintain a drainage canal, levee, and appurtenances in, over and upon" the property burdened by the servitude. Thus, the rights of servitude acquired pursuant to the agreement affect the entirety of the right of way for so long as the Parish "shall continue to use said easement or right-of-way for a drainage canal, levee, and appurtenances."

There can be little question about the Parish's authority to operate and maintain the subject drainage project. La. R.S. 33:1231236(13), establishes the powers of police juries and other parish governing authorities with respect to drainage, in pertinent part, as follows:

1236. Powers of parish governing authorities

(13) To construct and maintain drainage, drainage ditches, and drainage canals; to open any and all drains which they may deem necessary and to do and perform all work in connection therewith; to cut and open new drains, ditches and canals, to acquire lands for necessary public purposes, including rights of way, canals and ditches by expropriation, purchase, prescription or by donation; to enter into contracts for the construction of such drainage works, and to purchase machinery and have the work performed under their own supervision; to allocate, use and expend the general alimony of the parish for any of the above purposes; to incur debt and issue bonds for drainage and drainage canals in the manner provided for by Subtitle II of Title 39; and use such other funds as may be legally expended for such purposes . . . [emphasis supplied]

Additionally, the authority of the Parish to remove trees within its drainage right of way in the exercise of its powers to provide for drainage is well-established in the jurisprudence. See, for instance, *Accardo v. Chenier Prop. Partners, LLC*, No. 2011 CA 0153, (La.App. 1 Cir. 06/15/11), 2011 La. App. Unpub. LEXIS 347. This is particularly true where the Parish as servitude holder determines that a tree poses a risk of liability that may be eliminated by the tree's removal from the servitude. *Leblanc v. Trappey*, No. 2002-1103 (La. App. 3 Cir. 02/05/03), 838 So. 2d 860.

The Parish, as servitude holder, is entitled to take reasonable measures to protect itself from liability concerns by exercising its right to remove objects from within its servitude, and it may make such decisions as a matter of policy weighing the magnitude of the risk against the cost of remedial measures to eliminate both known and potential exposure. Such a decision may be determined based upon the particular facts and circumstances confronting the Parish taking into account the degree of risk, the cost to eliminate the risk, the possibility of future demands by property owners similarly situated, and other relevant factors.

It is therefore the opinion of this office that the specter of liability litigation over risks to health, safety and the public fisc occurring on private lands covered by public servitudes can be mitigated by the parish governing authority, and public funds can be expended in these efforts. This is certainly not to suggest or imply that liability issues may exist with respect to any of the trees or other objects located within the servitude. Such a determination is not within the limits of this opinion, and no attempt has been made by this office to assess or evaluate any particular risk of liability.

Because the question of potential liability of a servitude holder is indeterminable other than on a case-by-case basis, determinations as to the extent of mitigation of potential risks are policy determinations best left to parish governing authorities. It is these public servitude holders who may presumably be better informed about the state of public

servitudes they administer, and therefore have better perspective and the ability to make risk mitigation decisions more quickly and reliably than the general public. Therefore, with regard to the situation described in your opinion request, the parish governing authority, in its discretion and in order to protect health and safety may, but is not required to, remove trees located within a public servitude over private land.


Finally, we understand that a concern has been raised with respect to Art. VII, § 14's prohibition against the donation, loan, or pledge of public funds in connection with the removal of the trees on private property even though the trees are within the Parish drainage servitude. It is opinion of this office that as long as the Parish acts within its legitimate right to maintain its public drainage servitude and expends public funds in accordance with La. R.S. 33:1236 and other applicable laws, there can be no question of a donation, loan, or pledge of public funds in contravention of Art. VII, § 14 of the Louisiana Constitution.

We trust that this sufficiently answers your inquiry; however, if we may be of further assistance, please do not hesitate to contact our office.

Sincerely,

JEFF LANDRY
ATTORNEY GENERAL

By:


Carey T. Jones
Assistant Attorney General

JL: CTJ



Cooperative Extension Service

St. Charles Parish
1313 Paul Maillard Road, Suite E
Post Office Box 1766
Luling, Louisiana 70070
(985)785-4473
Fax: (985)785-4475
E-mail: stcharles@agcenter.lsu.edu

November 28, 2018

Buccola Residence
107 Burguières Lane
Destrehan, LA. 70047

Hello, Mr. Victor;

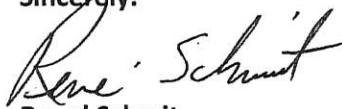
This letter is in follow-up to your request for an inspection of the live oak and sweetgum trees located on the drainage servitude on western side of 107 Burguières Lane in Destrehan.

I conducted the inspection on Tuesday November, 27th and determined that the live oak tree, although exhibiting no insect or disease problems, to be a significant safety hazard due to its angle of weighted lean to the eastern side. This lean is greater than a 45 degree pitch and will remain on-going. A primary contribution to this tree being a safety problem is that a majority of the primary and heaviest weighted limbs are located on one side of the tree - the eastern side – thus contributing to the forced lean. Unfortunately there is no advantage to removing the weighted limbs as that would result in not enough canopy left to support the tree's ability to function normally. It is my recommendation that strong consideration be given to removing this tree as it will only become less stable as the increase of pitch continues. (Keep in mind that as this tree continues to grow so will the limbs increase in their weight as will the direction of the tree in a downward motion).

In regards to the sweetgum tree, there were a few upper limbs that exhibited breakage and some decay. Certainly these limbs should be removed to reduce further breakage and decay. Overall, I found the sweetgum tree to be in relatively good health.

Let me know should you have any questions or need for any additional information. Thank you.

Sincerely,


Rene' Schmit
County Agent
St. Charles Parish

For the latest
research-based information
on just about anything,
visit our website:
www.LSUAgCenter.com