




ST. CHARLES PARISH

PAUL J. HOGAN, PE
COUNCILMAN, DISTRICT IV

MEMORANDUM

DATE: JANUARY 8, 2013

TO: PARISH COUNCIL

FROM: PAUL J. HOGAN, PE
COUNCILMAN, DISTRICT IV 

RE: PROCEDURES FOR THE PROCUREMENT OF ARCHITECTS AND ENGINEERS

Pursuant to the attached Attorney General Opinion 12-0133, I am proposing the attached, self-explanatory, ordinance. Also attached, is the section of the code to which this pertains.

Please review and provide your comments on the proposed draft ordinance no later than January 23, 2013. If anyone feels that a committee meeting would be in order to discuss this item, please let me know and I will have one requested.

PJH/TKC366:ag

Attachments

cc: Mr. V.J. St. Pierre, Jr., Parish President w/attachments
Mr. Buddy Boe, Chief Administrative Officer w/attachments
Mr. John "Rusty" Walker, Chief Operations Officer w/attachments
Mr. Leon C. Vial, III, Legal Services Director w/attachments

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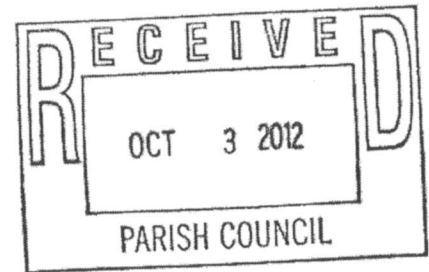
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JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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



October 3, 2012
OPINION 12-0133

71-1-B-MUNICIPALITIES-HOME RULE CHARTER

La. Const. art. VI § 5

La. R.S. 39:1301 *et seq.*

La. R.S. 33:404(1)(A)

Calli T. Madere
Acting Council Secretary
St. Charles Parish Council
St. Charles Parish Office of the Council
P.O. Box 302
Hahnville, La 70057

The Parish President has the authority to select and hire consulting engineers and contract for architectural services for the Parish based on the St. Charles Parish Home Rule Charter. This authority is limited in that the funds for the services must be appropriated by the Parish Council.

Dear Ms. Madere:

Our office received your request for an opinion concerning the authority of the St. Charles Parish President ("President") and the St. Charles Parish Council ("Council") to select and hire firms for professional services. Specifically, you have inquired as to whether the Council, through St. Charles Parish Ordinance § 2-12, can limit the President's ability to select and hire consulting engineers or contract for architectural services.

St. Charles Parish Ordinance § 2-12(b) states in pertinent part: "[a]ny contract for consulting engineering or architectural services which would result in an engineering or architectural fee in an amount of twenty thousand (\$20,000.00) or more shall be awarded by ordinance of the parish council."

St. Charles Parish operates under a home rule charter, which came into existence following the enactment of Article VI, § 5 of the Louisiana Constitution (1974). La. Const. Art. VI §5 provides that:

A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.

St. Charles Parish is therefore governed by the St. Charles Parish Home Rule Charter ("Charter"), to the extent the provisions are consistent with state law and the state constitution.

The Charter clearly defines the executive authority of the President in art. III § B (3a). It states in pertinent part that:

[T]he parish president shall be the chief executive officer of the parish and shall be vested with the executive power of the parish. He shall be responsible for carrying out the policies adopted by the Parish Council and for the administration, direction and supervision of all parish departments, offices, agencies and special districts.

Charter, art. III § B (3a) (emphasis added).

Similar executive authority has been discussed in prior opinions of this office regarding home rule charter political subdivisions. See La. Atty. Gen. Op. Nos. 10-0156 and 93-5. This office has previously opined that the selection and hiring of professional service firms for a parish is an executive power reserved for the President. La. Atty. Gen. Op. Nos. 10-0156, 09-0264, 07-0087 and 98-58.¹

Yet, since each home rule charter political subdivision must be analyzed by its specific charter, we must ascertain if the charters our office looked at previously use the same terminology as the underlying Charter. Although La. Atty. Gen. Op. Nos. 10-0156 and 09-0264 specifically address different authority than the Charter,² the executive power and authority language in both is similar to that of the Charter. The power granted to Plaquemines Executive Authority is to "supervise and direct all activities and functions of parish government." La. Atty. Gen. Op. No. 10-0156. Further, the Lawrason Act gives the executive authority the power "[t]o supervise and direct the administration and operation of all municipal departments, offices, and agencies" of the municipality. La. R.S. 33:404(1)(A). The Charter here grants similar authority, making the President responsible for the "administration, direction and supervision of all parish departments, offices, agencies." Charter, art. III § B (3a). It is likely within the authority of the President to select and hire firms for professional services based on the authority granted in the Charter. Thus, the provisions of the St. Charles Parish Ordinance § 2-12(b) that limits this authority of the President is invalid. However, the Charter may be amended, in accordance with Art. VIII, in order to restrict the abilities of the President as was sought with this ordinance.

¹ La. Atty. Gen. Op. Nos. 10-0156, 09-0264, 07-0087 and 98-58 address both home rule charter political subdivisions as well as Lawrason Act municipalities.

² La. Atty. Gen. Op. No. 10-0156 addressed the Plaquemines Parish Home Rule Charter, whereas La. Atty. Gen. Op. No. 09-0264 addressed a Lawrason Act municipality.

Yet, while the President does have the authority to select and hire firms for professional services, it is not absolute. If hiring a firm for professional services requires the spending of municipal funds or incurring a debt by the municipality, the President must have the approval of the Council to enter into such a contract. La. Atty. Gen. Op. Nos. 11-0084, 10-0245 and 00-439.³ The approval could come through the budgeting and appropriation of funds performed in accordance with the Local Government Budget Act, La. R.S. 39:1301 *et seq.*⁴, or from a separate approval request. Once the funds are appropriated, the Council no longer has a role to play in the contract process,⁵ unless given the specific authority to be further involved by the Charter.

The Charter gives the Council the specific authority to contract with other governmental units and to select special counsel. Article III § A (7) of the Charter expressly allows the Council to "enter into contracts with other governmental units within or outside the boundaries of the parish." (emphasis added). The ability to select special counsel is granted by Article III § C (3a) which provides in pertinent part: "In special matters, the Council may retain special attorneys to represent the Parish or perform certain duties subject to the restrictions imposed by the statutes of this State." Such specific grants of authority lend credence to the idea that if the drafters of the Charter meant for the Council to have the authority to enter into any other type of contract for professional services, the Charter would have said that and not given such a specific grant of authority in these two particular instances.

In conclusion, the President has the authority to select consulting engineers or contract for architectural services for the Parish. In hiring the contractors, the President must obtain approval of the Council prior to signing the contract if it requires spending municipal funds or incurring a debt. Therefore, any part of the St. Charles Ordinance § 2-12 that usurps the authority of the President is void. Further, any aspect of that Ordinance which asserts authority already granted to the Council is redundant.

³ Although these opinions apply the Lawrason Act, they articulate an important concept for all political subdivisions whether governed by a home rule charter or the Lawrason Act.

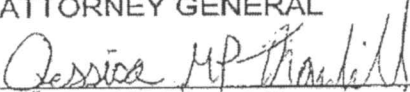
⁴ St. Charles Parish is subject to the Local Government Budget Act because it is a home rule charter that came into effect after 1974. La. R.S. 39:1303. The Local Government Budget Act requires the executive authority of a political subdivision to submit a budget for all general and special revenue funds to the legislative authority of the political subdivision. La. R.S. 39:1305. Thus, the executive authority cannot spend special revenue or general funds prior to their appropriation by the legislative authority.

⁵ La. Atty. Gen. Op. No. 03-0036.

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.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: 

Jessica MP Thornhill
Assistant Attorney General

JDC: JMPT

2013-

INTRODUCED BY: PAUL J. HOGAN, PE, COUNCILMAN, DISTRICT IV
ORDINANCE NO. _____

An ordinance to amend the St. Charles Parish Code of Ordinances, Chapter 2, Administration, Article I. In General, Section 2-12. Procedures for the procurement of architects and engineers, by removing Subsection (b).

WHEREAS, on June 18, 2012, the St. Charles Parish Council approved Resolution No. 5921, requesting the Louisiana Attorney General's Office provide an opinion concerning the relative authority of the St. Charles Parish President and the St. Charles Parish Council, under the St. Charles Parish Home Rule Charter with regards to the selection of firms for professional services and the hiring of said firms for professional services.”; and,

WHEREAS, St. Charles Parish received Louisiana Attorney General's opinion #12-01233 on October 3, October 3, 2012; and,

WHEREAS, in accordance with Attorney General's opinion #12-01233, the provisions of the St. Charles Parish Code 2-12(b) that limits this authority of the President is invalid; and,

WHEREAS, opinion #12-01233 further concludes, therefore, that any part of the St. Charles Parish Code 2-12 that usurps the authority of the President is void.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the St. Charles Parish Code of Ordinances, Chapter 2, Administration, Article I. In General, Section 2-12. Procedures for the procurement of architects and engineers, be amended by removing Sub-section (b).

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

And the ordinance was declared adopted this _____ day of _____, 2013, to become effective five (5) days after publication in the Official Journal.

Amend Code - Chapter 2, Section 2-12, Procure Arch & Eng

CHAIRMAN: _____

SECRETARY: _____

DLVD/PARISH PRESIDENT: _____

APPROVED: _____ DISAPPROVED: _____

PARISH PRESIDENT: _____

RETD/SECRETARY: _____

AT: _____ RECD BY: _____

Chapter 2 ADMINISTRATION*

Art. I. In General, §§ 2-1--2-16.5

ARTICLE I. IN GENERAL

Sec. 2-12. Procedures for the procurement of architects and engineers.

I. Special Provisions.

(a) Any contract for consulting engineers or architectural services involving the public works, sewerage, or waterworks department of any St. Charles Parish government or agency, commission or special district which would result in a fee in the amount of twenty thousand dollars (\$20,000.00) or more shall be awarded based on the recommendation of the parish president. Any such project resulting in a fee of less than the twenty thousand dollar (\$20,000.00) threshold shall be handled administratively by the appropriate department at its sole discretion, from utilizing this selection process whenever it is deemed appropriate. A report listing all contracts for consulting engineers or architectural services handled administratively shall be forwarded to the parish council monthly. Five (5) days prior to the execution of any administrative contract, notice regarding award of this contract shall be forwarded to the district councilman and councilmen-at-large.

(b) Any contract for consulting engineering or architectural services which would result in an engineering or architectural fee in an amount of twenty thousand dollars (\$20,000) or more shall be awarded by ordinance of the parish council.

(Ord. No. 92-11-2, §§ I-VI, 11-2-92; Ord. No. 93-2-20, §§ I-VI, 2-15-93; Ord. No. 93-2-21, 2-15-93; Ord. No. 95-9-8, § I, 9-5-95; Ord. No. 96-2-4, § I, 2-5-96; Ord. No. 96-2-5, § I, 2-5-96; Ord. No. 96-4-11, §§ I-III, 4-15-96; Ord. No. 96-7-6, § I, 7-1-96; Ord. No. 96-8-12, § I, 8-1-96; Ord. No. 98-4-3, § I, 4-6-98; Ord. No. 00-6-1, § I, 6-5-00; Ord. No. 00-6-4, § I, 6-5-00; Ord. No. 00-6-12, § I, 6-19-00; § I, 6-19-00; Ord. No. 00-7-1, § I, 7-10-00; Ord. No. 08-6-9, §§ I-I, 6-16-08; Ord. No. 10-8-11, § 1, 8-23-10)

Editor's note: Ord. No. 10-8-11, § 1, adopted Aug. 23, 2010, changed the title of § 2-12 "Qualification based selection procedures for the procurement of architects and engineers" to "Procedures for the procurement of architects and engineers."