



STATE BOND COMMISSION

ITEM NO. 13

Analysis of Request

LOCAL POLITICAL SUBDIVISIONS - LOANS

DATE: May 21, 2009

TYPE OF REQUEST: \$4,000,000 Revenue Anticipation Certificates

ENTITY: Iberia Parish Law Enforcement District

ANALYST: Eric Reimsnyder

APPLICATION NO: L09-120

SUMMARY OF REQUEST:

This request was submitted by David Henderson, Foley & Judell, LLP.

The purposes for which the loan is being made are as follows:

Not exceeding \$4,000,000 Revenue Anticipation Certificates, maturing on or before June 30, 2010, 5%, paying the cost of current expenses.

Budgeted Revenues - Y/E 6/30/09	\$17,437,559
75% Limit	\$13,078,169
Outstanding Budgetary Loan	\$1,060,000 *

* Staff has been informed the proceeds from the currently proposed Revenue Anticipation Certificates will be used to pay off the balance on the prior year's loan.

	Audited Actual 6/30/2008	Budget Ending 6/30/2009
Revenues	\$ 18,045,007	\$ 17,437,559
Expenses	\$ (17,394,586)	\$ (18,940,540)
Excess (Deficit)	\$ 650,421	\$ (1,502,981)
Other Financing Sources & Uses		
Excess (Deficit)	\$ 650,421	\$ (1,502,981)
Beginning Fund Balance	\$ 1,038,449	\$ 1,688,870
Ending Fund Balance	\$ 1,688,870	\$ 185,889

Fund Balance Reserved	\$ 241,354
Fund Balance Designated	None
Fund Balance Undesignated	\$ 1,447,516

Selection Method: Private Placement
Purchaser: TBD
Terms:
Interest Rate: 5%
Maturity: On or before June 30, 2010
Security: Income, revenues and receipts of the issuer for the fiscal year.

LEGISLATIVE AUTHORITY: R.S. 33:1423(D)(2)
R.S. 33:9010 (D)
R.S. 39:1430

**STATE BOND COMMISSION RECOMMENDATION:**

As noted in the attached May 14, 2009 letter from Mr. Steven Elledge, General Counsel for Iberia Parish Sheriff's Office, the increase in the level of budgetary loan to \$4,000,000 is due primarily due to several contracts, Cooperative Endeavor Agreements (CEA's), or Intergovernmental Agreements (IGA's), entered into between the prior Sheriff and the City regarding the Sheriff assuming law enforcement functions with the City of New Iberia and the Sheriff operating the Parish Prison which according to the current Sheriff are underfunded. The Attorney General has recently rendered an opinion 09-0003 indicating that such contracts, CEA's, and IGA's are null and void and non-binding on the office of the Sheriff, the Law Enforcement District, or the City of New Iberia. Staff has been informed that the Sheriff will continue to provide those services while pursuing a contractual remedy with the City to alleviate the funding shortfalls. Based on this information, Staff recommends approval of this application.

**STATE BOND COMMISSION
FEE WORKSHEET**

\$4,000,000
L09-120

Iberia Parish Law Enforcement District
Revenue Anticipation Certificates
May 21, 2009

Firm/Vendor	\$ Amount	\$ Per Bond
Legal Fees		
Issuer Counsel		\$0.00
Bond Counsel	Foley & Judell, LLP	\$2.22
Underwriter Counsel	\$8,894	\$0.00
Underwriter Co-Counsel		\$0.00
Preparation of Blue Sky Memo		\$0.00
Preparation of Official Statements		\$0.00
Tax Counsel		\$0.00
Trustee Counsel		\$0.00
Escrow Trustee Counsel		\$0.00
Other		\$0.00
Total Legal Fees	\$8,894	\$2.22
General Cost of Issuance		
Publishing/Advertising	\$500	\$0.13
Rating Agencies		\$0.00
Insurance		\$0.00
Bond Commission Fees	\$2,425	\$0.61
Issuer Financing Fees		\$0.00
Financial Advisor Fees		\$0.00
Trustee Fees		\$0.00
Escrow Trustee Fees		\$0.00
Feasibility Consultants		\$0.00
Other Consultants		\$0.00
Accounting Fees		\$0.00
Account Verification Fees		\$0.00
Escrow Verification Fees		\$0.00
Cash Flow Verification Fees		\$0.00
Other		\$0.00
Total General Cost of Issuance	\$2,925	\$0.73
TOTAL	\$11,819	\$2.95



LOUIS ACKAL
SHERIFF
EX-OFFICIO
TAX COLLECTOR

IBERIA PARISH SHERIFF'S OFFICE

300 IBERIA STREET - SUITE 120
NEW IBERIA, LOUISIANA 70560-4584

PHONE (337) 369-3714 - FAX (337) 364-8406

SBC NO. L09-120
ITEM NO. 13

May 14, 2009

Mr. Eric Reimsnyder
State Bond Commission
PO Box 44154
Baton Rouge, LA 70804

Re: SBC #L09-120
Iberia Parish Sheriff's Department

Dear Mr. Reimsnyder:

One of the reasons that we were not able to repay the 2008 - 2009 budgetary loan was the tremendous start-up costs that we encountered coming into office in July, 2008. The sheriff's department facilities, equipment and computer software had not been maintained. We were forced to make extraordinary expenditures in order to begin operations. We will not be faced with this problem in the next fiscal year.

However, the main reasons for our short fall are the two long term contracts that the previous sheriff entered into. We estimate that the contract with the City of New Iberia to provide law enforcement services is under-funded by over \$1,500,000. The City apparently agrees that the contract is under-funded, but disagrees with our estimates of the true costs. Last week the City gave the Sheriff an additional \$700,000 for operational costs for the 2008 - 2009 contract year. They have not increased the funding for the next fiscal year, but have agreed to renegotiate the contract.

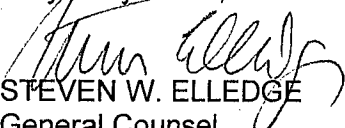
The second long term contact is with Iberia Parish Government. It requires the Sheriff to totally operate the parish jail and provide medical care for the prisoners for the annual sum of \$740,000. We estimate that this contract is under-funded by approximately \$1,700,000.

It is our intention to continue negotiations with the City and the Parish as follows:

1. Require the Iberia Parish Council to pay the actual costs of operating the jail;
2. Increase the number of state inmates (per diem rate is \$24.39);
3. Require the City to pay the actual costs of the law enforcement contract;
4. Reduce services under either contract, if necessary.

If you require additional information, please contact me immediately.

Very Truly Yours,


STEVEN W. ELLEDGE
General Counsel

SWE/bp
cc: Louis M. Ackal
Buzz Andersen

April 30, 2009
Opinion 09-0003

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Rev. Stat. 33:9004, La. Rev. Stat. 33:1410.60

Hon. Louis Ackal, Sheriff
Iberia Parish Sheriff's Office
300 Iberia Street, Suite 120
New Iberia, LA 70560-4584

Mayor Hilda Daigre Curry
City of New Iberia
457 East Main Street, Room 300
New Iberia, LA 70560-3700

The execution of a contract by a Law Enforcement District for a period of time that exceeds or extends beyond the term of a Sheriff is not illegal per se. However, State Bond Commission approval is required whenever a political subdivision incurs debt. Failure to obtain the consent and approval of the State Bond Commission renders any contract, debt, or obligation through which a public entity incurs debt null and void.

Dear Sheriff Ackal and Mayor Curry:

Both of your requests for an Attorney General's Opinion have been assigned to me for research and reply. You both have asked for clarification on several of issues surrounding a number of contracts executed by your predecessors.

The Sheriff has asked for our opinion on matters related to two (2) ten-year contracts. The Sheriff has indicated that neither of the contracts provide a profit or positive financing for his office. The Sheriff's opinion request describes the two (2) contracts as follows:

1. Work Release Contract / Lease. The previous sheriff, on behalf of the Law Enforcement District, entered into a lease agreement between the Iberia Parish Law Enforcement District and a private corporation to lease a building at the rate of \$30,000.00 per month. This lease has a termination date of January 31, 2012. The former sheriff then entered into a contract with the Louisiana Department of Corrections ("DOC") to house state prisoners for a work release program. The lease agreement provides that even in the event the Sheriff' office loses its contract with DOC, the contract shall continue until the termination date.
2. City of New Iberia Law Enforcement Cooperative Endeavor Agreement / Services. The previous sheriff, on behalf of the Iberia Parish Law Enforcement District, executed a cooperative endeavor agreement with the City of New Iberia to provide law enforcement services. This agreement does not expire until June 30, 2014. You indicate that the agreement is vague in many respects. However, you believe that the manpower required to provide the services listed in the

agreement far exceeds the force of "no fewer than 55 officers" as stated in the agreement. Further, you state that during the first six months in office, you have done everything you can to comply with the terms of the agreement. However, due to hurricanes and other calamities, many of the costs associated with the agreement have sky-rocketed beyond anything that could have been reasonably anticipated when the agreement was executed in July, 2004. According to your accountants, your office will lose \$1,500,000.00 under the terms of the agreement for the fiscal year July 1, 2008 to June 30, 2009.

Specifically, the Sheriff has asked for our opinion on the following questions:

1. With respect to the Work Release Contract / Lease, you ask whether the lease agreement is binding under La. Rev. Stat. 33:9001, or any other statute, or whether the contract may be terminated if the Department of Corrections cancels the separate contract for work release, or cannot provide enough inmates to make the venture profitable.
2. With respect to the Law Enforcement Cooperative Endeavor Agreement (CEA) with the City of New Iberia, you ask whether a sheriff can obligate his successor to an unprofitable contract by use of the Law Enforcement District under La. Rev. Stat. 33:9003 or any other revised statutes.

The Mayor has asked for our opinion on the legality of an Intergovernmental Agreement executed by the City of New Iberia and the Iberia Parish Law Enforcement District. This Intergovernmental Agreement gives the Iberia Parish Law Enforcement District the use of a City-owned building at no charge to the Law Enforcement District. According to the Mayor, the building has been appraised and it has been determined that the rental for a building of similar size and nature would be approximately \$82,000 a year. The Mayor questions whether such an Intergovernmental Agreement violates the constitutional prohibition against the gratuitous alienation of public property.

At the outset we note that each of the questions presented, and specifically the Sheriff's second question, refer to a Sheriff's ability to enter into a contract or lease, where the terms of such contract or lease purport to bind the Sheriff's successor. Our office has addressed this issue on a number of occasions.

Generally, we have drawn a distinction between contracts executed by the office of "Sheriff" versus those executed by a "Law Enforcement District". For example, in Attorney General Opinion No. 08-0072, we opined that:

"A Sheriff's limited existence is also recognized in the doctrine which provides that contracts entered into by a Sheriff are not binding on his successor in office because a Sheriff may not contract beyond his term of

office. See *Asadie v. Hebert*, 15 So. 2d 392 (Orleans 1943); La Atty. Gen. Op. 829A. Because of this principle, La. R.S. 33:9001, *et seq.*, was enacted to create a public entity known as the 'Law Enforcement District' for each parish, separate from the Sheriff, which has perpetual existence and which is therefore capable of entering into obligations exceeding the term of a Sheriff."

In accord are: Attorney General Opinion No. 01-0129 (opining that a contract by the former sheriff would not be binding upon the newly elected sheriff), Attorney General Opinion No. 92-529 (opining that a successor sheriff is not obligated to pay debts of his predecessor unless he receives funds due his predecessor or receives a balance in the Salary Fund from his predecessor), Attorney General Opinion No. 98-303 (opining that a contract between a Law Enforcement District and owners of a private detention facility may bind the district and any subsequent ex officio chief executive officer of the district when the term of the contract extends beyond the expiration of the term of the current ex officio chief executive officer of the district), Attorney General Opinion No. 90-641 (opining that a contract between the Law Enforcement District and private owners of detention facilities to manage the facility is binding for term of contract, not term of incumbent sheriff) and Attorney General Opinion No. 88-637(A) (opining that the Intergovernmental Agreement between the police jury and Law Enforcement District of Avoyelles Parish is binding upon the successors in office of both the Police Jury and the Law Enforcement District pursuant to the terms of the agreement).

Taking all of this into consideration, we observe that each of the contracts at issue were executed by the Iberia Parish Law Enforcement District. The provisions of La. Rev. Stat. 33:9001, *et seq.* are therefore applicable. As previously recognized by this office, Law Enforcement Districts have perpetual existence and are capable of entering into obligations exceeding the term of a Sheriff. As a consequence, the execution of a contract by a Law Enforcement District for a period of time that exceeds or extends beyond the term of a Sheriff is not illegal per se. In fact, La. Rev. Stat. 33:9004(B) specifically provides:

§ 9004. Additional powers

B. Any contract, agreement, lease, sublease, obligation, management agreement, or other instrument entered into by the law enforcement district **shall be legal, valid, and binding upon the district, including any subsequent ex officio chief executive officer of the law enforcement district**, notwithstanding that the term of such contract, agreement, lease, sublease, obligation, management agreement, or other instrument extends beyond the expiration of the term of the current ex

officio chief executive officer of the law enforcement district. (emphasis added).

Thus, we are of the opinion that the mere fact that a contract executed by a Law Enforcement District extends beyond the term of the Sheriff that executed the contract on behalf of the District is not grounds to void the contract. This conclusion applies to each of the contracts referenced above.

Notwithstanding, the Sheriff also calls our attention to the generally well-known requirement that State Bond Commission approval is required whenever a political subdivision incurs debt. See La. Rev. Stat. 39:1410.60 (A). Failure to obtain the consent and approval of the State Bond Commission renders any contract, debt, or obligation through which a public entity incurs debt null and void. See La. Rev. Stat. 39:1410.63.

In the past, this office has consistently opined that lease-purchase agreements containing a "non-funding out" or a "non-appropriation" clause in favor of the public entity do not constitute incurring debt requiring State Bond Commission approval. See Attorney General Opinion Nos. 83-1045, 81-701, 98-258, 95-508, 95-342, 92-559. On the other hand, a lease which spans more than one fiscal year and contains no "non-appropriation clause" must be submitted to the State Bond Commission for approval. See Attorney General Opinion No. 00-0433A. In accord is the Louisiana Fifth Circuit Court of Appeal decision in *Schwab v. City of Kenner*, 97-287 (La. App. 5 Cir. 3/11/98), 709 So.2d 320. There, the Louisiana Fifth Circuit held that an agreement which allowed the city to display the plaintiff's train collection for a ten-year term in return for a monthly payment was void ab initio, where no approval or consent was obtained from the State Bond Commission prior to execution of the agreement.

Our review of the Work Release Agreement / Lease and the Intergovernmental Agreement fails to reveal any mention of a "non-appropriation" or "non-funding out" clause. Although the Law Enforcement CEA does contain a "non-appropriation" clause, the clause only provides relief to the City of New Iberia. Further, none of the Agreements at issue contain a termination for convenience clause. Still further, we note that the Work Release Contract / Lease contains a penalty clause by which the lease payments would be accelerated and the total amount of rent for the remainder of the term would become due upon the uncured failure of the Law Enforcement District to make timely rent payments.

In our view, each of the Agreements at issue contemplates the expenditure of public funds and/or resources by a public entity over the span of more than one (1) year. We believe such Agreements must contain the appropriate language, such as a termination for convenience provision and either a "non-appropriation" or "non-funding out" clause, in order to protect to the public fisc. In fact, as reflected on their websites, both the

Louisiana Legislative Auditor and the Louisiana Office of Contractual Review recommend and encourage the use of termination for convenience clauses and "non-appropriation" clauses in Cooperative Endeavor Agreements.

As such, it is our opinion that due the existence of the penalty clause in the Work Release Contract / Lease, and the absence of a termination for convenience clause and reciprocal "non-appropriation" or "non-funding out" clauses in any of the Agreements at issue, we believe each of the Agreements incurs "debt" as provided for in La. Rev. Stat. 39:1410.60 and State Bond Commission approval is required for each of the Agreements.

It is our understanding that none of the Agreements were submitted to the State Bond Commission for approval. Accordingly, pursuant to La. Rev. Stat. 39:1410.63, we are of the opinion that the Work Release Contract / Lease, CEA, and Intergovernmental Agreement are null and void and non-binding on the office of the Sheriff, the Law Enforcement District, or the City of New Iberia.

We trust this adequately responds to both of your requests. If either of you should have any questions about the response contained herein, please feel free to contact our office.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:

MICHAEL J. VALLAN
Assistant Attorney General

JDC/MJV/crt

Opinion 09-0003
Syllabus

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Rev. Stat. 33:9004, La. Rev. Stat. 33:1410.60

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Hon. Louis Ackal, Sheriff
Iberia Parish Sheriff's Office
300 Iberia Street, Suite 120
New Iberia, LA 70560-4584

Date Received:

Date Released: April 30, 2009

Michael J. Vallan
Assistant Attorney General