



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

JUL 16 2012

JUL 12 2012
OPINION 12-0040

Hon. Calli T. Madere
Acting Council Secretary
St. Charles Parish Council
P.O. Box 302
Hahnville, LA 70057

172 WATER & WATER COURSES – Boats,
Motorboats & Vessels

33 U.S.C. 409
43 U.S.C. 2101, *et seq.*
La. Const. Art. VII, Sec. 14
La. R.S. 34:801, *et seq.*; 34:843; 41:1605
La. Atty. Gen. Op. No. 07-0037; 07-0067

La. R.S. 34:843 sets forth the process for obtaining reimbursement for a governmental entity's removal of sunken vessels from waterways in Louisiana.

Dear Ms. Madere:

You have requested an opinion from this office regarding what legal options are available to St. Charles Parish for the recovery of costs for the removal of a sunken vessel pursuant to the removal provisions of La. R.S. 34:843. That law provides the authority to various governmental entities to generally deal with objects "left unattended, stored, junked, or abandoned in any canal, coulee, drainage ditch, outfall canal, bayou, bay, lake, or any other waterway, whether navigable or not, or on the banks thereof within the state of Louisiana..."¹

In this context, the governmental entities that may exercise the authority granted in La. R.S. 34:843 is similarly broad. The provision bestows the removal authority recited therein upon "...the federal, state, or local governing authority having jurisdiction thereof..."² The law also sets forth specific notice provisions that must be provided to the owner of a sunken vessel under various scenarios. Because these notice provisions are specific to various scenarios, we do not here summarize them, but rather refer you to La. R.S. 34:843(A)(1) and La. R.S. 34:843(A)(2) for a review of those provisions.³ The notice provisions provide different notice mechanisms for situations in which a vessel owner is known or unknown.

Specifically to your question regarding cost recovery, in the event that the owner does not undertake the removal of the vessel following notice, La. R.S. 34:843(B) authorizes the governmental entity undertaking the actual removal of the vessel to,

¹ La. R.S. 34:843(A)(1). Under La. R.S. 34:843, a vessel is defined broadly as any "...tug, towboat, barge, watercraft, ship, vessel, equipment, machinery, or any object of any kind or description, whether foreign or domestic..." *Id.*

² La. R.S. 34:843(A)(1).

³ La. Atty. Gen. Op. No. 07-0037 also contains a review of the notice provisions. A copy of that opinion is included herewith for your review.

...have the object removed at the owner's cost and junk, discard, or otherwise dispose of the object or sell, exchange, or otherwise transfer ownership of the object to any person, corporation, or entity whatsoever for any price or consideration which the authority may deem advisable, or for no consideration, and apply the proceeds received, if any, to the cost of removing the object, and the balance, if any, shall become the property of the authority.⁴

Thus, it is the opinion of this office that, should St. Charles Parish undertake vessel removals pursuant to La. R.S. 34:843(B), the Parish may recover its costs for such recovery from the sale of the vessel pursuant to La. R.S. 34:843(B). Under La. R.S. 34:843(B), the Parish is, when the owner is known, entitled to reimbursement of the actual costs of the removal and a recovery of any proceeds from the sale of the removed vessel. It is our opinion that, should the owner, after failing to remove a vessel covered by La. R.S. 34:843, pursuant to the notice provisions of that statute, the Parish may undertake the removal of the vessel itself and invoice the owner for the costs of the removal. Should the owner fail or refuse to pay the costs after such a demand is made, such costs may be recovered by simply filing a petition, under La. R.S. 34:843, against the known owner either in the jurisdiction in which the owner resides or where the vessel is recovered. Such suits are appropriate when public funds are expended that create debts resulting from the acts of private citizens such as the sunken vessel salvage contemplated here. In this regard, La. Atty. Gen. Op. No. 07-0067 is instructive, as it states (emphasis added):

[w]e note that, Article VII, Section 14(A) of the 1974 Louisiana Constitution generally prohibits the loan, pledge and/or donation of public funds, credit and property to any person, association or corporation, public or private. Previous opinions of this office have determined that this constitutional provision requires public bodies to exercise reasonable means to recover erroneous payments, overpayments **and other debts owed to the public body**. Attorney General Opinion Nos. 05-0227, 05-0112, 03-0444; 01-63; 88-169.

The costs incurred by the parish for the recovery of a sunken vessel under La. R.S. 34:843, when the owner is known, would properly be classified as "other debts owed to the public body" that are recoverable under La. Const. Art. VII, Sec. 14(A). *Id.* Under La. Atty. Gen. Op. No. 07-0067, an action to recover the costs of the vessel recovery discussed herein would properly be classified as a debt collection – a matter that may be handled by the Parish or contracted out to a debt collection entity.⁵

⁴ La. R.S. 34:843(B)(1). The quoted language applies to vessels that are not presenting a threat to the public or the environment. The same language exists for cost recovery when the vessel does present a threat to the public or the environment. See La. R.S. 34:843(B)(2).

⁵ It is also important to note that La. R.S. 34:802, *et seq.*, provides a process for bringing an action against the owner of an obstruction within a waterway for damage caused by that obstruction. See *e.g.*, *Babin v. Lyons Lumber Co.*, 61 So. 855 (La. 1913). Although not directly applicable to the current scenario, as La. R.S. 34:802, *et seq.*, contemplates an action for an actual injury, it is worthy to note in

In the event that the owner is not known, it is not possible to obtain the costs of recovery as provided for in La. R.S. 34:834(B). In that event, the recovery allowed by the law is limited to the amount that the Parish can obtain from the sale of the recovered vessel. In the event that the costs of the vessel salvage exceed the costs recovered under La. R.S. 34:843(B), this office is aware of no other provision that provides for additional recovery beyond the value of the vessel. In other words, if the owner is known, but the Parish undertakes the removal of the vessel after the requisite notices to the owner under La. R.S. 34:843(A), cost recovery for the Parish is limited to the value of the vessel and the Parish may not seek additional recovery against the owner.⁶ The same logic would obtain in the event that the owner is unknown, as there would be no one against whom to seek cost recovery beyond the value of the vessel.

Beyond La. R.S. 34:843, in La. Atty. Gen. Op. No. 07-0037, we also noted that certain federal laws may be applicable to vessel removal obligations, to wit:

According to the Wreck Act, 33 U.S.C. 409, the owner of a vessel is responsible for the removal of a sunken vessel. More specifically, the Act makes it unlawful to:

[s]ink, or permit or cause to be sunk, vessels or other craft in navigable channels ... in such a manner as to obstruct, impede, or endanger navigation ... and it shall be the duty of the owner, lessee, or operator of such sunken craft to commence the immediate removal ... and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States ...

33 U.S.C. 409. Despite the reference to the United States being responsible for the removal of abandoned vessels, upon the failure of the owner to so remove, jurisprudence has interpreted this section to allow the application of State or local wreck laws so long as they do not conflict with existing federal admiralty law. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973).

In La. Atty. Gen. Op. No. 07-0037, this office found no conflict or preemption of La. R.S. 34:843 by the Wreck Act or any other federal law. In addition, although 33 U.S.C. 609 may be applicable to a particular salvage scenario, because the courts have generally

the event that an injury does occur before the Parish is able to remove the vessel at issue. In that case, per La. R.S. 34:802, *et seq.*, the liability for any injury remains with the owner.

⁶ It is important to note here that although La. R.S. 34:843 limits recovery under that law to the value of the vessel, there is no indication that this provision is intended to be the only remedy available to the Parish. In situations where the owner is known but does not undertake his obligation to remove the vessel, nothing in Title 34 appears to limit the ability of the Parish to seek additional recovery for expenditures under general tort principles. It is axiomatic that the same reality could not apply to scenarios involving vessels with unknown owners, as there would be no one to sue in tort.

looked to local and state laws for the removal of sunken vessels, it is our opinion that La. R.S. 34:843 would be the appropriate law to apply to your situation.

This office would be remiss if it did not mention La. R.S. 41:1605(A) in the context of vessel recovery. We presume that your opinion request is directed at the recovery of modern vessels. However, if the vessel is located in State-claimed waters and it predates the twentieth century,⁷ recovery of such a vessel and any of its contents, whether a hindrance to navigation or not, is not authorized by La. R.S. 34:843 and may only be accomplished pursuant to a permit from the Louisiana Division of Archaeology. Further, should a vessel be located on any property (sovereign water bottom or private property) that was a warship of any kind, its salvage is prohibited under La. R.S. 34:843 by the Sunken Military Craft Act.⁸ This recent federal law prohibits the disturbance of war vessels of any nation, regardless of where they are located.⁹

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

Sincerely yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By: 

RYAN M. SEIDEMANN
Assistant Attorney General

JDC/RMS/tp

cc: Charles R. "Chip" McGimsey, Ph.D., Louisiana State Archaeologist

⁷ Although La. R.S. 41:1605 is limited to vessels that predate the twentieth century, the federal law from which Louisiana gains the authority to regulate shipwrecks – the Abandoned Shipwreck Act, 43 U.S.C. 2101, *et seq.* – actually covers all such vessels that are potentially eligible for listing on the National Register of Historic Places. Because eligibility for National Register listing is an age of fifty years or more, it is probable that even many twentieth century wrecks in Louisiana are exempted from La. R.S. 34:843.

⁸ Pub.L. 108-375, Div. A, Title XIV, §§ 1401 to 1408. It is also important to note that the Sunken Military Craft Act contains no temporal limits for the protections of covered wrecks.

⁹ See Ryan M. Seidemann, Shipwreck Protection: Federal and State Law – A View From Louisiana, in Filipe Castro and Lindsey Thomas, eds., *2011 ACUA Underwater Archaeology Proceedings*, 66-73 (Advisory Council on Underwater Archaeology 2011).



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APR 09 2007
OPINION NUMBER 07-0037

172 WATER & WATER COURSES –Boats,
Motorboats & Vessels

Mike D. McDaniel, Ph.D
Secretary
Louisiana Department of Environmental Quality
Post Office Box 4302
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33 U.S.C. 409
46 U.S.C. 12302-12304
La. R.S. 29:721 - 725 .
La. R.S. 30:2413.1
La. R.S. 34:843
La. R.S. 34:851.20

DEQ possesses the necessary legal authority to act as the agency responsible for the removal and disposition of vessels abandoned and grounded by the 2005 hurricane season. During the removal and disposition process, DEQ must follow the procedure outlined in La. R.S. 34:843.

Dear Secretary McDaniel:

You have requested an opinion of this Office regarding the legal authority of various agencies of government to dispose of abandoned vessels left behind by Hurricanes Katrina and Rita. Specifically, you ask whether the Louisiana Department of Environmental Quality ("DEQ") has the authority to remove and properly dispose of vessels left abandoned or destroyed by the 2005 hurricane season when such vessels either remain on public rights of way or public property or pose a threat to public safety under La. R.S. 34:843 or other applicable State or federal law. Additionally, you have asked this Office to advise you on the proper procedure to be followed for the removal and disposal of such vessels. Based on the following analysis of both State and federal law, we opine that DEQ, under the specific circumstances herein, does have the authority to remove and dispose of abandoned vessels. This authority derives from several sources, as are discussed in more detail, *infra*, including: (1) the Louisiana Homeland Security and Emergency Assistance and Disaster Act; and (2) Act Number 662 of the 2006 Regular Session of the Louisiana Legislature.

Background

The pertinent factual background accompanying your request states that subsequent to Hurricanes Katrina and Rita in 2005, DEQ participated in several emergency meetings to discuss, among other things, the environmental concerns posed by vessels on public and private property. Due to DEQ's technical expertise and its availability of resources, DEQ was tasked with and agreed to handle management of the contracts for vessel removal and disposal. Funding for this process was to be provided by the Federal Emergency Management Agency through the Governor's Office of Homeland Security and Emergency Assistance and Preparedness ("GOHSEP").

Louisiana Law Under a State of Emergency, Generally

Before delving into the specific issues raised by your request, it is important to first discuss the unique situation created by the 2005 hurricane season, and Louisiana's ensuing response. Hurricanes Katrina and Rita wrought havoc on Louisiana's coastal parishes. The levee systems protecting the residential communities in these parishes were overwhelmed and inundated. Hurricane Katrina made landfall on the Louisiana coast on the morning of August 29, 2005, as a Category 3 hurricane, with sustained winds of 125 mph (205 km/h) near Buras-Triumph, Louisiana.¹ Approximately one month after Hurricane Katrina, Hurricane Rita made landfall on September 24, 2005, near the Texas-Louisiana border as a Category 3 hurricane.

Pursuant to State of Louisiana Proclamation Nos. 48 KBB 2005 and 53 KBB 2005, Governor Kathleen B. Blanco declared states of emergency in Louisiana as a result of these storms. The purpose of these proclamations was to first give governmental authorities time to prepare for the hurricanes, and in the aftermath of the storms, to allow them ample opportunity to address the damage and destruction caused by Hurricanes Katrina and Rita.²

It is important to note that under Louisiana's Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq* (hereinafter sometimes referred to as the "Disaster Act"), upon a declaration of an emergency or disaster by the Governor the State's emergency response and recovery program under the command of the director of GOHSEP is activated. La. R.S. 29:724. Simply put, once the Governor declares a state of emergency the provisions of the Disaster Act go into effect and remain in effect until such time that the state of emergency is terminated. Thus, for purposes of this opinion, since the state of emergency has been extended until March 19, 2007, the provisions in the Disaster Act and the powers and duties of the Governor and GOHSEP must be analyzed in conjunction with other relevant State and federal laws.

¹ Knabb, Richard D.; Rhome, Jamie R.; Brown, Daniel P. (December 20, 2005). Tropical Cyclone Report: Hurricane Katrina: 23-30 August 2005 (http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf). (PDF) National Hurricane Center. Last visited on 03/05/2007.

² Proclamation No. 48 KBB 2005 was issued to respond to the threat of Hurricane Katrina and has been in effect since August 26, 2005. Furthermore, pursuant to State of Louisiana Proclamation No. 13 KBB 2007 the State of emergency has been extended through March 19, 2007. Proclamation No. 53 KBB 2005, which implements a State of emergency as a result of Hurricane Rita, has been in effect since September 20, 2005 and has been extended through March 19, 2007, in accordance with State of Louisiana Proclamation No. 12 KBB 2007.

Jurisdiction and Authority Over Unclaimed, Abandoned/Grounded Vessels

A. The Disaster Act

There are several provisions of Louisiana's Disaster Act that are applicable to the determination of whether DEQ has the authority to remove and dispose of abandoned and wrecked vessels. As a starting point, upon the declaration of a state of emergency, the Act provides the Governor with several powers that enable her to "[meet] the dangers to the State and people presented by emergencies or disasters." La. R.S. 29:724(A). Indeed, the stated purpose of the Act, as outlined in subsection 722, is to ensure that the State is in a position to "respond to, or recover from these events, and generally preserve the lives and property of the people..." As applied to this specific situation, the Governor is given the authority to "utilize all available resources of the State government" and to "transfer the direction, personnel, or functions of State departments and agencies or units thereof for the purpose of performing or facilitating emergency services." La. R.S. 27:724(D). Thus, even if DEQ does not have the authority absent an emergency to dispose of abandoned vessels, the Governor is authorized to transfer that authority to DEQ if she determines that such a transfer is necessary to promote the recovery of the State.

Furthermore, the director of GOHSEP is also authorized to coordinate the activities of all State agencies and organizations and otherwise cooperate with agencies and organizations of other states and of the federal government. La. R.S. 29:725. In fact, the chain of command created by the Disaster Act places the director of GOHSEP directly under the direction and control of the Governor and requires that all State agencies and departments comply with the directives from GOHSEP relating to emergency planning and operations. *Id.*

Consequently, DEQ first acquired the authority to act as the agency responsible for the removal and disposal of abandoned and wrecked vessels when GOHSEP tasked it to handle the management of such activities. As verification of this assignment, attached to your opinion request is a letter from GOHSEP to DEQ Secretary Mike McDaniel, dated February 2, 2007, which states, in pertinent part:

This is to confirm that, in the aftermath of these two catastrophic events, the Louisiana Department of Environmental Quality (LDEQ) was designated as the state agency having jurisdiction and authority for removal and disposal of all unclaimed, abandoned vehicles and unclaimed, abandoned/grounded vessels, whether situated on private or public property, as a result of one or both hurricanes. This designation was made pursuant to the provisions of La. R.S. 29:721, et seq.

Thus, this Office is of the opinion that the Disaster Act, along with the above referenced letter, provide support for the conclusion that DEQ possesses the legal authority to remove and dispose of all unclaimed and abandoned vessels remaining on private or public property as a result of the 2005 hurricane season.

B. Act No. 662 of 2006 Regular Session and DEQ's Debris Mission

The Disaster Act is not the only Louisiana law lending support for DEQ's authority over abandoned hurricane damaged vessels. In September of 2005, DEQ prepared a Hurricane Katrina Debris Management Plan.³ Additionally, during the 2006 Regular Session of the Louisiana Legislature, Act 662 was passed. This Act tasked DEQ with the development and implementation of a comprehensive debris management plan (hereinafter sometimes referred to as the "debris mission"). The purpose of such a plan was the facilitation of a "reasonable, efficient, and prompt recovery from natural disasters that will be protective of human health and the environment." La. R.S. 30:2413.1, as enacted by Act No. 662 of the 2006 Regular Session of the Louisiana Legislature. It also important to note that Act 662 required that the plan be consistent with State and federal law and not supercede any ordinance adopted by a local governing authority. *Id.* DEQ utilized portions of its 2005 Debris Management Plan in conjunction with the dictates of Act 662 to create the "Comprehensive Plan For Disaster Clean-up and Debris Management."⁴

Because this plan was mandated by the Louisiana Legislature, DEQ's authority to respond to clean-up of hurricane debris, including the removal and disposal of abandoned vessels, is fully supported by the laws of this State. In fact, the letter from GOHSEP confirming DEQ's authority states, "[i]n addition, LDEQ's jurisdiction was recognized as part of the agency's hurricane debris mission." The letter goes on to state that:

This designation and authorization were made in full consultation and agreement with other agencies and offices of affected state and federal government, including the Governor's Office of Homeland Security and Emergency Preparedness, the Louisiana Department of Justice, the Louisiana Department of Transportation and Development, the Louisiana Department of Public Safety, the Louisiana Department of Wildlife and Fisheries, the Louisiana Recovery Authority, the United States Coast Guard, and the Federal Emergency Management Agency. All federal, state, and local debris mission partners were asked to provide assistance, cooperation, and consultation to the LDEQ consistent with their mandates/authorities/jurisdictions and LDEQ was to continue to coordinate with its federal, state, and local government partners.

See GOHSEP letter dated February 2, 2007.⁵ Therefore, as to the question of whether DEQ has the legal authority to remove and dispose of abandoned hurricane damaged vessels, the answer is in the affirmative and is supported by Louisiana law under both Title 29 and Act 662. It is important to note that DEQ continues to be responsible for

³ This plan was released on September 28, 2005, and revised on October 14, 2005.

⁴ The latest revision of this plan occurred in August 2006. A copy of this plan can be found at <http://www.deq.louisiana.gov/portal/portals/0/news/pdf/DEQDebrisPlan-8-25-FINAL.pdf>. Site last visited on March 1, 2007.

⁵ On file with the Louisiana Department of Justice.

cooperating and coordinating its recovery activities with all other federal, state, and local debris mission partners. The question of whether that has properly been done is a factual one, outside the scope of this opinion.

Proper Procedure for the Removal and Disposal of Abandoned Vessels

The determination of whether DEQ has the authority to dispose of abandoned vessels and the proper procedure to be followed for such disposal is important because FEMA requires strict adherence with local, state, and federal laws in order to secure reimbursement for expenses.⁶ Thus, because you stated in your request that funding for the management of vessels would be provided by FEMA, it is prudent that DEQ remain in compliance with all laws during the process.

The logical place to begin this analysis is to look to federal law to ensure that there is no law that either governs the procedure for the handling of abandoned vessels or specifically preempts State and local laws. According to the Wreck Act, 33 U.S.C. 409, the owner of a vessel is responsible for the removal of a sunken vessel. More specifically, the Act makes it unlawful to:

[s]ink, or permit or cause to be sunk, vessels or other craft in navigable channels...in such a manner as to obstruct, impede, or endanger navigation...and it shall be the duty of the owner, lessee, or operator of such sunken craft to commence the immediate removal...and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States...

33 U.S.C. 409. Despite the reference to the United States being responsible for the removal of abandoned vessels, upon the failure of the owner to so remove, jurisprudence has interpreted this section to allow the application of State or local wreck laws so long as they do not conflict with existing federal admiralty law. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). Furthermore, because both the Louisiana Disaster Act and Act 662 require DEQ to coordinate and cooperate with other federal, state, and local agencies, safeguards exist to ensure that DEQ remains in compliance with federal law during the removal and disposal process.

Having thus determined that federal law does not prohibit the State from establishing a procedure for the proper removal of abandoned vessels, we now turn to an analysis of Louisiana law. Louisiana Revised Statute 34:843 provides for the removal and other disposition of abandoned vessels by the "federal, state, or local governing authority having jurisdiction thereof." Because this Office has opined that DEQ possesses the authority and jurisdiction over the removal and disposition of abandoned vessels, we now address the procedure DEQ must follow during such process.

⁶ For a more detailed discussion of FEMA policies on reimbursement, see, La. Atty. Gen. Op. No. 05-0373.

La. R.S. 34:843 provides for the proper procedure to be used when removing and disposing of abandoned vessels. The procedure is, generally, as follows:

- (1) DEQ is to provide written notice by certified mail to the title owner of the abandoned vessel and the owner is given thirty days within which to provide a plan for removal of the vessel.
- (2) If the title owner of the vessel cannot be identified, DEQ must publish in the official journal of the parish where the vessel is located a notice that the vessel will be removed and disposed of by DEQ after thirty days of publication.
- (3) If the owner provides DEQ with a plan for removal of the vessel within the thirty day time delay, DEQ must approve or reject the plan within thirty days of submission.
- (4) If a plan of removal is not presented to DEQ, or is rejected, then DEQ may remove and dispose of the vessel, or sell, exchange, or otherwise transfer ownership of the vessel to any person, corporation, or entity for any price or consideration that DEQ deems reasonable.
- (5) If the vessel poses an immediate threat to life or property, DEQ may remove and dispose of the object without waiting for the thirty day time delay to run.⁷

Simply put, regardless of the cause for the abandonment, wreck, or grounding of a vessel, the onus for removal of such vessel is placed on the owner under both federal and State law. This conclusion is further supported by laws governing documentation of vessels. According to federal law, all undocumented vessels⁸ must have a number issued by a state, along with a certificate of number. 46 U.S.C. 12302-12304. The owner of a numbered vessel is then under a legal duty to notify the state of the destruction or abandonment of the vessel. *Id.* This requirement is also placed on the vessel owner by Louisiana law, which provides that the owner of a numbered vessel shall furnish the State with notice of the destruction or abandonment of the motorboat or sailboat. La. R.S. 34:851.20.

Thus, the proper procedure to follow during the removal and disposition of vessels abandoned or grounded in the aftermath of Hurricanes Katrina or Rita is that procedure outlined in La. R.S. 34:843. Once again, please note that DEQ must also remain in compliance with federal and local laws during such disposition; therefore, it is prudent that DEQ continue its mission with the cooperation of, and in consultation with, the appropriate federal, state, and local governments.

⁷ La. R.S. 34:843.

⁸ Under federal law vessels engaged in a trade must be issued a certificate of documentation. 46 U.S.C. 12102. All other undocumented vessels equipped with propulsion machinery—most of the vessels being handled by DEQ would fall under this category—must have a number issued to it by the State in which the vessel is principally operated. 46 U.S.C. 12301.

Conclusion

In conclusion, this Office is of the opinion that pursuant to the powers granted to the Governor and GOHSEP under the Louisiana Homeland Security and Emergency Assistance and Disaster Act as well as the debris mission developed by DEQ pursuant to the mandate of Act Number 662 of the 2006 Regular Session of the Louisiana Legislature, DEQ does possess the necessary legal authority to act as the agency responsible for the removal and disposition of vessels abandoned and grounded by the 2005 hurricane season. During the removal and disposition process, DEQ must follow the procedure outlined in La. R.S. 34:843. Specifically, DEQ must ensure that the registered owners of the vessels are notified of the existence of the abandoned vessel and must be provided with an opportunity to present a plan for the removal of the vessel. If no such plan is presented or if the vessel poses an immediate danger to life or property, DEQ have the vessel removed after timely notification to the owner, and may then dispose, sell, or exchange the vessel as stated in the statute.

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

Yours truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: 
Megan K. Terrell
Assistant Attorney General

CCF, Jr./MKT/tp



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION NUMBER 07-0067
JUL 18 2007

Mr. John A. Gallagher
Louisiana Municipal Association
700 North 10th Street
P.O. Box 4327
Baton Rouge, Louisiana 70821

71 MUNICIPALITIES

Municipalities may contract with private third parties for debt collection services.

Dear Mr. Gallagher:

You requested an Attorney General's opinion regarding the authority of a municipal government to contract with a third party for the collection of debts owed to the municipal government. Specifically, you question whether an incorporated municipality has the authority to enter into a professional services contract with a private third party for debt collection services.

We note that in Attorney General Opinion No. 02-0232, we opined that the Town of Simmesport could contract with a collection agency to collect debts owed to it pursuant to La. R.S. 9:3576.6, which dealt with the regulation of collection agencies, and allowed municipalities to utilize collection agencies licensed and bonded under the Collection Agency Regulation Act. This statute was subsequently repealed by Act 638 of the 2003 Regular Session of the Louisiana Legislature. However, the municipality did not derive its authority to contract with collection agencies from this statute. Municipalities have general corporate powers, including the power to contract for services. R.S. 9:3576.6 merely dictated which collection agencies (those that were licensed and bonded) a municipality was authorized to contract with. Because the Collection Agency Regulation Act was repealed, those restrictions are no longer in effect.

We note that, Article VII, Section 14(A) of the 1974 Louisiana Constitution generally prohibits the loan, pledge and/or donation of public funds, credit and property to any person, association or corporation, public or private. Previous opinions of this office have determined that this constitutional provision requires public bodies to exercise reasonable means to recover erroneous payments, overpayments and other debts owed to the public body. Attorney General Opinion Nos. 05-0227, 05-0112, 03-0444; 01-63; 88-169. The use of a private third party for debt collection services to recover amounts owed to a municipality would seem to be a reasonable means to recover such amounts. Therefore, it is our opinion that municipalities may contract with private third parties for debt collection services.

Trusting this adequately responds to your request, we remain

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: 

KENNETH L. ROCHE, III
Assistant Attorney General

CCF, JR/KLR, III/crt

