

2019-0273

INTRODUCED BY: PAUL J. HOGAN, PE, COUNCILMAN-AT-LARGE, DIVISION B

A resolution requesting that the Louisiana Attorney General provide an Opinion with regards to the power and authority which the St. Charles Parish Administration and Governing Authority may or may not have with respect to removing trees that are situated within a publicly recorded dedicated drainage servitude located on private property.

SECTION I. Within the legal opinion to be provided, it is requested that the opinion also address the following questions:

- 1) The St. Charles Parish Home Rule Charter allows St. Charles Parish to self govern, and as long as the parish government's actions or inactions are not inconsistent with its Charter, Code of Ordinances, State Laws and the State Constitution, is it permissible for the parish to authorize and enforce the removal of any healthy or unhealthy and stable or unstable tree, or other objects that are situated within its publicly recorded dedicated drainage servitudes located on private lands, and if it is permissible, must the governing authority only make the final determination by ordinance or resolution?
- 2) Before any tree located within a publicly recorded dedicated drainage servitude located on private land can be considered for removal by the parish, must it have become a hindrance or impediment to only the flow of water (the purpose of the servitude) before the parish can take action to completely remove it from the drainage servitude so as to eliminate any potential parish liability, or must any tree situated within the limits of the servitude be an actual hindrance to the flow of water only, by it directly obstructing or impeding the flow of drainage water only?
- 3) Is it permissible for the Parish governing authority (the legislative branch) to abdicate, cede, relinquish, surrender or transfer its power, authority, and responsibility to render the final determination concerning the removal or non-removal of objects such as trees from its public drainage servitudes, to any other parish government official, such as a parish administration Risk Manager, or a qualified outside authority such as a LSU Ag Center County Agent?
- 4) Is it permissible for any St. Charles Parish official within the administration (the executive branch) to remove or not remove any object including trees from within its publicly recorded dedicated drainage servitude located on private land that do or do not specifically impede drainage only within a drainage servitude?
- 5) Is it permissible for St. Charles Parish, with St. Charles Parish being the dominant drainage servitude holder, to require the servient servitude holder (the private property owner) to remove any tree that is hazardous or potentially hazardous, and healthy or unhealthy, and stable or unstable, and is located completely within a publicly recorded dedicated drainage servitude, and if it is permissible, but the private property owner refuses to abide by the parish's mandate to remove the offending object, can the property owner be held financially liable for any collateral property damage or personal injury that may later occur on neighboring property, including or excluding an Act of God?
- 6) Can St. Charles Parish escape legal liability and be held not responsible for property damages or personal injuries that may be caused by unsafe objects such as trees that are located within their servitudes, by failing to mitigate known unsafe situations, especially after being made fully aware of the hazardous or potentially hazardous conditions?
- 7) Would the expenditure of public funds subsequent to an action of the St. Charles Parish governing authority approving the removal of any tree or any other objects from within its publically recorded drainage servitudes located on private property be a violation of the State Constitution?

NOW, THEREFORE, BE IT RESOLVED, THAT WE THE MEMBERS OF THE ST. CHARLES PARISH COUNCIL, do hereby request that the Louisiana Attorney General provide an Opinion with regards to the power and authority which the St. Charles Parish Administration and Governing Authority may or may not have with respect to removing trees that are situated within a publicly recorded dedicated drainage servitude located on private property.

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

YEAS: HOGAN

NAYS: BENEDETTO, WILSON, CLULEE, GIBBS, WOODRUFF, BELLOCK, FLETCHER, FISHER-PERRIER

ABSENT: NONE

PROPOSED RESOLUTION FAILED FOR LACK OF A FAVORABLE MAJORITY ON SEPTEMBER 9, 2019

2019-0273 FAILED RQST FOR AG OPINION-SCP remove trees in dedicated drainage servitude (8-9-19) (I_9-9-19)