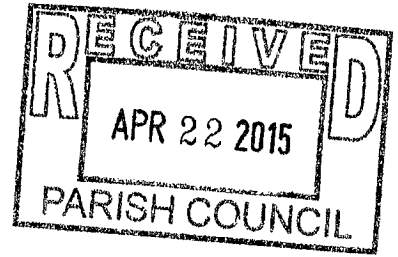




JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

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

April 17, 2015



Tiffany K. Clark  
Council Secretary  
St. Charles Parish Office of the Council  
P.O. Box 302  
Hahnville, LA 70057

Re: Request for Opinion

Dear Ms. Clark:

This office is in receipt of your request for an opinion, dated April 10, 2015, submitted on behalf of Councilman Paul Hogan for the St. Charles Parish Council. The proposed resolution 2015-0119 included with your correspondence asks our office to provide an opinion on:

- Whether the failure to seek repayment for services provided to private citizens with public funds constitutes malfeasance in office;
- Whether the contents of the letter sent by legal counsel for the Parish is an acceptable way to resolve the improper expenditure of public funds;
- Whether the Parish President is able to or should be required to personally reimburse the Parish if the letters sent by legal counsel fail to recover the funds from private citizens;
- The steps and/or procedures which should be taken by the Council and/or any other entities to address the improper expenditure of public funds, including whether there is a time limitation on pursuit of such an action; and
- Whether there are any circumstances, such as having good intentions, which make the provision of the constitution prohibiting the gratuitous expenditure of public funds inapplicable.

With respect to your first inquiry, please be advised, as our office has consistently stated, see, e.g., La. Atty. Gen. Op. Nos. 97-289, 02-63, 02-0235, 03-296 and 11-0190, the decision to charge an individual with malfeasance in office rests with the district attorney, who has broad discretion in both the institution and handling of criminal prosecutions. La. C.Cr.P. art. 61, La. Const. art. V, § 26(B), *State v. Kibodeaux*, 435 So.2d 1128, 1131 (La.App. 1 Cir. 1993).

With respect to your remaining inquiries, we direct you to La. Atty. Gen. Op. No. 14-0045, rendered in response to your inquiry about the means and methods available to recover the costs at issue in this matter, wherein we stated that our office defers to the Parish's legal counsel as to the means and methods which should be used to recover any funds owed to the parish. Citing La. Atty. Gen. Op. No. 12-0169, we stated that counsel to the parish is in the best position to determine which debts are collectible and what collection methods to pursue, taking into account the costs of potential recovery and any possible defenses to collection. Our office does not issue

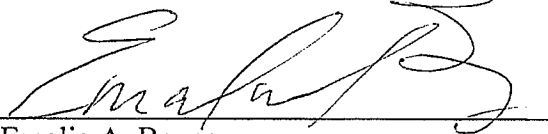
opinions which consider whether legal counsel's advice is acceptable, and again, our earlier opinion stated he was in the best position to make an appropriate determination as to the collection efforts which should be pursued by the parish in this matter. It is therefore appropriate for you to direct further inquiries about the Council's legal options with its legal advisor.

For the reasons above, we must respectfully decline to issue a further opinion on this matter as requested by Resolution 2015-0119.

With Best Regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY:



Emalie A. Boyce  
Deputy Director, Civil Division

JDC:EAB

xc: Paul Hogan, Councilman, District IV, St. Charles Parish  
Sonny Vial, St. Charles Parish Legal Services Director