



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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



November 26, 2013
OPINION 13-0171

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14

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

St. Charles Parish may provide dumpsters to homeowners as part of its blighted property program as set forth in the St. Charles Parish Code of Ordinances Sections 16-49 & 51 but the Parish must ensure that it secures payment or reimbursement from the private landowner for all costs associated with providing the dumpsters either through a lien or a repayment agreement.

Mr. Paul J. Hogan, PE
St. Charles Parish Councilman, District IV
Post Office Box 302
Hahnville, Louisiana 70057

Dear Mr. St. Pierre and Mr. Hogan:

Your request for an opinion of this office has been forwarded to me for research and reply.

According to your request and our subsequent telephone conversations, St. Charles Parish (the "Parish") occasionally seeks out or addresses complaints regarding property that is deemed unsafe or dangerous and informs the property owner that the Parish will provide dumpsters to them if the homeowner has someone demolish the structure and place the debris in the dumpster. Other times, the Parish receives calls from homeowners requesting a dumpster. When this happens, the Parish will label the property as blighted in order to provide the dumpster to the landowner pursuant to its blighted property ordinance. The Parish pays for the delivery, use, pick up and dumping fees associated with each dumpster. The funds used to pay for the dumpsters come from money allocated in the Parish budget under Public Works-Drainage-Paved Streets.

It is our understanding that no dumpsters are provided to landowners unless and until the Parish has complied with St. Charles Parish Code of Ordinances, Chapter 16, Article IV, which sets forth the procedure to be used to address blighted property within the Parish.

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Sec. 16-48 provides that upon receipt by the planning department that a building or premises:

- (1) Is or may become dangerous or unsafe to the general public;
- (2) Is vacant and open at the doorways or windows making it accessible to and an object of attraction to minors under eighteen (18) years of age, as well as to vagrants and other trespassers;
- (3) Is or may become a place of rodent or insect infestation;
- (4) Has become littered with trash or debris;
- (5) Is unfit for the purposes for which it may lawfully be used; or
- (6) Presents any other danger to the health, safety, morals and general welfare of the public;

an inspection and report in writing concerning findings and recommendations in regard to the repair or demolition and removal of the structure and/or removal of trash and debris shall be made to the parish president. The planning director shall then order the placement of a sign two (2) feet by three (3) feet in size, to be erected safely in the public right-of-way adjacent to the property or to be placed on the property where the violation occurred. Cost of production for signs shall be included in any future collection of enforcement expenses of the parish. Said authorized sign shall identify the name of the property owner/violator, indicate the home address and telephone number of the owner/violator and a description of the violation(s) that the owner/violator has incurred.

The owner of the unsafe building or premises will then have thirty days after receipt of notice to restore the building or condition to a safe condition. St. Charles Parish Code of Ordinances Sec. 16-49. If the restoration has not begun within ten days after receipt of notice or advertisement in the official journal, the planning director shall request the parish attorney to obtain a court order ordering the owner of the property to comply with the abatement order, or seek the court's permission to allow the parish or its agent to bring the premises to a safe condition at the owner's expense. *Id.* The payment and collection of expenses of the parish will then be done in accordance with Section 16-51 of the St. Charles Parish Code of Ordinances.

The facts presented in your opinion request and our subsequent telephone conversations establish that once the above cited Ordinance is followed, the Parish may continue providing commercial dumpsters to property owners in order to assist them in cleaning up property which has been formally declared as blighted. However, we point out that in order to avoid running afoul of La. Const. art. VII, Sec. 14(A), which prohibits the gratuitous alienation of public funds, the Parish must seek to recover the expenses associated with providing the dumpsters.

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This is consistent with past opinions issued by our office regarding whether a public entity may spend public funds on a private landowner's property. For example, La. Atty. Gen. Op. No. 10-0201 concluded that the City of Minden may not use public funds and/or resources to repair private roads leading to a private or church-owned cemetery. La. Atty. Gen. Op. No. 05-0299 opined that a Parish may not repair roads on private property used primarily for the benefit of private individuals. Similarly, La. Atty. Gen. Op. No. 08-0109 concluded that the use of parish prisoners to clean private property would be tantamount to a prohibited donation and such activities are not permissible under Louisiana law. La. Atty. Gen. Op. No. 88-384, which addressed whether the City of Minden could use public employees to repair sidewalks on private property stated that "providing the manpower required to repair these privately owned sidewalks requires the use of public funds" and concluded, "even though the materials for the repair are provided by the landowners, this practice is contrary to the provisions of Article VII, Section 14 of the Louisiana Constitution of 1974." La. Atty. Gen. Op. No. 81-1223 opined that a "police jury is not legally authorized to perform construction or maintenance work on private driveways if the benefits of said work accrue only to the owner of the property enhanced thereby."

Also in accord is La. Atty. Gen. Op. No. 00-14, which addressed whether East Baton Rouge City-Parish could use public funds to repair sewer lines on private property when the City-Parish had been mandated by the United States Environmental Protection Agency to substantially reduce sewer discharge. We concluded that the City-Parish could not use public funds on such an expenditure and stated as follows:

By virtue of the City-Parish's authority to compel private property owners to make necessary repairs, the City-Parish is not required or obligated to fund the repairs with public money. Although the City-Parish is obligated to the EPA to reduce sewer discharge, it can apparently accomplish what needs to be done on private property by requiring necessary repairs to be made by the property owners. Since the City-Parish has the authority to require private property owners to make sewer repairs, the need for the City-Parish to publicly fund the repairs is obviated.

With regard to providing dumpsters or paying the fees associated therewith, La. Atty. Gen. Op. No. 00-187 concluded that a solid waste commission could not use public funds to pay the rental fee for commercial dumpsters to be placed at commercial businesses. Similarly, La. Atty. Gen. Op. No. 96-115 concluded that a police jury could not expend public funds to pay all or a portion of the monthly rental fee being charged by a solid waste disposal company for the commercial dumpsters it supplies to private businesses located in the Parish.

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

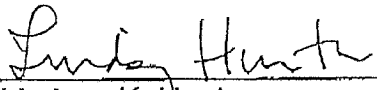
Mr. V.J. St. Pierre, Jr. and Mr. Paul J. Hogan, PE
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part of the procedures set forth in St. Charles Parish Code of Ordinances Sections 16-49 & 51 but the Parish must ensure that it is reimbursed for the costs associated with the dumpsters as failing to do so would amount to using public funds for the benefit of a private landowner in violation of La. Const. art. VII, Sec. 14. Ordinance Sections 16-49 and 51 provide the Parish with lien rights but do not preclude the Parish from entering into another type of agreement with a private landowner whereby the landowner repays the Parish for the costs of providing the dumpsters. The terms of such agreement should include repayment in a reasonable time and must be careful not to jeopardize the lien right given to the Parish by the parish ordinance. We would recommend any such agreement be reviewed by the Parish's attorney.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

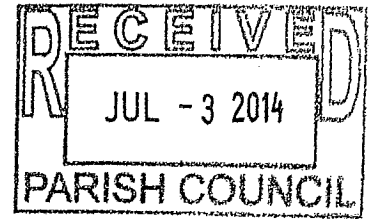
By: 
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JUN 30 2014
OPINION 14-0045

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, Sec. 14

Mr. Paul J. Hogan, P.E.
St. Charles Parish Councilman
Post Office Box 302
Hahnville, Louisiana 70057

Public entities must make reasonable attempts to collect debts owed to them as required by La. Const. art. VII, Sec. 14(A). Legal counsel for the public entity is in the best position to determine and advise the entity on which debts and what collection methods to pursue, taking into consideration the cost of potential recovery and any possible defenses to collection.

Dear Mr. Hogan:

You have requested an opinion of this office regarding the means and methods available to the St. Charles Parish Government (the "Parish") to recover costs associated with having provided dumpsters to private individuals. This request follows the opinions expressed by this office in La. Atty. Gen. Op. No. 13-0171.

Our office has previously opined that a public entity has a duty to be a prudent manager of the public fisc, which includes recovery of money owed to it. For example, in La. Atty. Gen. Op. No. 93-279, this office opined that if money was owed to a City, "then by all means, the City should demand payment and/or institute legal proceedings for the recovery of the money." Similarly, La. Atty. Gen. Op. No. 05-0448 concluded that a school board had a legal obligation to attempt to recover monies that were improperly paid to school bus drivers. We have also opined that based on the language of La. Const. art. VII, Sec. 14(A), a public entity has no authority to set-aside, reduce, or otherwise forgive a debt owed to the public entity. See La. Atty. Gen. Op. Nos. 13-0079, 10-0287 and 10-0264. Therefore, if money is owed to the Parish, the Parish should take reasonable steps to recover it.

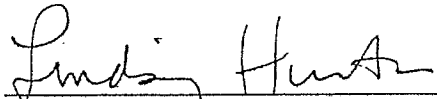
However, with regard to the means or method the Parish should use to recover any funds owed to it, our office will defer to the Parish's legal counsel. Counsel to the Parish is in the best position to determine which debts are collectable and what collection methods to pursue, taking into consideration the cost of potential recovery versus collection costs and any possible defenses to collection. See La. Atty. Gen. Op. No. 12-0169, which opined that La. Const. art. VII, Sec. 14 required the East Feliciana Parish School Board to pursue the collection of unpaid and disputed taxes unless the school board, with the advice of its legal counsel, determined that the benefit or value of recovery would be less than the costs that would be expended pursuing the collection of the taxes.

Therefore, it is the opinion of this office that public entities must make reasonable attempts to collect debts owed to them as required by La. Const. art. VII, Sec. 14(A). Legal counsel for the public entity is in the best position to determine and advise the entity on which debts and what collection methods to pursue, taking into consideration the cost of potential recovery and any possible defenses to collection.

If our office can be of any further assistance, please do not hesitate to contact us.

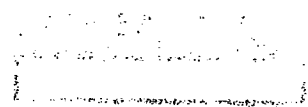
Yours very truly,

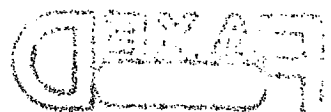
JAMES D. "BUDDY" CALDWELL
Attorney General

By: 
LINDSEY K. HUNTER
Assistant Attorney General

JDC/LKH/chb

cc: Mr. Sonny Vial, St. Charles Parish Legal Services Director





July 14, 2014
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.

Opinion 14-0083
Syllabus

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

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.

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

Date Received:

Date Released: July 14, 2014

Lindsey K. Hunter
Assistant Attorney General