

Louisiana Board of Ethics

**LaSalle Building
First Floor - Griffon Room**

**January 15, 2010
1:00 p.m.**

**617 North 3rd Street
Baton Rouge, Louisiana**

**Appearances
(Commence at 9:00 a.m.)**

Note: Meetings begin on January 14, 2010 and continue to January 15, 2010.

G7. Docket No. 09-377

Appearance in connection with consideration of a request for an advisory opinion on whether an architecture firm that has entered into contracts with the State of Louisiana through the Office of Facility Planning would be subject to the Code of Ethics.

G8. Docket No. 09-378

Appearance in connection with consideration of a request for an advisory opinion on whether an architecture firm that has entered into contracts with the State of Louisiana through the Office of Facility Planning would be subject to the Code of Ethics.

G9. Docket No. 09-610

Appearance in connection with a consideration of a request that the Board waive the \$250 and \$250 late fees assessed against Richard Ieyoub, for failure to timely file a Legislative and Executive ER-2/09 lobbying report.

G10. Docket No. 09-674

Appearance in connection with a request for an advisory opinion concerning an accounting firm providing risk services for Jefferson Parish.

G11. Docket No. 10-035

Appearance in connection with a request that the Board waive the \$500 and \$500 late fees assessed against Celeste Hood, for failure to timely file a Legislative and Executive ER-9/09 lobbying reports.

General Item

Ethics Board Docket No. BD 2009-377 01/15/2010

RE: Appearance in connection with consideration of a request for an advisory opinion on whether an architecture firm that has entered into contracts with the State of Louisiana through the Office of Facility Planning would be subject to the Code of Ethics.

Relevant Statutory Provisions, Advisory Opinions: 1102, 1113

Comments:

FACTS: The Division of Administration, Office of Facility Planning and Control (FPC) requests an advisory opinion on whether or not Washer Hill Lipscomb Cabaniss Architecture (Washer Hill) an architecture firm that has entered into a contract with FP&C to be the designer on the New Clinical Research Facility, LSU Pennington Biomedical Research Center (Pennington Project). As designer, Washer Hill is the representative of the owner and has the authority to act on behalf of the Owner during the construction phase of this project. As designer of record, Washer Hill's duties include, conducting site visits to evaluate the progress and the quality of the Contractor's work, conducting regular progress meetings, preparing and distributing minutes, and submitting monthly status reports with each pay request, verifying that the Contractor's Application for Payments reflects the status of work and the stored material, and recommending and preparing change orders to the contract. Michael Hill is a principal in Washer Hill. TTM submitted a bid for roof repair work on the Pennington Project. TTM was once owned by Michael Hill but was sold to the sons of Michael Hill. TTM withdrew their bid submission; however, the FP&C requests that the Board still render the opinion since TTM is requesting the return of its bid bond and the Board's opinion is necessary to decide that issue.

ISSUE #1: Is the request for an opinion moot since TTM withdrew their bid submission. Is FPC entitled to an opinion on this scenario in order to determine if TTM should receive a refund of the bid bond. Is FPC an "affected person" under the Code.

ANALYSIS: FPC states that it still desires an opinion be rendered regarding TTM since a determination that TTM could not bid on the project under the Code would provide guidance to FPC in making a decision as to pursuing the bid bond. Further, FP&C argues that an advisory opinion on the issue would be consistent with the primary objective of the Code by delineating situations that present too great a danger of a conflict of interest occurring. The FP&C may be faced with the same type of situation again and it requires the guidance of the Board as to how to handle these situations. Further, rendering the opinion will allow the Board to clarify its position on who is a public servant under the Code. Section 601 of the Rules for the Board of Ethics provides that the Board will only render advisory opinions to "affected persons." "Affected person" is defined in the Board's Rules as "any person or governmental agency, or the authorized representative of such person or agency with a demonstrable and objective interest in the Board's

interpretation, construction, and application of any law within the Board's jurisdiction." The staff recommends that the Board decline to issue the advisory opinion since the withdrawal of the bid renders this issue moot.

ISSUE #2: Michael Hill is a principal in Washer Hill. His sons own TTM roofing. Is there a conflict of interest if TTM is awarded a contract on the Pennington Project when Washer Hill is the design architect. Section 1113 of the Code prohibits a public servant, or member of such public servant's immediate family, or legal entity in which he has a controlling interest from bidding on or entering into any contract, subcontract or other transaction that is under the supervision or jurisdiction of the agency of such public servant. "Controlling interest" is an interest in a company either held individually or collectively by a member of his immediate family member that exceeds 25%. TTM Construction is wholly owned by Terence and Travis Hill. Each has a 50% ownership interest.

ANALYSIS: Since TTM Construction is a legal entity in which Michael Hill's immediate family own a controlling interest, it would be prohibited from bidding on or entering into a contract under the supervision and jurisdiction of Washer Hill. (AMA)

Recommendations: Decline to render the advisory opinion since the issue is moot now that the bid has been withdrawn.

BOBBY JINDAL
GOVERNOR



2009-377

ANGELE DAVIS
COMMISSIONER OF ADMINISTRATION

State of Louisiana
Division of Administration
OFFICE OF GENERAL COUNSEL

March 25, 2009

Louisiana Ethics Administration Program
P.O. Box 4368
Baton Rouge, Louisiana 70821

**Re: Request for Advisory Opinion on Project entitled Hurricane Gustav
Related Repairs, Pennington Biomedical Research Ctr., G19-609-09-
ORM, Part 1**

To: Members of Louisiana Ethics Administration Program

The Division of Administration, Office of Facility Planning and Control (FP&C), requests an advisory opinion on the following matter that has recently come to our attention. Because this matter involves roof repair as a result of Hurricane Gustav, time is of the essence, and if there is anything that can be done to expedite this matter, it would be appreciated.

Washer Hill Lipscomb Cabanis Architecture, LLC

According to the records of the Louisiana Secretary of State, one of the principal members of Washer Hill Lipscomb Cabanis Architecture, LLC (WHLC) is Michael W. Hill. On November 17, 2008, WHLC entered into a contract with FP&C to be the designer on the above-entitled project.

According to the Louisiana Capital Improvement Projects Procedural Manual for Design and Construction – 2006 Edition, as the designer, WHLC is the representative of the Owner and has the “authority to act on behalf of the Owner” during the Construction Phase of this project. As the designer of record, WHLC’s duties include, but are not limited, to:

- a. Conducting site visits to evaluate progress and quality of the contractor’s work. As such, the designer “shall endeavor to guard the Owner against defects and deficiencies in the Work of the contractors”;¹
- b. Conducting regular progress meetings, preparing and distributing minutes, and submitting monthly status reports with each pay request;
- c. Verifying that the Contractor’s Application for Payments reflects the status of work and the stored material. This verification requires that the designer assert

¹ Louisiana Capital Improvement Projects Procedural Manual for Design and Construction – 2006 Edition: p. 13

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- that the work and stored materials, to the best of his knowledge, are complete, acceptable and in accordance with the contract documents; and
- d. Recommending and preparing change orders to the contract.

TTM Construction Company, LLC (TTM)

On February 26, 2009, bids were opened on the Hurricane Gustav Related Repairs Project. The apparent low bidder was TTM Construction Company, LLC (TTM).

According to the records of the Louisiana Secretary of State, prior to June 3, 2008, Michael W. Hill, Travis C. Hill and Terrence W. Hill were members of TTM. On June 3, 2008, Michael W. Hill tendered his 51% membership in TTM to Travis and Terrence Hill. At present, the sole members of TTM, according to the Secretary of State, are Travis and Terrence Hill. Travis and Terrence Hill (TTM) are the sons of Michael W. Hill (WHLC).

On March 24, 2009, a letter was sent to TTM and WHLC requesting that they extend the deadline for awarding the contract to it by thirty (30) days while we seek an opinion from the Ethics Administration.

Issues in which the Office of Facility Planning and Control Requests an Opinion

We request an advisory opinion from the Louisiana Ethics Administration as to the following:

- (1) Under Louisiana Revised Statute 42:1102, a "public servant" is defined as a "public employee" or an "elected official", and a "public employee is defined as "anyone, whether compensated or not, who is... (c) Engaged in the performance of a governmental function." Previous case law and advisory opinions have indicated that this definition applies to contractors.² Based upon the duties of the architect as defined above, would Washer Hill Lipscomb Cabaniss Architecture, LLC, be considered a public servant under the Code of Governmental Ethics?
- (2) Under Louisiana Revised Statute 42:1113, no public servant or member of such a public servant's immediate family "shall bid on or enter into a contract ... that is under the supervision or jurisdiction of the agency of such public servant". An immediate family member, under the State Ethics Code, includes children of public servants. Based upon the facts described above, can TTM Construction Company, LLC bid on or contract with Facility Planning and Control when Washer Hill Lipscomb Cabaniss Architecture, LLC is the designer of record?
- (3) Under Louisiana Revised Statute 42:1112, no public servant shall participate in a transaction involving the governmental entity in which any of his "immediate family

² See *Commission on Ethics v. IT Corp.*, 423 So.2d 695 (La. App. 1 Cir. 1982), *In re T. Baker Smith & Son, Inc.*, Ethics Board Docket No: 2004-336

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members" has a substantial economic interest. Based upon the information above, can Washer Hill Lipscomb Cabaniss Architecture, LLC, provide design services to Facility Planning & Control when TTM Construction Company, LLC is the lowest responsive bidder?

If you need any further information on these issues, please contact me.

Sincerely,



Pamela Miller Perkins
General Counsel

PMP/JB/eb

c: Washer Hill Lipscomb Cabaniss Architecture, LLC
TTM Construction Company, L.L.C.

BOBBY JINDAL
GOVERNOR



ANGELE DAVIS
COMMISSIONER OF ADMINISTRATION

State of Louisiana
Division of Administration
OFFICE OF GENERAL COUNSEL

April 29, 2009

VIA HAND DELIVERY

Louisiana Ethics Administration Program
P.O. Box 4368
Baton Rouge, LA 70821

RE: New Clinical Research Facility, LSU Pennington Biomedical Research Center,
Project No. 19-609-06S-01; and
Hurricane Gustav Related Repairs, Pennington Biomedical Research Center,
G19-609-09-ORM, Part 1

To Whom It May Concern:

This letter is in response to the recent letters regarding to the above- referenced matters submitted to this Board by Milton Womack, Inc., Washer Hill Lipscomb Cabanis Architecture, LLC (WHLC) and Michael Hill, AIA Louisiana – The Louisiana Architects Association (AIA), and the Louisiana Association of General Contractors (AGC).

Prior to discussing the issues presented, the Division of Administration, Office of Facility Planning and Control (FP&C) would like to make clear that it has no ill-will towards any of these entities. FP&C's main objective in this request is the same as that of the Ethics Board. It is to ensure "impartiality, fairness and equality of treatment toward those dealing with government; assurance that decisions of public importance will not be influenced by private considerations; maintenance of public confidence in government (wherein enters the matter of appearances); and prevention of use of public office for private gain."¹

I. Current Status of Ethics Request

On March 25, 2009, on behalf of FP&C, the undersigned wrote two separate letters to this Board requesting an opinion on the following projects:

(A) New Clinical Research Facility, LSU Pennington Biomedical Research Center, Project No. 19-609-06S-01 (Clinical Research Facility Project); and

¹ La. R.S. 42:1101(B), *Glazer v. Com'n on Ethics for Public Employees*, 431 So.2d 752, 755-56 (La. 1983).

Office of General Counsel • Post Office Box 94095 • Baton Rouge, Louisiana 70804-9095
Claiborne Building • 1201 N. 3rd Street • Suite 7-211 • Baton Rouge, Louisiana 70802
(225) 342-7154 • Fax (225) 219-7572
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(B) Hurricane Gustav Related Repairs, Pennington Biomedical Research Ctr.,
G19-609-09-ORM, Part 1 (Roof Repair Project).

A. Roof Repair Project

Although FP&C has not withdrawn its request for an advisory opinion regarding the Roof Repair Project, no one has addressed the issue. Perhaps, it is because the responding entities believe there is no justiciable controversy. FP&C, however, respectfully disagrees.

After receiving notice that FP&C requested an Ethics Advisory Opinion from this Board on the two projects, on April 6, 2009, TTM Construction, L.L.C. (TTM), the low bidder on the Roof Repair Project, withdrew its bid. The withdrawal of the bid did not moot the issue for a number of reasons.

First, in its withdrawal, TTM requested that its bid bond be returned. FP&C still desires an advisory opinion from the Board on this particular situation. A determination that TTM could not bid on this project under the Ethics Code will provide guidance to FP&C in making a decision as to pursuing the bid bond.

Second, FP&C's request is for an advisory opinion, not a request for charges to be levied against a party.² An advisory opinion is not a decision on a formal charge.³ It is a non-binding interpretation of the law. An advisory opinion on this issue would be consistent with the primary objective of the Ethics Code, which is "to prevent not only the actuality of conflicts of interest, but also to prevent the occurrence of those situations that tend to create a perception of conflict of interest. It does this by delineating situations that present too great a danger of a conflict of interest occurring."⁴ When one considers the number of architects and contractors that do business with FP&C, the danger of this same type of situation occurring again is quite real. FP&C seeks guidance from the Ethics Board should it encounter a similar situation in the future.

Third, when one considers the difference between FP&C and the interested parties' interpretation of the Ethics Code and the difference in various opinions by the Board and the courts as to the provisions questioned, the current definition of "public employee" and "governmental function" obviously need further clarification. The facts involving the Clinical Research Facility Project are different from the facts involved in *In Re Taylor Porter*. For that matter, the facts involved in the Clinical Research Facility Project are different from the facts involved in the Roof Repair Project. As this Board noted in *In Re Taylor Porter* regarding the very issue presented in our request, "it is necessary that such a determination be made on a case-by-case basis."⁵

² La. R.S. 42:1134

³ *In Re Taylor Porter*, Opinion No. 2008-1150, page 6

⁴ *In Re Beychok*, 495 So.2d 1278, 1281 (La.1986)

⁵ *In Re Taylor Porter*, Opinion No. 2008-1150, page 7



LONG LAW FIRM L.L.P.
BATON ROUGE • WASHINGTON D.C.

C. Kris Kirkpatrick
Michael A. Patterson
Joseph E. Johnson
Albert Dale Clary
David L. Cooney
C. Stokes McConnell, Jr.
J. Wendell Clark

Jamie Hurst Watts
Adrian G. Madson
Jacques A. Pichard
S. Roscoe Barnett
Mark L. Barber
Sebastian R. Caballero

Russell B. Long (past-convict)
19 Louisiana and States of Colorado
19 LL.M. (Boston University)
7 A Professional Law Corporation
7 A Licensed Law Firm

May 11, 2009

VIA HAND DELIVERY

Louisiana Ethics Administration Program
617 North Third Street
LaSalle Building, 10th Floor
Baton Rouge, Louisiana 70802

Re: Response to Correspondence from the Division of Administration and the Office of Facility Planning and Control regarding Request for Advisory Opinion on Project entitled New Clinical Research Facility, LSU Pennington Biomedical Research Center, Project No. 19-609-06S-01, Part 01.

To: Members of the Louisiana Ethics Administration Program:

Please accept these comments on behalf of Washer Hill Lipscomb Cabaniss Architecture, LLC (WHLC) and Michael Hill in response to the April 29, 2009 correspondence from the Division of Administration (DOA) Office of Facility Planning and Control (FPC). As you are aware, one of WHLC's principals is Michael Hill, and Terry Hill, the President of Womack, is his brother.

Roof Repair Project

DOA/FPC takes the position it will not withdraw its request for an advisory opinion regarding the roof repair project even though the contractor, TTM Construction, LLC, has withdrawn its bid. DOA/FPC suggests to the Board that the basis for its insistence is that it wishes to have assistance in making a decision whether to pursue TTM's bid bond. This can only be characterized as punitive. There is nothing pending which requires an advisory opinion. The Board should decline DOA/FPC's request.

**Pursuant to WHLC's scope of services and the applicable case law and statutes,
WHLC is not engaged in the performance of a governmental function.**

Central to the questions before the Board of Ethics is whether WHLC, a private entity that contracted with the Division of Administration pursuant to a joint venture to perform architectural

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services for one of its many projects, is a government employee engaged in the performance of a governmental function under La. R.S. 42:1102 (18). For the reasons submitted to you before and for reasons more fully stated herein, the Board of Ethics' answer to this question should be no.

In the case of *Commission on Ethics for Public Employees v. IT Corporation*,¹ the court determined IT Corporation was a state employee engaged in the performance of a state function pursuant to state law. Act 334 of 1978 provided, "it is in the public interest and within the police powers of the state to establish a framework for the regulation, monitoring, and control of the generators, transportation, storage and disposal of such hazardous waste..." (emphasis added) IT had the duty of securing feasible sites for the storage and disposal of hazardous waste. Accordingly, IT was charged with one part of the framework in establishing where the storage and disposal of hazardous waste would be located. In finding IT was a state employee, the court did not use an expansive interpretation of being engaged in the performance of a state function, as is necessary to find WHLC is engaged in the performance of a governmental function.

The same was true with the case of *In Re: George Dyer and Fire Apparatus Specialists, Inc.*² The volunteer fire department contracted to be the sole provider of fire protection for the district; accordingly, the volunteer fire department, of which George Dyer was the fire chief, was engaged in the performance of a governmental function. (emphasis added) An expansive interpretation was again not needed to find that the sole fire fighters for the district were engaged in the performance of a governmental function. No government employees provided these services. In the instant matter, however, WHLC has architectural duties apart from the role of the DOA/FPC. It is not as though the work performed by the architects of WHLC is the same as or takes the place of the function of the DOA/FPC. Accordingly, the Board should not find WHLC is engaged in the performance of the governmental function assigned to the DOA/FPC. To find WHLC is a state employee requires an expansive interpretation of being engaged in the performance of a governmental function, which the Ethics Board has previously found to be inappropriate.

The DOA/FPC relies on *In Re: Kean Miller 2009-169*³ to suggest that WHLC is a state employee. While the case suggests that Kean Miller is a state employee, this case does not further the argument that WHLC is a state employee. There are many points of distinction which suggest WHLC is not a state employee.

¹ *Commission on Ethics for Public Employees v. IT Corporation*, 423 So.2d 695 (La. App. 1 Cir. 1982.)

² *In Re: George Dyer and Fire Apparatus Specialist, Inc.* 95 2297 (La. App 1. Cir. 6/28/96), 677 so.2d 1075.

³ *In Re: Kean Miller 2009-169*

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The rationale of the Board finding Kean Miller is a state employee is outlined in opinion 2009-154.⁴ Kean Miller was found to be a public employee pursuant to La. R.S. 42:1102-18(a) (iii and iv). Kean Miller was hired to 1.) attend meetings of the OCD State Appeal Panels approximately three times a week, 2.) provide legal counsel to the Louisiana OCD State Appeals Panels as requested with regard to disposition of appeals before panels; 3.) draft proposed decision letters incorporating the decision of the Appeals Panels; and 4.) represent OCD in litigation arising out of the decision of the Appeal Panels. Following Hurricane Katrina, the OCD had approximately 5,000 appeals to be heard and four staff members to make recommendations to the panel. Kean Miller provided most of its services in the office of the OCD, including clerical/paralegal services. Kean Miller's staff also performed the same functions as the Road Home Program staff under the head of OCD and the head of the Road Home Program. The contract was entered into due to the volume of appeals.

WHLC did not contract with the state to address the volume of the DOA/FPC's work or to perform the same function of the DOA/FPC. WHLC as a joint venturer was hired to perform professional architectural services pursuant to contract with the Division of Administration for a Capital Outlay Project. The role of WHLC in performing architectural services is distinct, separate and apart from the administrative role of the DOA/FPC. Kean Miller's employees were performing the same functions as the agency staff due to the volume of appeals in the same office as the OCD and under the head of OCD and the head of the Road Home Program. WHLC does not perform its services in the offices of the DOA/FPC, and the architects of WHLC are supervised by and subject to the authority of WHLC. To find that the DOA/FPC has supervision or authority over the employees of privately owned companies who contract with the state for Capital Outlay Projects would lend to an absurd result. Where would the line of state employees end? The DOA/FPC functions as the owner of the project through a contract for services. A finding that Kean Miller is engaged in the performance of a governmental function based on these pertinent points does not further the argument that WHLC is a state employee pursuant to La. R.S. 42:1102-18(a) (iii and iv).

The question is whether WHLC is "engaged in the performance of governmental function" in providing architecture services to the DOA/FPC for the Clinical Research Facility at LSU Pennington Biomedical Research Center pursuant to state law. The answer is no.

La. R.S. 39:1 creates the Division of Administration as a division of the Office of the Governor. La. R.S. 39:121 says the Division of Administration is to "exercise supervision over the expenditure of funds and the construction projects." La. R.S. 39:121(4) specifically provides, "the Division of Administration shall "[s]upervise construction, approve estimates, and select and employ engineers, architects, and other personnel necessary in connection with the administration of contracts for projects."

⁴ Opinion No. 2009-154

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Pursuant to La. R.S. 39:124, "facility planning and control section shall make periodic inspections at all stages of construction of any facility constructed pursuant to this Part and shall make detailed reports which shall be made available to the legislature and to the public. Such inspections shall include but not be limited to the close technical on-site examination of the materials, structure, and equipment and surveillance of the workmanship and methods used to insure reasonably that the project is accomplished in compliance with information given by the contract documents and good construction practices."

La. R.S. 39:125 also provides the "facility planning and control section shall be responsible for directing final payment for work done on each project. However, if upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the facility planning and control section shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment. Upon completion of the project the facility planning and control section shall release it to the agency. The facility planning and control section shall be responsible for making an inspection of the project prior to the expiration of the guarantee period to observe any defects which may appear within one year after completion of the contract. The facility planning and control section shall give prompt written notice to the contractor of defects which are due to faulty materials and workmanship."

Section 7 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction (Procedure Manual) outlines the role of the architect.¹ The array of services shows the

¹ The role of the architect involves designing the project within the applicable legal requirements and cost constraints and advising the owner if this cannot be done. The designer is charged with providing the necessary geotechnical reports and surveys, and finalizing the time schedule. The designer is to submit a statement of probable costs, and a report based on the applicable codes for state owned buildings. The designer is responsible for the coordination of all documents and disciplines. The designer distributes construction documents and is required to comply with all provisions of Public Bid Law. The designer evaluates prior approval requests for substitution of materials, products and equipment required by the applicable statutes and owner procedures. The designer issues the agenda and modifies construction documents. The designer participates in a pre-bid conference in accordance with the contract documents. The designer provides a form to the owner to tabulate the bids. The designer analyzes the bids and makes a recommendation to the owner as to whether to award the bid to the low bid contractor or to reject all bids. The architect administers the construction documents and submits to the owner a cost data form for the owner's evaluation. The architect makes recommendations for the owner's approval in regard to testing. The architect advises and consults with the owner and communicates the owners instructions to the contractor. The designer can act on behalf of the owner as provided for the manual. The designer conducts a pre-construction conference. The designer and consultants must visit the site for inspections. The designer is to guard the owner against defects and deficiencies. Reports are required from the designer and consultants to the owner upon each visit. The designer agrees to qualifications, experience and training of his representatives in making decisions and interpreting construction documents. The designer is to confirm in writing all such decisions to the owner. The designer is also charged with replacing any representative the owner determines does not meet the qualifications. The designer issues certificates for payment upon determining the quality and progress of the contractor's work. The designer instructs the contractor to conduct monthly meetings in regard to project scheduling. The designer is to

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design professional functions in the role of an architect, which supports the supervisory governmental function of the DOA/FPC. The architect certainly assists the DOA/FPC, but the architect does not perform the function of the DOA/FPC. It is misleading to suggest otherwise. The DOA/FPC has its own supervisory role, its own inspections to perform, its own budgetary concerns to address, its own reports to write, its own contract administration to perform, its own duties to the legislature and the public arising from these projects, essentially, its own administration to perform separate, independent and apart from the work of the architect. While the DOA/FPC may rely on the information supplied by the architect in performing its tasks, to find that anyone whose work is relied upon by the government agency in performing its duties is engaged in the performance of a governmental function is overly broad. The Board of Ethics cannot find WHLC is a state employee without interpreting 42:1102 (18)(a)(iii) expansively.

This Board has said quite correctly and is worth again quoting here:

"The Board takes cognisance of the untold hundreds, if not thousands, of contracts between private entities and governmental agencies. The object of these contracts varies greatly. Some provide professional services (legal, accounting, architecture, landscape architecture, medical, engineering, etc.); some provide construction, renovation or repairs of buildings, roads, equipment, etc.; some provide social services, employment and management guidelines, insurance advice and policies, some provide products including consumables; the list is virtually endless. To hold that each of those private entities and their employees are public employees appears beyond the intent of the legislature in adopting Sec. 1102(18)(a). If the legislature intended that result, it would simply have provided in Section 1102(18)(a) that "any

submit to the owner, user agency and contractor a monthly status report. The form of the report is supplied to the designer. The Designer's Statement for Professional Services and the Contractor's Certificate for payment shall be supplied to the owner. The designer is the impartial judge between the owner and contractor for the requirements of the contract documents. The designer can reject all work that is not in compliance with the contract documents. The designer reviews shop drawings, samples and submissions of the contractor only for conformance of the design concept. The designer is to respond to requests for information from the contractor. Only with the authorization of the owner shall the designer prepare change orders. The designer conducts an inspection with the owner, user agency and the contractor to determine if the contractor's work is in general accordance with the contract documents. When the owner desires to accept the work on full or substantial completion, the designer shall recommend such acceptance in writing, excepting the retained percentage, liquidated damages or the value of the punch list items. Upon receipt of the clear lien certificate, the designer makes the final inspection. The designer issues guarantees, operation and maintenance manuals, keys and other closing documents for the owner. After acceptance by the owner, the designer prepares a final report containing information requested by the owner and two sets of as built drawings. The designer reviews and approves the punch list. The designer follows up on items to be corrected during the warranty period.

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person who provides a service or product under contract to a governmental agency is deemed to be a public employee."⁶

A finding that WHLC is a state employee has far reaching ramifications. Each private architect who contracts from here on with the DOA/FPC for Capital Improvement Projects will be subject to the same strict confines of the ethics code applicable to state employees. The Procedure Manuel outlines the roles for all architects working on these projects, and the revised statutes applicable to the DOA/FPC apply in each instance as well. Accordingly, a finding that the architect is engaged in the performance of a governmental function in this instance would mean the same result for each architect engaged in services under any Capital Outlay Project.

Womack's bid is in the best interest of the tax payer

DOA/FPC claims the tax payer is at a great disservice when contractors bid on projects designed by immediate family members⁷. The DOA/FPC conveniently excluded from its analysis that through the vetting process of the public bid, Womack's bid was nearly \$400,000 less than the next highest bid. If WHLC is found to be a public employee and in turn Womack is precluded from proceeding with the project, an extra \$400,000 will be necessary to complete this project. We again caution against an expansive interpretation of WHLC being engaged in the performance of the governmental function for practical reasons such as this.

At the time WHLC became the architect, there were no ethical concerns to address regardless of whether WHLC is found to be a state employee or not. WHLC as the architect designed the plans, prepared the specifications to be bid, etc. It was not until after Womack bid the job and the DOA/FPC awarded the contract to Womack that the DOA/FPC claimed there was an ethical conflict. The DOA/FPC did not raise its ethical concerns until the job was approximately one year from completion. It would be a great disservice to the taxpayers of this state to nullify the contract of the architect and/or the contract of the contractor. Given most of the work has been completed, the parties request that neither contract be nullified, as no ethical impropriety grounded in fact has been found.

The DOA/FPC's assertions of ethical concerns arising from the work of WHLC and Womack are unfounded.

The DOA/FPC contends the primary objective of the ethics code is "to prevent not only the

⁶ In Re: Taylor Porter 2008-1150.

⁷ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

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actuality of conflicts of interest, but also to prevent the occurrence of those situations that tend to create a perception of a conflict of interest."⁸ In finding a conflict of interest under these circumstances and based on the assertions of the DOA/FPC, one would need to presume first of all, these actions are possible and secondly, WHLC is prepared to ignore the provisions of the Louisiana State Board of Architectural Examiners, cheat, lie and steal in order to further its interests and those of Womack. This is an extreme charge in order to find an ethical conflict, especially since any design professional would face legal and professional ramifications for the actions suggested by the DOA/FPC. The DOA/FPC's arguments for ethical conflict also ignore the fact that the architecture services were provided subject to a joint venture with Post Architects.

A. Closing Specifications

DOA/FPC contends that the designer could easily manipulate its design to favor the contractor by including a closing specification.⁹ The DOA/FPC is aware this type of manipulation did not occur. Section 7.1.4 of the Procedure Manual specifically addresses closing specifications. Generally, state law prohibits closing specifications with few exceptions. Section 7.1.4 (1)(b) of the Procedure Manual provides, "Any reason for closing specifications as provided for by law shall be brought to the attention of the owner in writing for review." Accordingly, any closing specification included in the plans would not be a secret. Further, for this specific project, the construction documents were developed with a closing specification, not at the insistence of the architect, but at the request of the user agency. The closing specification requested by the user agency involved the fire alarm and mechanical system, and this closing specification was approved by FPC when Womack bid the project. The DOA/FPC knows closing specifications are generally prohibited. The DOA/FPC also knows that if a closing specification is included in the plans, the owner will be aware of the specification and the specification will be subject to approval. Suggesting an ethical conflict based on closing specifications which are known by the owner and subject to approval is misleading.

B. Price Increases and Change Orders

The DOA/FPC contends an architect could approve cost increases and approve change orders to increase the contract price as a benefit to the contractor.¹⁰ An architect cannot unilaterally approve cost increases or change orders in favor of family members and to suggest that one can is again misleading, especially when dealing with charges of ethical impropriety. Section 7.1.6.15 of the Procedure Manual further provides, "Only with the authorization of the Owner, shall the Designer

⁸ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 2.

⁹ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

¹⁰ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

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prepare Change Orders. The designer shall obtain from the Contractor his estimate of cost and time changes in accordance with the contract documents for the Change Order, review and approve same and submit it to the Owner for approval before any changes are made in the Contract." There is no basis for the claims of the DOA/FPC in regard to ethical concerns over price increases and change orders. (Emphasis added)

C. Ignoring Delays Caused by the Contractor

The DOA/FPC argues that an ethical conflict may arise if the architect ignores delays caused by the contractor resulting in delays of occupancy and loss of the owner's right to contractually stipulated damages.¹¹ This argument ignores the fact that any weekly or monthly reports¹² from the architect are submitted to the owner for review, ignores the premise that the DOA is charged with performing its own inspections pursuant to La. R.S. 39:121(4) and ignores the fact that the facility planning and control section is to make periodic inspections at all stages of construction and is to make detailed reports available to the legislature and to the public pursuant to La. R.S. 39:124. The DOA/FPC seems to argue the WHLC has free reign, but there is owner oversight as to the status of the project on a strict and routine basis. Further, WHLC is providing its services subject to a joint venture with Post Architects. It is impractical to argue that long delays caused by the contractor would be ignored by the architect.

Further, the designer is to be the "impartial judge of the performance there under by both the Owner and Contractor,"¹³ and the designer shall "endeavor to guard the owner against defects and deficiencies in the work of the contractor."¹⁴ Accordingly, both WHLC and Post Architects can be sued for breach of contract and for professional negligence if the architects participate in the scheme alleged by the DOA/FPC. One who asserts an ethical conflict is present or potentially present must presume WHLC is engaged in professional negligence and is breaching its contract to the owner. The Board should not presume professionals are engaged in schemes of professional negligence and breaches of contract. No reasonable person would engage in these actions.

¹¹ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

¹² Section 7.1.6.6 and 7.1.6.10 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

¹³ Section 7.1.6.11 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

¹⁴ Section 7.1.6.6 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

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D. Information Conveyed only to the Favored Contractor

DOA/FPC contends that an architect could convey information to a preferred contractor that would not be known by any other contractor bidding the job, which would allow for an unfair, competitive advantage in securing the bid.¹⁵ There are factual constraints to this argument, and again, no reasonable professional would engage in this activity.

Section 7.1.5 of the Procedure Manual establishes, "Upon receipt of written approval from the User Agency and other State regulatory agencies, receipt of corrected and completed Construction Documents, and approval of the Latest Statement of Probable Construction Costs, the Owner may advertise the project for bids and shall be assisted by the Designer in obtaining bids." Section 7.1.5.6 also establishes that "the architect provides the Owner with a form to assist the owner in tabulating the bids." Accordingly, the process for tabulating the bids is the same as to all submissions and based on the documents previously approved. It is unclear how secretive information could give one contractor an advantage over another if all of the contractors' bids are based on the same plans and specifications approved by the owner, user agency and state regulatory agencies, and if the criteria contained in the plans and specifications is used to evaluate the bids.

Any vagueness in the plans and specifications may be called into question by any of the contractors. Accordingly, this is simply another roadblock to any attempts by an architect to unethically favor a contractor.

The argument of the DOA/FPC also suggests that the owner would be completely unaware if the criteria upon which the bids were evaluated favored a particular contractor. We suggest this would be clear if an architect was brazen enough to do this.

It should be noted Womack presented a bid that was \$400,000 lower than any of the other contractors. This speaks to the integrity and professional reputations of WHLC and Womack in that the bid was not challenged by any of the other contractors. The potential challenge of other contractors in regard to a bid submission is a deterrent to any design professional from favoring one contractor over another.

It should not be presumed that professionals are engaged in these sorts of activities. There are strong deterrents to these practices as provided by the Louisiana State Board of Architectural Examiners and the laws of this state.

¹⁵ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

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E. Ignoring Defective or Substandard Construction

The argument by the DOA/FPC that an architect might just ignore defective or substandard construction is completely unreasonable.¹⁶ **No architect wants problems with the construction of his project.** The architect is charged with protecting the owner from defects and deficiencies.¹⁷ Ignoring defective and substandard construction, no matter who the contractor is, would likely subject the architect to professional negligence and breach of contract claims resulting in damages, repair costs, emotional distress damages, etc. When there are legal and professional ramifications of this nature, it should not be presumed that these actions would occur. Especially in the case of a joint venture, it is not only WHLC that would be exposed to legal action, but also Post Architects.

The DOA/FPC's argument suggests it has no control over the project, but the DOA/FPC has total control. In fact, it has final acceptance. Pursuant to 7.1.6.15 of the Procedure Manual, R.S. 38:2241.1 gives the owner discretion to make acceptance on either full completion or substantial completion. The designer conducts an inspection with the Owner, User Agency, and Contractor to determine if the work is in general accordance with the contract documents. Accordingly, the agency conducts its own independent evaluation as to the construction.

Pursuant to La. R.S. 39:125, "facility planning and control section shall be responsible for directing final payment for work done on each project. However, if upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the facility planning and control section shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment. Upon completion of the project the facility planning and control section shall release it to the agency." There are so many reasons an architect would not ignore substandard construction regardless of who the contractor is that this argument is unfounded.

Lack of Capacity for Decision Making

Crucial to finding no ethical conflict in *In Re: Kean Miller*¹⁸ was that Kean Miller was not the decision maker.¹⁹ The OCD was to be the decision maker as to the outcome of the appeals and the decision as to what title company to use was made by IFC and the Road Home Applicant. As

¹⁶ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6

¹⁷ Section 7.1.6.6 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

¹⁸ *In Re: Kean Miller* 2009-169

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outlined in the Procedure Manual, the owner maintains approval over the plans and specifications, any change orders are subject to the owner's approval, inspections are made by not only the architect, but by the government agencies as well, payments are made subject to the approval of the owner, and final acceptance of the project is subject to the approval of the owner. The owner, not the architect, makes the final decision on aspects crucial to the project, the same aspects the DOA/FPC seems to suggest lead to an ethical conflict.

Conclusion

WHLC should not be deemed a public employee. The DOA/FPC has set forth scenarios for ethical conflict that are neither factually, legally or ethically plausible. One would need to presume architects have complete control over the plans and acceptance of these state owned projects to assert an ethical conflict. Further, one would have to presume architects who have excellent reputations in their fields would partake in unprofessional actions which would subject them to professional ridicule and hardship as well as lawsuits in order to further an already independently successful contractor. These are not presumptions that should be made to find real ethical conflict exists.

Very truly yours,

LONG LAW FIRM, L.L.P.

MICHAEL A. PATTERSON
SEBASTIAN R. CABALLERO

MAP: src
cc: Mike Hill

General Item

Ethics Board Docket No. BD 2009-378 12/18/2009

RE: Appearance in connection with consideration of a request for an advisory opinion on whether an architecture firm that has entered into contracts with the State of Louisiana through the Office of Facility Planning would be subject to the Code of Ethics.

Relevant Statutory Provisions, Advisory Opinions: 1102, 1113

Comments:

FACTS: The Division of Administration, Office of Facility Planning and Control (FPC), requests an advisory opinion on whether Washer Hill Lipscomb Cabaniss Architecture (Washer Hill) an architecture firm that has entered into a contract with FPC to be the designer on the New Clinical Research Facility, LSU Pennington Biomedical Research Center (Pennington Project) is a public servant. In December 2007, the State of Louisiana, through the Division of Administration, entered into a contract with Washer Hill - Post Architects - A Joint Venture for design services in connection with the Pennington Project. As designer, Washer Hill is the representative of the owner and has the authority to act on behalf of the Owner during the construction phase of this project. Washer Hill's duties include, conducting site visits to evaluate the progress and the quality of the Contractor's work, conducting regular progress meetings, preparing and distributing minutes, and submitting monthly status reports with each pay request, verifying that the Contractor's Application for Payments reflects the status of work and the stored material, and recommending and preparing change orders to the contract. Michael Hill is a principal in Washer Hill. Terry Hill, the brother of Michael Hill, is the President of and partial owner of Milton J. Womack, Inc. Is there a conflict of interest if Milton J. Womack, Inc. is awarded a contract on the Pennington Project when Washer Hill is the design architect.

The Board concluded at the October 28, 2009 meeting that Washer Hill is a public employee and is therefore subject to the provisions of the Code of Governmental Ethics.

The remaining issue is whether Milton J. Womack, Inc. may be awarded a contract on the Pennington Project when Washer Hill is the design architect.

Michael Hill is a principal in Washer Hill. Terry Hill, the brother of Michael Hill, is the President of and partial owner of Milton J. Womack, Inc. Section 1113 of the Code prohibits a public servant, or member of such public servants immediate family, or legal entity in which he has a controlling interest from bidding on or entering into any contract, subcontract or other transaction that is under the supervision or jurisdiction of the agency of such public servant. "Controlling interest" is an interest in a company either held individually or collectively by a member of his immediate family member that exceeds 25%. Section 1112B provides no public servant shall participate in a transaction involving the governmental entity in which to his actual knowledge, any member of his immediate family has a substantial economic interest.

Terry Hill is President of Milton J. Womack, Inc. and has submitted affidavits stating that he does not have a controlling interest in Milton J. Womack, Inc. and that he is the sole member of his immediate family owning any common stock in Milton J. Womack, Inc. At no time has Terry Hill owned more than 23.6843% common stock in Milton J. Womack, Inc. The contract to Milton Womack has already been awarded therefore the prohibited transaction, if any, is past conduct. The Board does not issue advisory opinions regarding past conduct.

Michael Hill is Vice President of Washer Hill and is a 21.5% shareholder. No other member of Michael Hill's family has any ownership interest in Washer Hill. Michael Hill oversees the production of all the contract documents and construction administration of all projects for Washer Hill. On the Pennington project, he oversees Jason Bethany who handles the day to day construction administration of the project and attends all jobsite meetings with Mr. Bethany. Section 1112B provides no public servant shall participate in a transaction involving the governmental entity in which to his actual knowledge, any member of his immediate family has a substantial economic interest. (AMA)

Recommendations: Adopt proposed advisory opinion.

DATE

Pamela Miller Perkins
Division of Administration
Office of General Counsel
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

Re: Ethics Board Docket No. 2009-378

Dear Ms. Perkins:

At its October 28, 2009 meeting, the Louisiana Board of Ethics ("Board") considered your request for an advisory opinion on whether Washer Hill Lipscomb Cabaniss Architecture (Washer Hill) an architecture firm that has entered into a contract with the Division of Administration, Office of Facility Planning and Control (FPC) to be the designer on the New Clinical Research Facility, LSU Pennington Biomedical Research Center (Pennington Project) is a public employee and therefore subject to the provisions of the Code of Governmental Ethics. You further requested an opinion as to whether any conflict is presented if a company partially owned by the brother of Michael Hill, a principal in Washer Hill, is awarded a contract on the Pennington Project.

In December 2007, the State of Louisiana, through the Division of Administration, entered into a contract with Washer Hill Lipscomb Cabaniss Architecture - Post Architects - A Joint Venture for design services in connection with the Pennington Project. As designer, Washer Hill is the representative of FPC and has the authority to act on behalf of FPC during the construction phase of this project. Washer Hill's duties include, conducting site visits to evaluate the progress and the quality of the Contractor's work, conducting regular progress meetings, preparing and distributing minutes, and submitting monthly status reports with each pay request; verifying that the Contractor's Application for Payments reflects the status of work and the stored material; and recommending and preparing change orders to the contract. Michael Hill is a principal in Washer Hill. Terry Hill, the brother of Michael Hill, is the President of and partial owner of Milton J. Womack, Inc.

The Board concluded and instructed me to inform you that Washer Hill is a public employee by virtue of its contract with FPC for the limited purposes of the scope of the contract between FPC and Washer Hill and is subject to the provisions of the Code of Governmental Ethics. Section 1102 (18)(a)(iii) and (iv) of the Code define a "public employee" as any one compensated or not who is engaged in the performance of a governmental function or under the supervisory or authority of an elected official or another employee of the governmental entity. Black's Law dictionary defines a governmental function as a government agency's conduct that is expressly or impliedly mandated or authorized by constitutional law or other law that is carried out for the benefit of the general public. Washer Hill's responsibility is directly related to FPC's governmental function pursuant to its statutory duties under La. R.S. 39:121 namely that FPC exercises supervision over the expenditure of Capital Outlay Funds; supervises construction; approves estimates; selects personnel necessary for the administration of contracts for projects; performs periodic inspections of projects; directs

Ethics Board Docket No. 2009-378

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DATE

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payment for work done on each project; determines whether contract documents have been fully complied with by inspecting the project during construction; makes a final inspection of the project during the warranty period; and gives prompt written notice to the contractor of defects in workmanship. Therefore, Washer Hill is performing a governmental function by providing the contractual services in overseeing, on behalf of the FPC, the Pennington Project.

The Board further concluded and instructed me to inform you that it has declined to issue an advisory opinion as to the award of the contract to Milton J. Womack, Inc. as it concerns past conduct. However, generally, Section 1113 of the Code prohibits a public servant, member of his immediate family, or legal entity in which he has a controlling interest from entering into any contract, subcontract or other transaction under the supervision or jurisdiction of the agency of such public servant. "Controlling interest" means any ownership in any legal entity, held by or on behalf of an individual or a member of his immediate family, either individually or collectively, which exceeds twenty-five percent of that legal entity.

In addition, Section 1112 of the Code prohibits a public employee from participating in transactions involving the governmental entity in which he or a member of his immediate family has a substantial economic interest. Michael Hill, as a principal in Washer Hill, is considered a public employee for the limited purposes of the scope of the contract between FPC and Washer Hill and the services that he provides pursuant to the contract, and is therefore subject to the participation restrictions contained in Section 1112 of the Code. As the Pennington Project proceeds, Michael Hill is prohibited from participating in any transactions involving Milton J. Womack, Inc. and/or Terry Hill. "Transaction involving the governmental entity" means any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter which the public servant or former public servant of the governmental entity in question knows or should know: (a) Is, or will be, the subject of action by the governmental entity. (b) Is one to which the governmental entity is or will be a party. (c) Is one in which the governmental entity has a direct interest. A transaction involving the agency of a governmental entity shall have the same meaning with respect to the agency.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Ethics. The Board issues no opinion as to past conduct or laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (225) 219-5600 or (800) 842-6630.

Sincerely,

LOUISIANA BOARD OF ETHICS

Alesia M. Ardoin
For the Board

DRAFT

2009-377

Wray & Pierce, L.L.P.

ATTORNEYS AT LAW
509 ST. LOUIS STREET
POST OFFICE BOX 3238
BATON ROUGE, LOUISIANA 70821-3238
TELEPHONE: (225) 334-9200
FAX: (225) 334-9288
WWW.WRAYLAW.COM

RUSSEL W. WRAY
CHRISTOPHER P. PIERCE

RICHELLE N. MOORE
LANI B. DURIO
DIANA B. MOORE

W. P. WRAY, JR.
OF COUNSEL

December 16, 2009

Via Facsimile ONLY

Ms. Alesia Ardoin
Ethics Administration Program
P.O. Box 4368
Baton Rouge, Louisiana 70821

Re: Louisiana Board of Ethics Docket Nos. 2009-377 and 2009-378

2009 DEC 16 AM 10:50
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ETHICS ADMINISTRATION

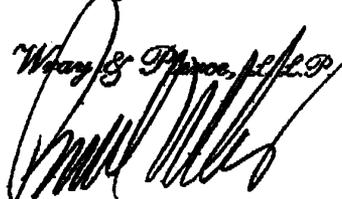
Dear Alesia:

We understand the matter with TTM is moot.

That leaves only the issue with regard to Milton J. Womack, Inc. The language of La. R.S. 42:1112 and 1113 could not be more clear. Since the board has ruled the joint venture of Washer Hill Lipscomb Cabaniss Architecture, LLC and Post Architects is a public servant, then the law does not preclude Womack from bidding because Terry Hill does not own a controlling interest. There is no dispute about the fact he owns less than 25%, and no real issue for the Board to resolve or issue an advisory opinion on.

Therefore, we respectfully request this matter be deferred indefinitely, dismissed as moot, or that the Board find there is no justiciable controversy or other issues necessary for them to rule upon.

Sincerely,



Russel W. Wray

RWW:kbp

cc: Louisiana Associated General Contractors, Inc.

BOBBY JINDAL
GOVERNOR



ANGELE DAVIS
COMMISSIONER OF ADMINISTRATION

State of Louisiana
Division of Administration
OFFICE OF GENERAL COUNSEL

April 29, 2009

VIA HAND DELIVERY

Louisiana Ethics Administration Program
P.O. Box 4368
Baton Rouge, LA 70821

RE: New Clinical Research Facility, LSU Pennington Biomedical Research Center,
Project No. 19-609-06S-01; and
Hurricane Gustav Related Repairs, Pennington Biomedical Research Center,
G19-609-09-ORM, Part 1

To Whom It May Concern:

This letter is in response to the recent letters regarding to the above- referenced matters submitted to this Board by Milton Womack, Inc., Washer Hill Lipscomb Cabaniss Architecture, LLC (WHLC) and Michael Hill, AIA Louisiana – The Louisiana Architects Association (AIA), and the Louisiana Association of General Contractors (AGC).

Prior to discussing the issues presented, the Division of Administration, Office of Facility Planning and Control (FP&C) would like to make clear that it has no ill-will towards any of these entities. FP&C's main objective in this request is the same as that of the Ethics Board. It is to ensure "impartiality, fairness and equality of treatment toward those dealing with government; assurance that decisions of public importance will not be influenced by private considerations; maintenance of public confidence in government (wherein enters the matter of appearances); and prevention of use of public office for private gain."

I. Current Status of Ethics Request

On March 25, 2009, on behalf of FP&C, the undersigned wrote two separate letters to this Board requesting an opinion on the following projects:

(A) New Clinical Research Facility, LSU Pennington Biomedical Research Center, Project No. 19-609-06S-01 (Clinical Research Facility Project); and

¹ La. R.S. 42:1101(B). *Glazer v. Com'n on Ethics for Public Employees*, 431 So.2d 752, 755-56 (La.1983).

Office of General Counsel • Post Office Box 94095 • Baton Rouge, Louisiana 70804-9095
Claiborne Building • 1201 N. 3rd Street • Suite 7-211 • Baton Rouge, Louisiana 70802
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(B) Hurricane Gustav Related Repairs, Pennington Biomedical Research Ctr.,
G19-609-09-ORM, Part 1 (Roof Repair Project).

A. Roof Repair Project

Although FP&C has not withdrawn its request for an advisory opinion regarding the Roof Repair Project, no one has addressed the issue. Perhaps, it is because the responding entities believe there is no justiciable controversy. FP&C, however, respectfully disagrees.

After receiving notice that FP&C requested an Ethics Advisory Opinion from this Board on the two projects, on April 6, 2009, TTM Construction, L.L.C. (TTM), the low bidder on the Roof Repair Project, withdrew its bid. The withdrawal of the bid did not moot the issue for a number of reasons.

First, in its withdrawal, TTM requested that its bid bond be returned. FP&C still desires an advisory opinion from the Board on this particular situation. A determination that TTM could not bid on this project under the Ethics Code will provide guidance to FP&C in making a decision as to pursuing the bid bond.

Second, FP&C's request is for an advisory opinion, not a request for charges to be levied against a party.² An advisory opinion is not a decision on a formal charge.³ It is a non-binding interpretation of the law. An advisory opinion on this issue would be consistent with the primary objective of the Ethics Code, which is "to prevent not only the actuality of conflicts of interest, but also to prevent the occurrence of those situations that tend to create a perception of conflict of interest. It does this by delineating situations that present too great a danger of a conflict of interest occurring."⁴ When one considers the number of architects and contractors that do business with FP&C, the danger of this same type of situation occurring again is quite real. FP&C seeks guidance from the Ethics Board should it encounter a similar situation in the future.

Third, when one considers the difference between FP&C and the interested parties' interpretation of the Ethics Code and the difference in various opinions by the Board and the courts as to the provisions questioned, the current definition of "public employee" and "governmental function" obviously need further clarification. The facts involving the Clinical Research Facility Project are different from the facts involved in *In Re Taylor Porter*. For that matter, the facts involved in the Clinical Research Facility Project are different from the facts involved in the Roof Repair Project. As this Board noted in *In Re Taylor Porter* regarding the very issue presented in our request, "it is necessary that such a determination be made on a case-by-case basis".⁵

² La. R.S. 42:1134

³ *In Re Taylor Porter*, Opinion No. 2008-1150, page 6

⁴ *In Re Beychok*, 495 So.2d 1278, 1281 (La.1986)

⁵ *In Re Taylor Porter*, Opinion No. 2008-1150, page 7

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B. Clinical Research Project

Since the original request, FP&C has received letters from the above-named entities in response to the Clinical Research Facility Project. In their correspondence, they have focused almost exclusively on the Board's recent opinion of *In Re Taylor Porter*. They argue that designers who contract with FP&C are not public servants, and the project architect's role is to "indirectly support" FP&C's performance of its mandated governmental function. To hold otherwise, the respondents claim, would be an "expansive interpretation" of the Ethics Code. We respectfully disagree with these arguments for the reasons more fully discussed below.

II. Current Definition of "Governmental Function"

A. *In Re Taylor Porter*, Opinion No. 2008-1150

In Re Taylor Porter, this Board noted that the Ethics Code did not provide a definition of "governmental function" as it relates to a person or entity being classified as "public servant".⁶ Therefore, the Board turned to Black's Law Dictionary to determine the meaning of the term "governmental function", which states:

"A governmental agency's conduct that is expressly or impliedly mandated or authorized by constitution, statute or other law and that is carried out for the benefit of the general public."

The Board then examined First Circuit precedent regarding the meaning of the term "governmental function". The seminal case in this area is *Commission on Ethics for Public Employees v. IT Corporation*.⁷ In *IT Corporation*, a private company (IT Corporation) was awarded a contract by the Department of Natural Resources to conduct a feasibility study for a regional hazardous waste disposal facility. Under those facts, the court found IT Corporation was a state employee for purposes of the Ethics Code because it was "engaged in the performance of a state function". In making this determination, the court looked to the statutory law to determine whether the work for which IT Corporation contracted was assigned to the Department of Natural Resources by state law as one of its "governmental functions". Citing Act 334 of 1978, the court found that conducting a feasibility study was in fact a statutory responsibility of the Department of Natural Resources.⁸

In contrast, Taylor Porter's contract with LSU was limited to providing legal services to the university in order to assist it in negotiations with Our Lady of the Lake (another Taylor Porter client) in the creation of a teaching hospital. This Board stated that the particular function

⁶ La. R.S. 42:1102(18)

⁷ 423 So2d 695 (La. App. I Cir 1982)

⁸ *Id.*

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assigned by law to LSU is to provide "services for students studying to become physicians and the provision of health care for the benefit of the public," and that the "legal services to be provided by Taylor Porter will not provide a medical education or health care to the public; instead its legal services will indirectly support the LSU's performance of its legally mandated governmental function."⁹

B. *In Re Kean Miller*, Opinion 2009-169 and Opinion 2009-154

Since *In Re Taylor Porter*, this Board has again had the opportunity to examine the issue of whether a private law firm was performing a "governmental function". In this instance, however, the Board found that the law firm was performing a "governmental function" and thus was a public employee.¹⁰ In the *In Re Kean Miller* opinions¹¹, the law firm of Kean Miller, Hawthorne, D'Armond, McCowan & Jarman, L.L.P. (Kean Miller) requested an opinion as to whether it was a public employee if it entered into an agreement with the Office of Community Development (OCD) to provide legal and administrative assistance in the appeal process for the Louisiana Road Home Program.

OCD's governmental function is to provide financial assistance to citizens displaced by Hurricane Katrina. Kean Miller's contractual obligations to OCD were: (1) to attend meetings of the OCD three times per week; (2) provide legal counsel to the OCD appeals panels; (3) draft proposed decision letters and (4) represent the OCD in litigation arising out of the decisions.

The question arose because Kean Miller had a business relationship with First American Title Company, a subcontractor of the Road Home Program. First American's contractual relationship with OCD involved obtaining applicant background information, performing support functions for eligibility determinations, determining pre-storm values, appraising homes, searching titles, disbursing funds, and performing closing services. It was not the title company for the Road Home program. The relationship between Kean Miller and First American did not involve the Road Home program or residential real estate transactions. Kean Miller attorneys served as licensed agents for First American and sold title insurance policies in connection with commercial real estate.

On April 1, 2009, this Board issued an opinion pertaining to whether Kean Miller can provide services to OCD and at the same time continue representation of First American.¹² The Board held that Kean Miller's agency as it pertained to its contractual service with OCD was defined by the scope of the work it provided under its contract. And because the services provided under Kean Miller's contract with OCD and its contract with First American are separate and distinct and do not overlap, the Board found there was no violation of the Ethics Code. In its finding, the Board stated:

⁹ *In Re Taylor Porter*, Opinion No. 2008-1150, page 4

¹⁰ Opinion No. 2009-154

¹¹ 2009-169 and 2009-154

¹² Opinion No. 2009-169

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"Kean Miller's role with the Road Home Program will not be as a decision-maker. The OCD will be the decision-maker as to the outcome of the appeals. Further, the decision as to which title company to employ, regarding potential residential property under the Road Home Program, will be made by ICF and the Road Home applicant. In the event that an appeal calls for work to be completed by a title company, this decision is to be determined by the Road Home applicant or ICF."¹³

Absent from this decision, but implied within, is the determination of whether Kean Miller is a public employee. It is our understanding that the decision that Kean Miller is a public employee was requested and rendered, but has yet to be published. It is our understanding that this Board, in Opinion No. 2009-154 found the *Kean Miller* facts were inapplicable to those in *In Re Taylor Porter*. It also found that the *Kean Miller* facts were more analogous to the situation in *IT Corporation* because the services being performed by Kean Miller would directly benefit and be delivered to the public.

III. Various Issues Raised by the Other Parties

A. WHLC is Contractually Obligated to Perform FP&C's Statutorily Mandated Governmental Functions

Based upon the definition of "governmental functions" and holdings referred to above, the pivotal questions to be determined are: (1) what are the particular duties that a private contractor agrees to perform when entering into a contract with FP&C; (2) what are the governmental functions assigned by law to FP&C for the public's benefit, and (3) are the contractual services provided by Washer Hill and other private architects directly related to the governmental functions assigned to FP&C or are they services that only indirectly support the agency function?

As the attached chart¹⁴ demonstrates, the purpose of the design professional is much more than simply to design a set of plans to put out for public bid. The designer's responsibility is directly related to FP&C's governmental function of: exercising supervision over the expenditure of Capital Outlay Funds;¹⁵ supervising construction; approving estimates; selecting personnel necessary for the administration of contracts for projects;¹⁶ performing periodic inspections of projects; directing payment for work done on each project; determining whether contract documents have been fully complied with by inspecting the project during construction;¹⁷

¹³ Id at page 2.

¹⁴ See Attached Exhibit A

¹⁵ La. R.S. 39:121

¹⁶ La. R.S. 39:121(4)

¹⁷ La. R.S. 39:124

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making a final inspection of the project during the warranty period; and giving prompt written notice to the contractor of defects in workmanship.¹⁸

Design professionals are more susceptible to being involved in a conflict of interest because of the governmental functions they are contracting to perform, particularly when the conflict relates to family members whose work they are contractually obligated to review and supervise. While we are not accusing any of the parties of any wrong doing in this matter, these conflicts are not remote or inconsequential. They are real, and the possibilities for favoritism and corruption are infinite.

As the AGC's April 23, 2009, letter to the Board pointed out, "the Public Bid Law was enacted in the interest of the taxpaying citizens and has for its purpose their protection against contracts of public officials entered into because of favoritism and possibly involving exorbitant and extortionate prices."¹⁹ The taxpayers are at a disservice when contractors bid on projects designed by immediate family members. For example, the designer could easily manipulate its design to favor the related contractor by "closing a specification", i.e., writing a specification so that only the family member can perform. The manipulation could be so cleverly disguised that no one would even notice. The designer could also allow the contractor/family member to bid significantly lower than the other bidders that might not be privy to the same information that is known only to the design professional.²⁰ In fact, the present issues are the result of the second lowest bidder in the Roof Repair Project calling into question the relationship between TTM and WHLC.²¹

Moreover, after the contract is awarded, the architect could approve cost increases to favor his family members. He could ignore defective or substandard construction or construction that is not in compliance with the plans and specifications that he designed so as not to cause harm to his family members. The architect could approve change orders and increase the contract price so as to benefit the related contractor. He could ignore delays caused by the contractor resulting in delay in occupancy of the building and loss of the owner's right to contractually stipulated liquidated damages. He could disregard punch-list items that are not in compliance with the plans and specifications that he designed. And the designer could fail to hold the contractor accountable for warranty items prior to their expiration.

The architect's function on these two projects is more than to provide "indirect support" to FP&C. FP&C has to rely heavily upon architects such as WHLC to perform FP&C's statutorily mandated functions. And if the architects were to be derelict in these duties or show

¹⁸ La. R.S. 39:125

¹⁹ See p 4 of AGC letter citing *Bowell v. Department of Highways*, 203 La. 760, 14 So.2d 627 (La. 1943); *Haughton Elevator Division v. State, Division of Administration*, 367 So.2d 1161 (La. 1979)

²⁰ The AGC, in its letter at page 7, states that the difference between the Milton Womack bid and the second lowest bidder was \$400,000.00.

²¹ See Attached Exhibit B, March 2, 2009, Letter from Simon, Peragine, Smith & Redfeam on behalf of Crown Roofing Services, Inc.

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favoritism to the contractor at the expense of FP&C, then the taxpayers of this state suffer.²²

C. The Governmental Function of FP&C Is Not Solely to Operate a Facility Management Program and the Contractual Duty of the Architect Is Not Solely to Perform Design Services

In its April 23, 2009, letter, the AIA states that the governmental function of FP&C is to provide "facility management services". While facility management is one governmental function of FP&C, the AIA is incorrect in insinuating that this is its only function. To imply such is to ignore the provisions found within Title 39 that pertain to administering the capital outlay program and the construction and repair of state buildings.²³

The AIA letter also states that "during the construction phase, when a project architect functions as a representative of the building owner, he does so functioning as a project architect and does not supplant the administration, management and supervision functions of the building owner."²⁴ This statement is misleading.

As shown in the attached chart,²⁵ the Design Manual bestows upon the architect numerous administrative, management and supervisory powers over the construction phase of the project. Moreover, every contract between FP&C and the general contractor incorporates therein the AIA document entitled General Conditions of the Contract for Construction, AIA Document A201-1997.²⁶ In this document the contractor acknowledges and agrees: that the architect provides contract administration;²⁷ that communications between the two will be handled through the architect when they pertain to the Contract documents;²⁸ that the architect has the right to reject work that does not conform to the Contract documents;²⁹ that the Architect will prepare the Change Orders and Construction Change Directives and may authorize minor changes in the work;³⁰ that the architect will interpret and decide matters concerning performance under, and requirements of the Contract Documents.³¹ To state that FP&C has not given the architect administrative authority under a contract is to completely disregard FP&C's contract with both the architect and the general contractor.

²² In re Ark-La-Tex Antique and Classic Vehicles, Inc., App. 1 Cir.2006, 943 So.2d 1169, 2005-1931 (La.App. 1 Cir. 9/15/06), writ denied 948 So.2d 151, 2006-2509 (La. 1/12/07). (Among the multiple policy objectives of the Code of Governmental Ethics are impartiality, fairness, and equality of treatment toward those dealing with government, assurance that decisions of public importance will not be influenced by private considerations, maintenance of public confidence in government, and prevention of use of public office for private gain.)

²³ See attached Exhibit A and Attached Exhibit C, Louisiana Capital Improvement Projects Procedure Manual for Design and Construction (Design Manual)

²⁴ AGC, likewise argues in its letter that the function of the designer is not to supervise and oversee the work.

²⁵ See attached Exhibit A

²⁶ See attached Exhibit D, General Conditions of the Contract for Construction, AIA Document A201-1997.

²⁷ A201-1997, Section 4.2

²⁸ A201-1997, Section 4.2.4

²⁹ A201-1997, Section 4.2.6

³⁰ A201-1997, Section 4.2.8

³¹ A201-1997, Section 4.2.11

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Additionally, AIA's letter implies that FP&C retains the ultimate authority as owner and therefore, the architect is not truly performing administrative, managerial or supervisory functions. Ultimate authority, however, does not negate the fact that architects are still performing a "governmental function". In fact, in *In Re Kean Miller*¹², one of the determinative factors in deciding that Kean Miller could perform contractual legal services for OCD and still represent First American was the fact that Kean Miller was not the decision maker. Likewise, in *IT Corp v. Commission on Ethics*¹³, IT Corporation was employed to perform a feasibility study, nevertheless, DNR retained the right to proceed with the results of that study. Even a traditional state employee may not possess ultimate decision making authority, but that does not exempt a state employee from the Ethics Code.

D. There is No Blanket Exemption from the State Ethics Code For Architects and Engineers

1. *In Re Taylor Porter* Held Decisions as to the Classification of Private Companies as Public Servants Is To Be Made on a Case by Case Basis

Milton Womack and WHLC's letters suggest that this Board in *In Re Taylor Porter* exempted private architects from the Ethics Code. They quote, out of context, the Board's taking notice that there are thousands of contracts between private entities and government agencies, including professional services contracts with architects and engineers. They also quote the Board's comment that "to hold that each of those private entities and their employees are public employees appears beyond the intent of the Legislature in adopting Sec. 1102(18)(a)."¹⁴

Left out of their argument, however, is the final conclusion reached by this Board. In its conclusion, this Board made clear that it was not creating a blanket exemption for professional services. It stated: "It is necessary that such a determination be made on a case-by-case basis." Likewise, our decision is premised on the facts found herein.¹⁵ Lastly, if the Board were creating a blanket exemption, then the decision in *In Re Kean Miller* would have had different results because private attorneys would already be exempt under *In Re Taylor Porter*.

2. *In Re Taylor Porter* Did Not Hold Private Professionals Subject to Separate Licensing Requirements are Not Subject to the State Ethics Code

In its correspondence to this Board, the AIA claims that architects are licensed and governed by the Louisiana State Board of Architectural Examiners. Therefore, it claims that application of the Ethics Code to architects is unnecessary because any potential conflict of

¹² Opinion No. 2009-169

¹³ 464 So.2d 284

¹⁴ Opinion No. 2008-1150, p. 4

¹⁵ Id at page 7

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interest or impartiality is resolved under LSBAE Rules of Conduct. It quotes the following from *In Re Taylor Porter*, to support its argument:

In the instant case, neither a conflict of interest nor improper private gain would be inherent in Taylor Porter's rendering legal services to LSU. As noted above, the potential professional conflict of interest will be resolved under the Rules of Professional Conduct for attorneys.³⁶

Again, the reference to the *Taylor Porter* decision is taken out of context. In the *Taylor Porter* decision, the Board was obviously referring to that specific set of facts, i.e., an attorney representing two clients on the same transaction. If the Board would have meant all attorneys are exempt from the State Ethics laws simply because there is a comparable Rule of Professional Conduct, then the *In Re Kean Miller* decision would have had different results.

Furthermore, this argument ignores prior court decisions on this topic. In the matter of *Midboe v. Commission on Ethics for Public Employees*,³⁷ the plaintiff sued the Commission on Ethics for Public Employees for a declaratory judgment as to the Constitutionality of the Ethics Code prohibiting him from pursuing employment opportunities as an attorney after his service as the former Secretary of DEQ ended.³⁸ He claimed that the Ethics Code infringed on the Supreme Court's exclusive power to regulate the practice of law. The Supreme Court, in finding the Ethics Code to be Constitutional, stated the Ethics Code merely supplemented the Rules of Professional Conduct for Attorneys, and it did not infringe upon the Supreme Court's powers. In its decision, the Supreme Court stated:

However, attorneys are subject to laws other than the Rules of Professional Conduct, and sometimes those laws relate to their actions as attorneys. A person who receives a license to practice law and adheres to the Rules of Professional Conduct is not insulated from other regulations and conditions under which the license may be used. *Mire*, 540 So.2d at 955; see also *DeSalvo v. State*, 624 So.2d 897, 902 (La.1993), cert. denied, 510 U.S. 1117, 114 S.Ct. 1067, 127 L.Ed.2d 386 (1994).

A person possessing a law license is not exempt from the duties of citizenship or ordinary state laws. *Mire*, 540 So.2d at 954. For example, a lawyer's business is affected and limited by local zoning ordinances, yet these regulations do not impede or frustrate this Court's authority over the practice of law. A lawyer who converts and commingles his clients' money may have violated this Court's disciplinary rules but is also subject to the state criminal

³⁶ Opinion No. 2008-1150

³⁷ 646 So.2d 351 (La. 1994)

³⁸ This case was abrogated by the Supreme Court for reasons not applicable to the issue at hand.

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theft laws. Similarly, an attorney who is a public official or employee is subject to the Rules of Professional Conduct, as well as the ethics code rules which apply to all public servants, as long as the ethics code provisions do not impede or frustrate this Court's authority to regulate the practice of law.³⁹

To say one profession is exempt from the Ethics Code because it is also bound by a professional code would be a very expansive interpretation of the Ethics Code and would result in some very absurd results. For example, a licensed attorney would be free to ignore the requirements of Section 1112, and 1113 as well, claiming the issue is addressed in the Rules of Professional Conduct.

To conclude, the Ethics Code's prohibitions do not prevent architects from practicing their trade nor does the Ethics Code conflict with Rules of Professional Conduct for Architects. However, when a person contracts with the State of Louisiana to perform governmental functions, he is required to also abide by the Ethics Code relative to that project.

3. Enforcement of the Ethics Code Does Not Result in Provisions of the Public Bid Law Becoming Meaningless or Absurd

Milton Womack and the AGC claim that the enactment of La. R.S. 38:2212.7 last year demonstrates the legislative intent not to include in the Ethics Code definition of public servants private architects, designers or other consultants who perform services on public works project. As shown below, the opposite is true. We respectfully disagree.

La. R.S. 38:2212.7 states:

Any person contracting with an agency for the purposes of developing bidding documents, requests for proposals, or any other type of solicitation related to a specific procurement shall be prohibited from bidding, proposing, or otherwise competing for award of that procurement. Such persons shall further be prohibited from participating as subcontractors related to the award of that procurement.

This statute is found within the Public Bid Law, and it goes without saying that Title 38 and Title 42 pertain to two separate and distinct areas of the law. As pointed out in *Mildboe*, supra, one statute is not to be read to the exclusivity of the other nor is it meant to supplant the other. These two separate areas of law have two distinct purposes, and while both affect architects, each law affects them in a different manner.⁴⁰ Under La. R.S. 38:2212.7, an architect

³⁹ Id. at 359

⁴⁰ See *Womack v. Louisiana Commission on Governmental Ethics*, Sup. 1967, 250 La. 833, 199 So.2d 891 (distinguishes Civil Service Rules from Ethics Code)

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who bids on a public works project that he designs would be in violation of the Public Bid Law. The ramifications for violating the Public Bid Law are quite different from the penalties that may be imposed by the Board of Ethics. To say that there is no need for one provision under the Public Bid Law because there is an applicable provision under the Ethics Code would be as nonsensical as stating that there is no need for a criminal penalty for misapplication for payments of construction funds⁴¹ since there is a remedy available to pursue a claim for payment of funds under the Public Works Act.⁴²

4. The Ethics Code Should be Read So as to Employ a "Fair and Just" Reading of Each Provision and not in a Manner to Make One Section Meaningless or Mere Surplusage

This Board has made clear it will not adopt a standard of construction that does not employ a "fair and just" reading of each provision. Nevertheless, some of the arguments presented by some of the responding entities request that the Board employ a stretched view of the Ethics Code. If so employed, the interpretation would lead to conflicts within the Code itself and also expand the code in directions the legislature clearly never intended.

For example, the AGC suggest that if a private architect is deemed a public employee, then the Board would have to interpret La. R.S. 42:1121 to mean that a private architect firm cannot contract with FP&C for two years after the project is completed. Such an interpretation obviously would not be rational, and it certainly would not be a "fair and just" reading of this provision. Additionally, this hypothetical situation disregards the vast precedent to the contrary, including the recent decision of this Board in *In Re Kean Miller* that states the scope of a private firm's agency is limited to its contract with the public entity.⁴³

Milton Womack and AGC also urge this Board to read the recent amendment of La. R.S. 42:1113 (D)(1)(a)(i), to "specifically allow family members of [certain public officials] to be awarded a public contract by competitive bidding so long as the immediate family member is not a spouse". The subparagraph does not state this and to read such into it would be an "expansive interpretation of the ethics code". Reading the provision in the manner they suggest would result in a conflict between Part A and Part D of La. R.S. 42:1113. And as pointed out by AGC, "No law should be considered meaningless or mere surplusage."⁴⁴ The legislative intent in enacting Section A was to prevent public servants and their immediate family members from contracting within their agency, and the legislative intent in enacting Section D was to prevent heads of departments or high ranking public officials and their spouses from contracting with other agencies in state government.

⁴¹ La. R.S. 14:202

⁴² La. R.S. 38:2241

⁴³ Opinion 2009-169

⁴⁴ AGC correspondence, p. 6

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Also, Milton Womack suggests this Board has held in the past that when a contract is publicly bid by a class of companies and does not involve services or products that only one bidder can provide, there is "no substantial economic interest" and thus no violation of Section 1112. Such an interpretation of the law and this Board's precedent is neither "fair" nor "just". As stated above, when an architect is allowed to participate in transactions involving his immediate family members, the entire process, not just the award of the contract, is tainted. Potential violations of the Ethics Code can occur both before and after the actual bid. There is the possibility of pre-bid collusion, as well as questions of favoritism both during and after construction. The advisory opinion cited by Milton Womack, Opinion No. 2009-155, certainly did not address these issues nor does it address the host of other issues involved if this Board were to state that public bidding makes the Ethics Code inapplicable.

Lastly, AGC's argument that because this matter is publicly bid, the architect has no way of knowing who will be the lowest bidder should not be considered for the same reasons. There is still a possibility of bid collusion and post-bid misconduct. Further, each contractor bidding on a job must be familiar with the plans and specifications. Under Section 1113, the contractor should not bid on the project when he knows his father or brother is the designer.

E. The Architect is NOT Performing the Services for User Agencies; It is Performing Services for FP&C

In Milton Womack's letter, it states that the purpose of the architect in this matter is to "design a facility to house suites for exercise, testing, special procedures, metabolic chambers, metabolic cart studies and space for faculty and support personnel in order to support Pennington Biomedical Research Center's research and clinical missions. Pennington's mission is not to construct facilities".

This statement misses a crucial point. The design contract is between FP&C and the designer. The purpose of the contract is to fill a vital role that FP&C is statutorily obligated to perform for the user agency. While FP&C employs architects and engineers on staff that could do the work, due to limited resources and in an effort to employ the most efficient, cost-effective means possible, FP&C contracts this work out to private design firms (architects and engineers). This not only achieves a savings for the State, it insures that designers with specialties in certain areas such as laboratory design or roofing can be employed. FP&C is not statutorily obligated to contract with outside architects, but the inordinate volume of work makes it cost-prohibitive and extremely burdensome to add hundreds of architects and engineers to the State's payroll.

IV. Ownership of the Construction Companies

In addition to responding to our request, Milton Womack and the AGC also argue that Milton Womack is not in violation of La. R.S. 42:1113 because Terry Hill, the president of Milton Womack, does not have a controlling interest in the company.

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The ownership of TTM Construction Company was not addressed among the parties. According to the records of the Louisiana Secretary of State, prior to June 3, 2008, Michael W. Hill (a member of WHLC), Travis C. Hill, and Terrence W. Hill were members of TTM Construction. On June 3, 2008, Michael W. Hill tendered his 51% membership in TTM to Travis and Terrence Hill. Travis and Terrence Hill (TTM) are the sons of Michael W. Hill (WHLC). There is nothing that contests that Travis and Terrence Hill have a controlling interest in TTM and that they are the sons of the architect, Michael W. Hill of WHLC. Under the Ethics Code, they are prohibited from bidding on the Roof Repair Project.⁴⁵

A. Controlling Interest in Milton Womack

As to the ownership of Milton Womack, Inc., the AGC and Milton Womack do not contest that Michael W. Hill of WHLC and Terry Hill of Milton Womack are brothers. Nevertheless, they argue that La. R.S. 42:1113 does not apply to Milton Womack because Terry Hill, the president of Milton Womack, does not have a controlling interest

Louisiana Revised Statute 42:1113(A) provides:

- A. (1) No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

A "controlling interest" is a defined term in the Ethics Code. It means "any ownership in any legal entity or beneficial interest in a trust, held by or on behalf of an individual or a member of his immediate family, either individually or collectively, which exceeds twenty-five percent of that legal entity."⁴⁶ The AGC and Milton Womack argue and submit an affidavit by Mark Gallegos, the Secretary/Treasurer of Milton Womack, claiming that Terry Hill owns only 23% of Milton Womack's common stock, and therefore, Section 1113 is not applicable to it.

This argument misinterprets the statute. Under this statute, the following persons are prohibited from bidding or entering "into a contract, subcontract or other transaction that is under the supervision or jurisdiction of the agency of such public servant".

- (1) A public servant
- (2) A member of the public servant's immediate family
- (3) A legal entity in which the public servant has a controlling interest

⁴⁵ Ethics Board Opinion No. 2002-149

⁴⁶ La. R.S. 42:1102 (8)

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The public servant involved herein is Michael Hill and/or WHLC. No one has stated that Michael Hill does not own a controlling interest in WHLC. To the extent that Milton Womack and AGC are claiming that Terry Hill does not have a "controlling interest" in Milton Womack as defined by the Ethics Code, the issue is irrelevant. The only issue is can Terry Hill, a member of the public servant's immediate family, bid or enter into contracts with FP&C.

Terry Hill is the president of Milton Womack, Inc. He holds the contractor's licenses that were used to bid on this project. Terry Hill printed his name and signed the bid form for the Clinical Research Facility Project.⁴⁷ Terry Hill's name is also listed as the authorized officer of Milton Womack on the bid form.⁴⁸ Milton Womack's attached corporate resolution authorizes and empowers Terry Hill to execute any and all contracts of whatever kind on behalf of the corporation.⁴⁹ Terry Hill signed the contract between Milton Womack and FP&C as president.⁵⁰

At the time of filing the request, the exact amount of stock owned by Terry Hill in Milton Womack was not known to FP&C. To this date, FP&C does not know exactly whether the 23% is a substantial number of the total stocks or not. It is unknown whether the 23% represents the majority of Milton Womack stocks held by any one individual or whether there are people who hold more of a controlling interest than Terry Hill. Likewise, it is unknown whether any other immediate family members own any portion of stock in Milton Womack.⁵¹

FP&C is not in a position to investigate such matters. However, even if it is found that Terry Hill's ownership interest results in Section 1113 found inapplicable to Milton Womack, the remaining issue involving the Clinical Research Facility Project also needs to be decided because if Terry Hill's interest is not a "controlling interest", it may be deemed a "substantial interest" under the Ethics Code. Under Section 1112, the public servant, WHLC/Michael Hill, is not allowed to participate in transactions in which any member of his immediate family has a "substantial economic interest." A substantial economic interest is "an economic interest which is of greater benefit to the public servant or other person than a general class or group of persons."⁵²

⁴⁷ See Attached Ex. E, Bid Form by Milton Womack

⁴⁸ Id

⁴⁹ Id

⁵⁰ See Attached Ex. F, Contract between FP&C and Milton Womack

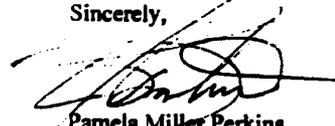
⁵¹ Opinion No. 2008-913

⁵² La. R.S. 42:1102 (21)

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If you have any questions or desire anything further from the Division of Administration in regards to this matter, please do not hesitate to contact our office.

Sincerely,



Pamela Miller Perkins
Jason Bonaventure
Division of Administration
Office of General Counsel
1201 N. Third Street, Suite 7-211
Baton Rouge, LA 70802

JB/eb

Enclosures

c: Russel W. Wray
James L. Ellis
Herman J. Gesser III
Michael A. Patterson
Jerry Jones
John Davis



C. Kris Kirkpatrick¹³
Michael A. Patterson¹⁴
Joseph E. Juban
Albert Dale Clary¹
David L. Guerry¹
C. Stokes McConnell, Jr.¹⁷
J. Wendell Clark

Janice Hunt Watts
Adrian G. Nadreau
Jacque A. Puchera
S. Brooke Barwell
Mark L. Barlow

Russell B. Long (1918-2009)
13 Louisiana and District of Columbia
14 LLM, Deputy Solicitor
1 A Professional Law Corporation
17 A Limited Liability Company

April 21, 2009

VIA HAND DELIVERY

Louisiana Ethics Administration Program
617 North Third Street
LaSalle Building, 10th Floor
Baton Rouge, Louisiana 70802

Re: Request for Advisory Opinion on Project entitled New Clinical Research Facility, LSU Pennington Biomedical Research Center, Project No. 19-609-06S-01, Part 01

To: Members of Louisiana Ethics Administration Program:

Please accept these comments on behalf of Washer Hill Lipscomb Cabaniss Architecture, LLC and Michael Hill, a principal of the firm, in response to the request for an advisory opinion by General Counsel for the Division of Administration concerning this project.

BACKGROUND

Pennington Foundation made a decision in the late 1990s to expand the research facilities at the Pennington Biomedical Research Center.

At that time, the expansion was to be privately funded. The Basic Science Building was privately bid in 2000 and was built.

The combined price of the Basic Science and Clinical Research projects exceeded the funds Pennington Foundation had available for construction. At that juncture, the Clinical Research Building was placed on hold. Subsequently, Pennington Foundation approached the State to obtain public funding for the Clinical Research Building.

In December, 2007, the State of Louisiana, through the Division of Administration, entered into a contract with Washer Hill Lipscomb Architecture - Post-Architects - A Joint Venture for the design services in connection with the Clinical Research Facility to be located at Pennington.

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Subsequently, the project was placed for competitive bids in 2008. There were thirteen (13) bids received on the project and Milton Womack, Inc. was the successful low bidder on the project (approximately \$400,000.00 lower than the second bid). The State of Louisiana entered into a contract for the construction of the Clinical Research Facility with Milton Womack, Inc.

One of the principals of Washer Hill Lipscomb Cabaniss Architecture, LLC is Michael Hill. His brother is one of the officers of Milton Womack, Inc. Mr. Hill's brother owns a minority interest in Milton Womack, Inc. Michael Hill has no ownership interest whatsoever in Milton Womack, Inc.

It should be noted that the request for advisory opinion only refers to Washer Hill Lipscomb Cabaniss Architecture, LLC when in fact a review of the design contract with the Division of Administration shows that the designer of record is a joint venture between Washer Hill Lipscomb Architecture and Post-Architects.

General Counsel for the Division of Administration has asked whether Washer Hill Lipscomb Cabaniss Architecture, LLC should be considered a public servant pursuant to the Code of Governmental Ethics. For the reasons discussed below, the answer to this question should be no. Washer Hill Lipscomb Cabaniss Architecture, LLC should not be considered a public servant.

DISCUSSION

The Clinical Research Facility is a building under construction on the existing Pennington campus. "The new facility will house suites for exercise testing, special procedures, two metabolic chambers, a metabolic cart studies and space for facility and support personnel."¹

Washer Hill Lipscomb Cabaniss Architecture, LLC is a private architectural firm, not a governmental entity.

The question posed by counsel for the Division of Administration is whether the work performed by Washer Hill Lipscomb Cabaniss Architecture, LLC cause it to be considered a public employee pursuant to La. R.S. § 42:1102(18)(a)(iii). The Board has very recently stated in *In Re: Taylor Porter*, 2008-1150 that "[a] fair reading of Section 18(a) shows that (iii) and (iv) above represent exceptions to generally accepted meaning of employee. Thus, those exceptions should not be given an expansive interpretation."

¹Preliminary Program, New Clinic Research Facility, Pennington Biomedical Research Center, Project No. 19-609-06S-01

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The question here is the same as in *In Re: Taylor Porter*; whether Washer Hill Lipscomb Cabaniss Architecture, LLC would be "engaged in the performance of governmental function," in providing architecture services to the Division of Administration and, therefore, in violation of Section 1111(2)(d) (payment from nonpublic sources as compensation) and Section 1112B(2) (participation in certain transactions involving the public employees governmental entity).

The Code of Governmental Ethics provides no definition of governmental function. La. R.S. 39:1 creates the Division of Administration as a division of the Office of the Governor. La. R.S. 39:121 says the Division of Administration is to "exercise supervision over the expenditure of funds and the construction projects." La. R.S. 39:121(4) specifically provides, "the Division of Administration shall "[s]upervise construction, approve estimates, and select and employ engineers, architects, and other personnel necessary in connection with the administration of contracts for projects." (Emphasis added.)

Here, as in *In Re: Taylor Porter*, Washer Hill Lipscomb Architecture - Post-Architects - A Joint Venture is indirectly supporting the Division of Administration's performance of its legally mandated governmental function in administering contracts for projects. To find that a private architectural firm involved in one of the numerous projects overseen by the Division of Administration is engaging in the performance of a governmental function is an expansive view of a private entity being engaged in the performance of a governmental function.

This Board has said quite correctly and is worth quoting here:

"The Board takes cognisance of the untold hundreds, if not thousands, of contracts between private entities and governmental agencies. The object of these contracts varies greatly. Some provide professional services (legal, accounting, architecture, landscape architecture, medical, engineering, etc.); some provide construction, renovation or repairs of buildings, roads, equipment, etc.; some provide social services, employment and management guidelines, insurance advice and policies, some provide products including consumables; the list is virtually endless. To hold that each of those private entities and their employees are public employees appears beyond the intent of the legislature in adopting Sec.1102(18)(a). If the legislature intended that result, it would simply have provided in Section 1102(18)(a) that "any person who provides a service or product under contract to a governmental agency is deemed to be a public employee." *In Re: Taylor Porter*.

As further noted by this Board the Preamble to the Code announces a policy against "creating unnecessary barriers to public service." Such a result would inevitably follow were an architectural firm such as Washer Hill Lipscomb Cabaniss Architecture, LLC to be deemed a public servant

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because of its design services in assisting the Division of Administration in performing its statutorily mandated duties.

Very truly yours,

LONG LAW FIRM, L.L.P.

MICHAEL A. PATTERSON

MAP:krc

cc: Mike Hill



C. Kris KirkpatrickSM
Michael A. PetersonSM
Joseph E. Johns
Albert Dale Clary^{*}
David L. Guerry^{*}
C. Stokes McConnell, Jr.SM
J. Wendell Clark

Jamie Hunt Watts
Adrian G. Madrazo
Jacques A. Pacheco
S. Brooke Barnett
Mark L. Barboe
Sebastian R. Caballero

Russell B. Long (1928-2009)
10 Louisiana and Senator of Colorado
18 LL.M. Degree Recipient
7 A Professional Law Corporation
77 A Limited Liability Company

May 11, 2009

VIA HAND DELIVERY

Louisiana Ethics Administration Program
617 North Third Street
LaSalle Building, 10th Floor
Baton Rouge, Louisiana 70802

Re: Response to Correspondence from the Division of Administration and the Office Facility Planning and Control regarding Request for Advisory Opinion on Project entitled New Clinical Research Facility, LSU Pennington Biomedical Research Center, Project No. 19-609-06S-01, Part 01.

To: Members of the Louisiana Ethics Administration Program:

Please accept these comments on behalf of Washer Hill Lipscomb Cabaniss Architecture, LLC (WHLC) and Michael Hill in response to the April 29, 2009 correspondence from the Division of Administration (DOA)/Office of Facility Planning and Control (FPC). As you are aware, one of WHLC's principals is Michael Hill, and Terry Hill, the President of Womack, is his brother.

Roof Repair Project

DOA/FPC takes the position it will not withdraw its request for an advisory opinion regarding the roof repair project even though the contractor, TTM Construction, LLC, has withdrawn its bid. DOA/FPC suggests to the Board that the basis for its insistence is that it wishes to have assistance in making a decision whether to pursue TTM's bid bond. This can only be characterized as punitive. There is nothing pending which requires an advisory opinion. The Board should decline DOA/FPC's request.

Pursuant to WHLC's scope of services and the applicable case law and statutes, WHLC is not engaged in the performance of a governmental function.

Central to the questions before the Board of Ethics is whether WHLC, a private entity that contracted with the Division of Administration pursuant to a joint venture to perform architectural

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services for one of its many projects, is a government employee engaged in the performance of a governmental function under La. R.S. 42:1102 (18). For the reasons submitted to you before and for reasons more fully stated herein, the Board of Ethics' answer to this question should be no.

In the case of *Commission on Ethics for Public Employees v. IT Corporation*,¹ the court determined IT Corporation was a state employee engaged in the performance of a state function pursuant to state law. Act 334 of 1978 provided, "it is in the public interest and within the police powers of the state to establish a framework for the regulation, monitoring, and control of the generators, transportation, *storage* and *disposal* of such hazardous waste..." (emphasis added) IT had the duty of securing feasible sites for the storage and disposal of hazardous waste. Accordingly, IT was charged with one part of the framework in establishing where the storage and disposal of hazardous waste would be located. In finding IT was a state employee, the court did not use an expansive interpretation of being engaged in the performance of a state function, as is necessary to find WHLC is engaged in the performance of a governmental function.

The same was true with the case of *In Re: George Dyer and Fire Apparatus Specialists, Inc.*² The volunteer fire department contracted to be the sole provider of fire protection for the district; accordingly, the volunteer fire department, of which George Dyer was the fire chief, was engaged in the performance of a governmental function. (emphasis added) An expansive interpretation was again not needed to find that the sole fire fighters for the district were engaged in the performance of a governmental function. No government employees provided these services. In the instant matter, however, WHLC has architectural duties apart from the role of the DOA/FPC. It is not as though the work performed by the architects of WHLC is the same as or takes the place of the function of the DOA/FPC. Accordingly, the Board should not find WHLC is engaged in the performance of the governmental function assigned to the DOA/FPC. To find WHLC is a state employee requires an expansive interpretation of being engaged in the performance of a governmental function, which the Ethics Board has previously found to be inappropriate.

The DOA/FPC relies on *In Re: Kean Miller 2009-169*³ to suggest that WHLC is a state employee. While the case suggests that Kean Miller is a state employee, this case does not further the argument that WHLC is a state employee. There are many points of distinction which suggest WHLC is not a state employee.

¹ *Commission on Ethics for Public Employees v. IT Corporation*, 423 So.2d 695 (La. App. 1 Cir. 1982.)

² *In Re: George Dyer and Fire Apparatus Specialist, Inc.* 95 2297 (La. App 1. Cir. 6/28/96), 677 so.2d 1075.

³ *In Re: Kean Miller 2009-169*

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The rationale of the Board finding Kean Miller is a state employee is outlined in opinion 2009-154.⁴ Kean Miller was found to be a public employee pursuant to La. R.S. 42:1102 18 (a) (iii and iv). Kean Miller was hired to 1.) attend meetings of the OCD State Appeal Panels approximately three times a week, 2.) provide legal counsel to the Louisiana OCD State Appeals Panels as requested with regard to disposition of appeals before panels; 3.) draft proposed decision letters incorporating the decision of the Appeals Panels; and 4.) represent OCD in litigation arising out of the decision of the Appeal Panels. Following Hurricane Katrina, the OCD had approximately 5,000 appeals to be heard and four staff members to make recommendations to the panel. Kean Miller provided most of its services in the office of the OCD, including clerical/paralegal services. Kean Miller's staff also performed the same functions as the Road Home Program staff under the head of OCD and the head of the Road Home Program. The contract was entered into due to the volume of appeals.

WHLC did not contract with the state to address the volume of the DOA/FPC's work or to perform the same function of the DOA/FPC. WHLC as a joint venturer was hired to perform professional architectural services pursuant to contract with the Division of Administration for a Capital Outlay Project. The role of WHLC in performing architectural services is distinct, separate and apart from the administrative role of the DOA/FPC. Kean Miller's employees were performing the same functions as the agency staff due to the volume of appeals in the same office as the OCD and under the head of OCD and the head of the Road Home Program. WHLC does not perform its services in the offices of the DOA/FPC, and the architects of WHLC are supervised by and subject to the authority of WHLC. To find that the DOA/FPC has supervision or authority over the employees of privately owned companies who contract with the state for Capital Outlay Projects would lend to an absurd result. Where would the line of state employees end? The DOA/FPC functions as the owner of the project through a contract for services. A finding that Kean Miller is engaged in the performance of a governmental function based on these pertinent points does not further the argument that WHLC is a state employee pursuant to La. R.S. 42:1102 18 (a) (iii and iv).

The question is whether WHLC is "engaged in the performance of governmental function" in providing architecture services to the DOA/FPC for the Clinical Research Facility at LSU Pennington Biomedical Research Center pursuant to state law. The answer is no.

La. R.S. 39:1 creates the Division of Administration as a division of the Office of the Governor. La. R.S. 39:121 says the Division of Administration is to "exercise supervision over the expenditure of funds and the construction projects." La. R.S. 39:121(4) specifically provides, "the Division of Administration shall "[s]upervise construction, approve estimates, and select and employ engineers, architects, and other personnel necessary in connection with the administration of contracts for projects."

⁴ Opinion No. 2009-154

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Pursuant to La. R.S. 39:124, "facility planning and control section shall make periodic inspections at all stages of construction of any facility constructed pursuant to this Part and shall make detailed reports which shall be made available to the legislature and to the public. Such inspections shall include but not be limited to the close technical on-site examination of the materials, structure, and equipment and surveillance of the workmanship and methods used to insure reasonably that the project is accomplished in compliance with information given by the contract documents and good construction practices."

La. R.S. 39:125 also provides the "facility planning and control section shall be responsible for directing final payment for work done on each project. However, if upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the facility planning and control section shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment. Upon completion of the project the facility planning and control section shall release it to the agency. The facility planning and control section shall be responsible for making an inspection of the project prior to the expiration of the guarantee period to observe any defects which may appear within one year after completion of the contract. The facility planning and control section shall give prompt written notice to the contractor of defects which are due to faulty materials and workmanship."

Section 7 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction (Procedure Manual) outlines the role of the architect.³ The array of services shows the

³ The role of the architect involves designing the project within the applicable legal requirements and cost constraints and advising the owner if this cannot be done. The designer is charged with providing the necessary geotechnical reports and surveys, and finalizing the time schedule. The designer is to submit a statement of probable costs, and a report based on the applicable codes for state owned buildings. The designer is responsible for the coordination of all documents and disciplines. The designer distributes construction documents and is required to comply with all provisions of Public Bid Law. The designer evaluates prior approval requests for substitution of materials, products and equipment required by the applicable statutes and owner procedures. The designer issues the agenda and modifies construction documents. The designer participates in a pre-bid conference in accordance with the contract documents. The designer provides a form to the owner to tabulate the bids. The designer analyzes the bids and makes a recommendation to the owner as to whether to award the bid to the low bid contractor or to reject all bids. The architect administers the construction documents and submits to the owner a cost data form for the owner's evaluation. The architect makes recommendations for the owner's approval in regard to testing. The architect advises and consults with the owner and communicates the owners instructions to the contractor. The designer can act on behalf of the owner as provided for the manual. The designer conducts a pre-construction conference. The designer and consultants must visit the site for inspections. The designer is to guard the owner against defects and deficiencies. Reports are required from the designer and consultants to the owner upon each visit. The designer agrees to qualifications, experience and training of his representatives in making decisions and interpreting construction documents. The designer is to confirm in writing all such decisions to the owner. The designer is also charged with replacing any representative the owner determines does not meet the qualifications. The designer issues certificates for payment upon determining the quality and progress of the contractor's work. The designer instructs the contractor to conduct monthly meetings in regard to project scheduling. The designer is to

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design professional functions in the role of an architect, which supports the supervisory governmental function of the DOA/FPC. The architect certainly assists the DOA/FPC, but the architect does not perform the function of the DOA/FPC. It is misleading to suggest otherwise. The DOA/FPC has its own supervisory role, its own inspections to perform, its own budgetary concerns to address, its own reports to write, its own contract administration to perform, its own duties to the legislature and the public arising from these projects, essentially, its own administration to perform separate, independent and apart from the work of the architect. While the DOA/FPC may rely on the information supplied by the architect in performing its tasks, to find that anyone whose work is relied upon by the government agency in performing its duties is engaged in the performance of a governmental function is overly broad. The Board of Ethics cannot find WHLC is a state employee without interpreting 42:1102 (18)(a)(iii) expansively.

This Board has said quite correctly and is worth again quoting here:

"The Board takes cognisance of the untold hundreds, if not thousands, of contracts between private entities and governmental agencies. The object of these contracts varies greatly. Some provide professional services (legal, accounting, architecture, landscape architecture, medical, engineering, etc.); some provide construction, renovation or repairs of buildings, roads, equipment, etc.; some provide social services, employment and management guidelines, insurance advice and policies, some provide products including consumables; the list is virtually endless. To hold that each of those private entities and their employees are public employees appears beyond the intent of the legislature in adopting Sec.1102(18)(a). If the legislature intended that result, it would simply have provided in Section 1102(18)(a) that "any

submit to the owner, user agency and contractor a monthly status report. The form of the report is supplied to the designer. The Designer's Statement for Professional Services and the Contractor's Certificate for payment shall be supplied to the owner. The designer is the impartial judge between the owner and contractor for the requirements of the contract documents. The designer can reject all work that is not in compliance with the contract documents. The designer reviews shop drawings, samples and submissions of the contractor only for conformance of the design concept. The designer is to respond to requests for information from the contractor. Only with the authorization of the owner shall the designer prepare change orders. The designer conducts an inspection with the owner, user agency and the contractor to determine if the contractor's work is in general accordance with the contract documents. When the owner desires to accept the work on full or substantial completion, the designer shall recommend such acceptance in writing, excepting the retained percentage, liquidated damages or the value of the punch list items. Upon receipt of the clear lien certificate, the designer makes the final inspection. The designer issues guarantees, operation and maintenance manuals, keys and other closing documents for the owner. After acceptance by the owner, the designer prepares a final report containing information requested by the owner and two sets of as built drawings. The designer reviews and approves the punch list. The designer follows up on items to be corrected during the warranty period.

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person who provides a service or product under contract to a governmental agency is deemed to be a public employee."⁶

A finding that WHLC is a state employee has far reaching ramifications. Each private architect who contracts from here on with the DOA/FPC for Capital Improvement Projects will be subject to the same strict confines of the ethics code applicable to state employees. The Procedure Manuel outlines the roles for all architects working on these projects, and the revised statutes applicable to the DOA/FPC apply in each instance as well. Accordingly, a finding that the architect is engaged in the performance of a governmental function in this instance would mean the same result for each architect engaged in services under any Capital Outlay Project.

Womack's bid is in the best interest of the tax payer

DOA/FPC claims the tax payer is at a great disservice when contractors bid on projects designed by immediate family members⁷. The DOA/FPC conveniently excluded from its analysis that through the vetting process of the public bid, Womack's bid was nearly \$400,000 less than the next highest bid. If WHLC is found to be a public employee and in turn Womack is precluded from proceeding with the project, an extra \$400,000 will be necessary to complete this project. We again caution against an expansive interpretation of WHLC being engaged in the performance of the governmental function for practical reasons such as this.

At the time WHLC became the architect, there were no ethical concerns to address regardless of whether WHLC is found to be a state employee or not. WHLC as the architect designed the plans, prepared the specifications to be bid, etc. It was not until after Womack bid the job and the DOA/FPC awarded the contract to Womack that the DOA/FPC claimed there was an ethical conflict. The DOA/FPC did not raise its ethical concerns until the job was approximately one year from completion. It would be a great disservice to the taxpayers of this state to nullify the contract of the architect and/or the contract of the contractor. Given most of the work has been completed, the parties request that neither contract be nullified, as no ethical impropriety grounded in fact has been found.

The DOA/FPC's assertions of ethical concerns arising from the work of WHLC and Womack are unfounded.

The DOA/FPC contends the primary objective of the ethics code is "to prevent not only the

⁶ In Re: Taylor Porter 2008-1150

⁷ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

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actuality of conflicts of interest, but also to prevent the occurrence of those situations that tend to create a perception of a conflict of interest.⁸ In finding a conflict of interest under these circumstances and based on the assertions of the DOA/FPC, one would need to presume first of all, these actions are possible and secondly, WHLC is prepared to ignore the provisions of the Louisiana State Board of Architectural Examiners, cheat, lie and steal in order to further its interests and those of Womack. This is an extreme charge in order to find an ethical conflict, especially since any design professional would face legal and professional ramifications for the actions suggested by the DOA/FPC. The DOA/FPC's arguments for ethical conflict also ignore the fact that the architecture services were provided subject to a joint venture with Post Architects.

A. Closing Specifications

DOA/FPC contends that the designer could easily manipulate its design to favor the contractor by including a closing specification.⁹ The DOA/FPC is aware this type of manipulation did not occur. Section 7.1.4 of the Procedure Manual specifically addresses closing specifications. Generally, state law prohibits closing specifications with few exceptions. Section 7.1.4(1)(b) of the Procedure Manual provides, "Any reason for closing specifications as provided for by law shall be brought to the attention of the owner in writing for review." Accordingly, any closing specification included in the plans would not be a secret. Further, for this specific project, the construction documents were developed with a closing specification, not at the insistence of the architect, but at the request of the user agency. The closing specification requested by the user agency involved the fire alarm and mechanical system, and this closing specification was approved by FPC when Womack bid the project. The DOA/FPC knows closing specifications are generally prohibited. The DOA/FPC also knows that if a closing specification is included in the plans, the owner will be aware of the specification and the specification will be subject to approval. Suggesting an ethical conflict based on closing specifications which are known by the owner and subject to approval is misleading.

B. Price Increases and Change Orders

The DOA/FPC contends an architect could approve cost increases and approve change orders to increase the contract price as a benefit to the contractor.¹⁰ An architect cannot unilaterally approve cost increases or change orders in favor of family members and to suggest that one can is again misleading, especially when dealing with charges of ethical impropriety. Section 7.1.6.15 of the Procedure Manual further provides, "Only with the authorization of the Owner, shall the Designer

⁸ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 2.

⁹ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

¹⁰ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

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prepare Change Orders. The designer shall obtain from the Contractor his estimate of cost and time changes in accordance with the contract documents for the Change Order, review and approve same and submit it to the Owner for approval before any changes are made in the Contract." There is no basis for the claims of the DOA/FPC in regard to ethical concerns over price increases and change orders. (Emphasis added)

C. Ignoring Delays Caused by the Contractor

The DOA/FPC argues that an ethical conflict may arise if the architect ignores delays caused by the contractor resulting in delays of occupancy and loss of the owner's right to contractually stipulated damages.¹¹ This argument ignores the fact that any weekly or monthly reports¹² from the architect are submitted to the owner for review, ignores the premise that the DOA is charged with performing its own inspections pursuant to La. R.S. 39:121(4) and ignores the fact that the facility planning and control section is to make periodic inspections at all stages of construction and is to make detailed reports available to the legislature and to the public pursuant to La. R.S. 39:124. The DOA/FPC seems to argue the WHLC has free reign, but there is owner oversight as to the status of the project on a strict and routine basis. Further, WHLC is providing its services subject to a joint venture with Post Architects. It is impractical to argue that long delays caused by the contractor would be ignored by the architect.

Further, the designer is to be the "impartial judge of the performance there under by both the Owner and Contractor,"¹³ and the designer shall "endeavor to guard the owner against defects and deficiencies in the work of the contractor."¹⁴ Accordingly, both WHLC and Post Architects can be sued for breach of contract and for professional negligence if the architects participate in the scheme alleged by the DOA/FPC. One who asserts an ethical conflict is present or potentially present must presume WHLC is engaged in professional negligence and is breaching its contract to the owner. The Board should not presume professionals are engaged in schemes of professional negligence and breaches of contract. No reasonable person would engage in these actions.

¹¹ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

¹² Section 7.1.6.6 and 7.1.6.10 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

¹³ Section 7.1.6.11 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

¹⁴ Section 7.1.6.6 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

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D. Information Conveyed only to the Favored Contractor

DOA/FPC contends that an architect could convey information to a preferred contractor that would not be known by any other contractor bidding the job, which would allow for an unfair, competitive advantage in securing the bid.¹⁵ There are factual constraints to this argument, and again, no reasonable professional would engage in this activity.

Section 7.1.5 of the Procedure Manual establishes, "Upon receipt of written approval from the User Agency and other State regulatory agencies, receipt of corrected and completed Construction Documents, and approval of the Latest Statement of Probable Construction Costs, the Owner may advertise the project for bids and shall be assisted by the Designer in obtaining bids." Section 7.1.5.6 also establishes that "the architect provides the Owner with a form to assist the owner in tabulating the bids." Accordingly, the process for tabulating the bids is the same as to all submissions and based on the documents previously approved. It is unclear how secretive information could give one contractor an advantage over another if all of the contractors' bids are based on the same plans and specifications approved by the owner, user agency and state regulatory agencies, and if the criteria contained in the plans and specifications is used to evaluate the bids.

Any vagueness in the plans and specifications may be called into question by any of the contractors. Accordingly, this is simply another roadblock to any attempts by an architect to unethically favor a contractor.

The argument of the DOA/FPC also suggests that the owner would be completely unaware if the criteria upon which the bids were evaluated favored a particular contractor. We suggest this would be clear if an architect was brazen enough to do this.

It should be noted Womack presented a bid that was \$400,000 lower than any of the other contractors. This speaks to the integrity and professional reputations of WHLC and Womack in that the bid was not challenged by any of the other contractors. The potential challenge of other contractors in regard to a bid submission is a deterrent to any design professional from favoring one contractor over another.

It should not be presumed that professionals are engaged in these sorts of activities. There are strong deterrents to these practices as provided by the Louisiana State Board of Architectural Examiners and the laws of this state.

¹⁵ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6.

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E. Ignoring Defective or Substandard Construction

The argument by the DOA/FPC that an architect might just ignore defective or substandard construction is completely unreasonable.¹⁶ **No architect wants problems with the construction of his project.** The architect is charged with protecting the owner from defects and deficiencies.¹⁷ Ignoring defective and substandard construction, no matter who the contractor is, would likely subject the architect to professional negligence and breach of contract claims resulting in damages, repair costs, emotional distress damages, etc. When there are legal and professional ramifications of this nature, it should not be presumed that these actions would occur. Especially in the case of a joint venture, it is not only WHLC that would be exposed to legal action, but also Post Architects.

The DOA/FPC's argument suggests it has no control over the project, but the DOA/FPC has total control. In fact, it has final acceptance. Pursuant to 7.1.6.15 of the Procedure Manual, R.S. 38:2241.1 gives the owner discretion to make acceptance on either full completion or substantial completion. The designer conducts an inspection with the Owner, User Agency, and Contractor to determine if the work is in general accordance with the contract documents. Accordingly, the agency conducts its own independent evaluation as to the construction.

Pursuant to La. R.S. 39:125, "facility planning and control section shall be responsible for directing final payment for work done on each project. However, if upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the facility planning and control section shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment. Upon completion of the project the facility planning and control section shall release it to the agency." There are so many reasons an architect would not ignore substandard construction regardless of who the contractor is that this argument is unfounded.

Lack of Capacity for Decision Making

Crucial to finding no ethical conflict in *In Re: Kean Miller*¹⁸ was that Kean Miller was not the decision maker.¹⁹ The OCD was to be the decision maker as to the outcome of the appeals and the decision as to what title company to use was made by IFC and the Road Home Applicant. As

¹⁶ April 29, 2009 correspondence from the DOA/FPC to the Board of Ethics page 6

¹⁷ Section 7.1.6.6 of the Louisiana Capital Improvements Projects Procedure Manual for Design and Construction

¹⁸ *In Re: Kean Miller* 2009-169

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outlined in the Procedure Manual, the owner maintains approval over the plans and specifications, any change orders are subject to the owner's approval, inspections are made by not only the architect, but by the government agencies as well, payments are made subject to the approval of the owner, and final acceptance of the project is subject to the approval of the owner. The owner, not the architect, makes the final decision on aspects crucial to the project, the same aspects the DOA/FPC seems to suggest lead to an ethical conflict.

Conclusion

WHLC should not be deemed a public employee. The DOA/FPC has set forth scenarios for ethical conflict that are neither factually, legally or ethically plausible. One would need to presume architects have complete control over the plans and acceptance of these state owned projects to assert an ethical conflict. Further, one would have to presume architects who have excellent reputations in their fields would partake in unprofessional actions which would subject them to professional ridicule and hardship as well as lawsuits in order to further an already independently successful contractor. These are not presumptions that should be made to find real ethical conflict exists.

Very truly yours,

LONG LAW FIRM, L.L.P.

**MICHAEL A. PATTERSON
SEBASTIAN R. CABALLERO**

MAP: src
cc: Mike Hill

Alesia Ardoin

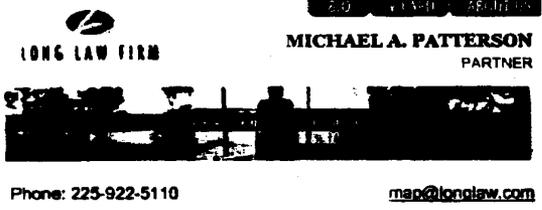
From: Michael Patterson (MAP@longlaw.com)
Sent: Monday, May 11, 2009 10:48 AM
To: Alesia Ardoin
Subject: Request for info on WHLC ownership

Ms Ardoin,
Per your request, here is the information on WHLC:

Russell Washer- President 42.5% shareholder
Mike Hill VP 21.5% shareholder
Rick Lipscomb Sec/Treas. 21.5% shareholder
Rex Cabaniss 15% shareholder

Mr. Hill oversees the production of all the contract documents and construction administration of all projects for the firm.

On the Pennington project, he oversees Jason Bethany who handles the day to day construction administration of the project. Mr. Hill attends all jobsite meeting with Mr. Bethany.




LONG LAW FIRM


MICHAEL A. PATTERSON
PARTNER



Phone: 225-922-5110 map@longlaw.com

General Item

Ethics Board Docket No. BD 2009-610

01/15/2010

RE:

Appearance in connection with a consideration of a request that the Board waive the \$250 and \$250 late fees assessed against Richard Ieyoub, for failure to timely file a Legislative and Executive ER-2/09 lobbying report.

Relevant Statutory Provisions, Advisory Opinions:

24:58 & 49:76

Comments:

Richard Ieyoub filed his Legislative and Executive ER-2/09 lobbying report that was due by March 25, 2009, 5 days late on March 30, 2009. He was assessed \$250 per report, totaling \$500. To date, he has paid \$250 and has a remaining balance of \$250 that is due.

Mr. Ieyoub requests an appearance before the Board regarding the late fees assessed in connection with the lobbying report covering the period of February 1, 2009 through February 28, 2009.

Mr. Ieyoub has two prior late fees. He was assessed \$500 and \$350 for prior year reports. Those late fees have been paid. (MDD)

Recommendations:

Decline to waive.

2009-610



April 22, 2009

Via Facsimile and U. S. Mail

Mr. Michael D. Dupree
 Staff Attorney
 Louisiana Board of Ethics
 Post Office Box 4368
 Baton Rouge, Louisiana 70821

Richard P. Ieyoub
 Of Counsel
 Direct Phone: 225-282-0621
 Direct Fax: 225-282-0650

Re: Legislative & Executive Filing Penalty
 February 1 - 28, 2009 Lobbyist Expenditure Report

Dear Mr. Dupree:

Reference is made to your letter of April 16, 2009 wherein you indicated that I was being fined \$250.00 for being late in filing my Legislative and Executive lobbying expenditure report which was due on March 25, 2009.

I am hereby requesting that the Board grant me a waiver of these late fees and in connection with this request, I would like to appear before the Board. Please provide me with dates that would be available for my appearance and upon receipt of those dates, I will contact you in an attempt to set a specific time for the hearing. Thank you for your help and cooperation.

Yours very truly,

Richard P. Ieyoub

RPI/ddm

Expenditure Report for MR. RICHARD IEYOUB**Executive Branch Lobbying Expenditures**

for February 09

Lobbyist: RICHARD IEYOUB

Report Submitted: 3/30/2009.

Executive Branch Subject Matters Lobbied

A listing of each subject matter lobbied during this reporting period pursuant to R.S. 49:74(A)(4):

No Subject Matters Lobbied

Executive Branch ExpendituresAggregated total of all the expenditures made during this reporting period in accordance with 49:76D(1)(b): **\$0.00**

List of expenditures made per individual executive branch official during this reporting period:

No relevant expenditures reported for this period.

List of expenditures attributable to the spouse or minor child of an executive branch official during this period:

No relevant expenditures reported for this period.

List of all expenditures made for reception, social gather, or other function to which more than 25 executive branch officials were invited during this reporting period:

No relevant expenditures reported for this period.

Executive Branch Lobbying Expenditures Reported to Date for the Current YearAggregated total of all the expenditures made to date for this calendar year in accordance with 49:76D(1)(b): **\$0.00**

Aggregate total spent per individual executive branch official to date for the current calendar year:

No relevant expenditures reported to date for this calendar year.

The aggregate total of expenditures attributable to the spouse or minor child of an executive branch official to date for the current calendar year:

No relevant expenditures reported to date for this calendar year.

Aggregated total of all the expenditures made for reception, social gather, or other function to which more than 25 executive branch officials were invited during the calendar year: **\$0.00****Legislative Branch Lobbying Expenditures**

for February 09

Lobbyist: RICHARD IEYOUB

Report Submitted: 3/30/2009.

Legislative Branch Subject Matters Lobbied

A listing of each subject matter lobbied during this reporting period pursuant to R.S. 24:53(A)(4):

No Subject Matters Lobbied

Legislative Branch ExpendituresAggregated total of all the expenditures made during this reporting period in accordance with 24:55D(1)(b): **\$0.00**

List of expenditures made per individual legislator or public servant during this reporting period:

No relevant expenditures reported for this period.

List of expenditures attributable to the spouse or minor child of an legislator or public servant during this period:

No relevant expenditures reported for this period.

List of all expenditures made for reception, social gather, or other function to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee or any committee recognized caucus or any delegation thereof during this reporting period:

No relevant expenditures reported for this period.

Legislative Branch Lobbying Expenditures Reported to Date for the Current YearAggregated total of all the expenditures made to date for this calendar year in accordance with 24:55D(1)(b): **\$0.00**

Aggregate total spent per individual legislator or public servant to date for the current calendar year:

No relevant expenditures reported to date for this calendar year.

The aggregate total of expenditures attributable to the spouse or minor child of a legislator for all reporting periods during this calendar

Lobbyist Data Search

year:

No relevant expenditures reported to date for this calendar year.

Aggregated total of all the expenditures made for reception, social gather, or other function to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee or any committee, recognized caucus, or any delegation thereof during the calendar year:

\$0.00



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS
P. O. BOX 4368
BATON ROUGE, LA 70821
(225) 219-5600
FAX: (225) 381-7271
1-800-842-6630
www.ethics.state.la.us

December 2, 2009

Mr. Richard Ieyoub
One American Place, Suite 900
Baton Rouge, LA 70825

Re: Ethics Board Docket No. 2009-610

Dear Mr. Ieyoub:

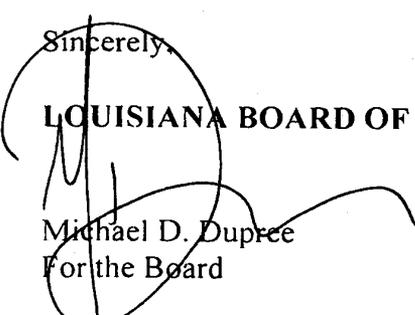
The Louisiana Board of Ethics, at its June 24, 2009 meeting, considered your request for a continuance in connection with your request for a "good cause" waiver of the \$250 late fee assessed against you for failure to timely file a required lobbying report.

Your appearance in connection with this matter was continued due to illness and has now been rescheduled for January 15, 2010.

If you have any questions, please feel free to contact me.

Sincerely,

LOUISIANA BOARD OF ETHICS


Michael D. Dupree
For the Board

EB:MDD

General Item

Ethics Board Docket No. BD 2009-674 01/15/2010

RE: Appearance in connection with a request for an advisory opinion concerning an accounting firm providing risk services for Jefferson Parish.

Relevant Statutory Provisions, Advisory Opinions: 1111C(2)(d), 2009-154, 2008-1150

Comments:

FACTS:

Jefferson Parish has advertised for "Statements of Qualifications" from firms interested in providing Actuarial and Risk Consulting Services. Jefferson Parish has selected the firm of Sigma Consulting Corp. (Sigma) as Actuarial Consultants and the firm of Aparicio, Walker & Seeling Risk Management, LLC (AWS-RM) to perform risk consulting for Jefferson Parish. It proposes to enter into a three-year contract with AWS-RM.

As risk consultants, AWS-RM will be assigned tasks such as cost estimate, scopes of work to be assigned on an as needed basis as directed by the Director of Risk Management in making claim and insurance programs work, which may include writing specifications for the Parish's Producer of Record to go to market; assist in the review of submittals and make recommendations based on its review; evaluate existing insurance policies and make recommendations; make valuation recommendations based on self-insured needs; and make valuations of real property.

AWS-RM is not a licensed insurance agency, nor does it represent insurance companies. AWS-RM does not transact sales of insurance of any kind and ASW-RM has no financial interest in any insurance policy that Jefferson Parish may purchase.

The principals of AWS-RM also have an interest in three other companies; Aparicio, Walker & Seeling, Inc. (AWS), Aparicio, Walker & Seeling Benefits, LLC (AWS-B) and Aparicio, Walker & Seeling of Baton Rouge, LLC (AWS-BR). AWS-RM shares the same ownership, same offices, and same employees with AWS.

Additional information suggests that AWS-RM will not make any recommendations to Jefferson Parish to purchase insurance through any of the affiliated companies of AWS-RM (AWS, and AWS-B). AWS-BR is now a defunct company.

AWS does act as an insurance agent broker for insurance policies, however, it does not have a relationship with Jefferson Parish. AWS has indicated that it would not receive any compensation from any business that is written for the Parish of Jefferson or a result of business written for the Parish of Jefferson, but it cannot say that it will never receive compensation from an insurance company that has a relationship with Jefferson Parish.

AWS-RM, in accordance with the Risk Management Services Agreement with Jefferson Parish, will provide the Parish with a list of recommended insurance products and companies. The Parish makes the final determination regarding whether they choose to purchase the insurance.

Additional information secured indicates that a potential AWS contract will supplement the parish's staff of personnel that currently perform risk management services for the parish. The parish's risk analyst and Director of Risk Management currently perform the duties.

ISSUE:

Would AWS-RM entering into a three-year contract with Jefferson Parish make it a public employee subject to the provisions of the Ethics Code?

If AWS-RM is a public servant, does the common ownership between the companies affiliated with Aparicio, Walker & Seeling, present participation and prohibited compensation problems for the owners of AWS-RM, if AWS-RM were to make a recommendation to use an insurance company which may provide remuneration to the owners of AWS-RM through one of the affiliated companies such as AWS or AWS-B?

LAW:

Section 1102 provides that a public employee is any person who provides a governmental function.

In Board Docket No. 2008-1150, the Board rendered the opinion that the law firm of Taylor and Porter would not be defined as a "public employee" as defined by the Code of Governmental Ethics by providing legal services to LSU in connection with a single contract with Our Lady of the Lake while Taylor Porter serves as special counsel for both LSU and OLOL. The Board reasoned that "the legal services to be provided by Taylor Porter will not provide medical, education or health care to the public; instead its legal services will indirectly support the LSU's performance of its legally mandated governmental function."

In Board Docket No. 2009-154, the Board rendered the opinion that the Kean Miller law firm would be a public employee as defined by the Code of Governmental Ethics if it entered into an agreement with the OCD/DRU to assist its attorney's with OCD/DRU's appeals process. The Board reasoned that the duties that Kean Miller employees proposed to perform are a part of a service or duty that OCD employees provide to the general public, and as such, Kean Miller's participation in the appeals process, as a representative of the Office of Community Development, would be engaging in the performance of a governmental function for purposes of the Code and as such define Kean Miller as a public employee.

Section 1111C(2)(d) prohibits a public servant from performing a compensated service to a person who has or seeks a business, financial or contractual relationship with the public servant's agency.

ANALYSIS:

AWS-RM would be considered a public servant. In line with the Kean Miller opinion, AWS-RM would be providing services which Jefferson Parish already provides to the public. Jefferson Parish is mandated to protect the investments and property of the citizens by insuring property, as well as insuring the citizens against loss. It provides insurance policies for the benefit of the public. Therefore, the services that AWS-RM would perform, on behalf of Jefferson Parish, for the citizens of Jefferson Parish would classify AWS-RM as a public employee subject the the Code.

Section 1111C(2)(d) of the Code prohibits a public servant, and any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, from receiving any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person which has or seeks a business, financial or contractual relationship with the public servant's agency. Because AWS and AWS-RM share common ownership, common employees and common workspace, AWS-RM exercises control of AWS and therefore, AWS' receipt of compensation from an insurer who may contract with Jefferson Parish would be prohibited by Section 1111C(2)(d) if AWS-RM were to enter into a contract with Jefferson Parish. (MDD)

Recommendations: Adopt the proposed advisory opinion.

Date

Mr. Thomas G. Wilkinson
Parish Attorney
Jefferson Parish
P.O. Box 9
Suite 5200
Gretna, LA 70054

DRAFT

RE: Ethics Board Docket No. 2009-674

Dear Mr. Wilkinson:

The Louisiana Board of Ethics, at its September 31, 2009 meeting, considered your request for an advisory opinion concerning whether Aparicio, Walker & Seeling Risk Management, LLC (AWS-RM) may enter into a contract with Jefferson Parish to perform insurance risk consulting services.

Information secured by the Board indicates that, as risk consultants for Jefferson Parish, AWS-RM would be assigned tasks such as providing cost estimates, performing work to be assigned on an as needed basis by the Director of Risk Management as well as work involving claims and insurance programs. Such tasks may include writing specifications for the Parish's Producer of Record to go to market; assisting in the review of submittals and the making of recommendations to Jefferson Parish based on the review of AWS-RM, the evaluation of existing insurance policies and the making of valuation recommendations based on self-insured needs, as well as the valuation of real property. After the provision of the consulting services by AWS-RM, Jefferson Parish would have the final say as to what insurance to purchase, and from whom to purchase insurance from.

AWS-RM is not a licensed insurance agency, nor does it represent insurance companies. AWS-RM does not transact sales of insurance of any kind and ASW-RM has no financial interest in any insurance policy that Jefferson Parish may purchase.

The principals of AWS-RM also have an interest in two other companies; Aparicio, Walker & Seeling, Inc. (AWS), Aparicio, Walker & Seeling Benefits, LLC (AWS-B). AWS-RM shares the same ownership, same offices, and same employees as AWS.

AWS-RM has indicated that it would not make any recommendations to Jefferson Parish to purchase insurance through AWS, and AWS-B.

AWS does act as an insurance agent broker for insurance policies, however, it does not have a relationship with Jefferson Parish. AWS has indicated that it would not receive any compensation from any business that is written for the Parish of Jefferson or as a result of business written for the Parish of Jefferson. However, AWS may receive compensation from an insurance company that has a business, contractual or financial relationship with Jefferson Parish, through acting as an insurance agent in a separate transaction, apart from Jefferson Parish.

DRAFT

Thomas G. Wilkinson
date
Page -2-

DRAFT

The Board has concluded, and instructed me to inform you that Section 1111C(2)(d) of the Code prohibits AWS-RM from contracting with Jefferson Parish to provide insurance risk consulting services, if AWS receives compensation from insurance companies which Jefferson Parish has a business, contractual or financial relationship with. Section 1111C(2)(d) of the Code prohibits a public servant, and any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, from receiving any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person which has or seeks a business, financial or contractual relationship with the public servant's agency. Because AWS and AWS-RM share common ownership, common employees and common workspace, AWS-RM exercises control in AWS. Therefore, AWS' receipt of compensation from an insurer who may contract with Jefferson Parish would be prohibited by Section 1111C(2)(d) if AWS-RM were to enter into a contract with Jefferson Parish.

The Board issues no opinion as to laws other than the Code of Governmental Ethics. This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Ethics. If you have any further questions, please contact me at (225) 219-5600 or at (800) 842-6630.

Sincerely,

LOUISIANA BOARD OF ETHICS

Michael Dupree
For the Board

DRAFT



AARON F. BROUSSARD
PARISH PRESIDENT

**JEFFERSON PARISH
LOUISIANA**

OFFICE OF THE PARISH ATTORNEY

Our Mission is
"Provide the services,
leadership, and vision to
improve the quality of life
in Jefferson Parish."

THOMAS G. WILKINSON
PARISH ATTORNEY

LOUIS G. GRUNTZ, JR.
DEPUTY PARISH ATTORNEY

PEGGY O. BARTON
DEPUTY PARISH ATTORNEY

October 21, 2009

Mr. Michael Dupree
Louisiana Board of Ethics
P. O. Box 4368
Baton Rouge, LA 70821

RE: Ethics Board Docket No. 2009-674

Dear Mr. Dupree:

In response to your letter dated October 13, 2009, please find the additional information requested regarding this matter.

1. Did any employees of Jefferson Parish provide the types of risk management services contained in the proposed contract with AWS, prior to Jefferson Parish's desire to contract for these services? If so, whom? When? What was the employee's job description and duties? Does anyone currently fill such a roll? Has the roll been eliminated?

This contract supplements parish staff in the Department of Risk Management. Current staff that utilizes the services of this contract is the Risk Analyst and the Director of Risk Management. Services are on an as needed and project bases. A copy of the job description and duties are attached for your review. As outlined, the services are to supplement current staff.

2. Have these risk services always been contracted out to a third party? Prior to the proposed contract, how did Jefferson Parish fulfill its risk assessment needs?

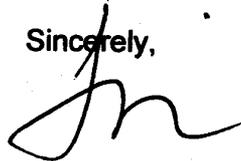
Supplemental services were originally contracted out in 1999. Prior to that date all projects were handle by staff personnel; however, due to work loads the Director determined that additional help was needed in order to accomplish the growing departmental demands.

2009 OCT 22 PM 2:25

CLERK OF COURSE REGISTRATION
CAMPAIGN FINANCE
RECEIVED

Please let me know if you need any additional information, you may contact me at (504) 364-3800.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Wilkinson', written in a cursive style.

THOMAS G. WILKINSON
Parish Attorney

TGW/pob

cc: Mr. Tim A. Whitmer, CAO

Class Code:

JEFFERSON PARISH, LOUISIANA
CLASS DESCRIPTION, 1997

POSITION TITLE: RISK ANALYST

KIND OF WORK

Under general supervision, the purpose of the position is to assist the Director of Risk Management with the Property and Casualty Insurance Program of the Parish of Jefferson. Employee in this classification is responsible for the timely and accurate compilation and reporting of all financial activities of the Loss Fund and Insurance Program. Work areas include, but are not necessarily limited, to losses, departmental allocations, insurance policies, budgets, fixed assets.

DISTINGUISHING FEATURES OF WORK

This class is distinguished as professional in the field of insurance risk analysis work requiring ability to analyze, prepare and maintain a wide variety of records and reports.

EXAMPLES OF WORKESSENTIAL FUNCTIONS

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within the classification. It is not necessarily descriptive of any one position in the class. The omission of an essential function does not preclude management from assigning duties not listed herein if such functions are a logical assignment to the position.

Ensures that Insurance Agent of Record is consistent with Parish standards, policies, procedures and philosophy in the purchasing of insurance policies; ensures proper direction in purchasing policies in accordance with established coverages and cost reduction programs.

Analyzes and evaluates insurance proposals and policies; ensures the timely purchase and renewal of policies to avoid lapses in coverage.

Attends Insurance Advisory Committee meetings and provides recommendations; ensures that Parish Attorney's Office has correct information to prepare correspondence and council resolutions for claim settlements.

Provide insurance agent with updated lists of vehicles and equipment; ensures that new vehicle and equipment acquisitions are timely reported to agent.

RISK ANALYST

Maintain custody of current and expired insurance policies ensuring that originals are not misplaced; maintain up to date insurance policy inventory.

Maintain fixed property inventory and appraisal list for all Parish immovable property as relates to Property/Fire and Boiler and Machinery coverages; ensures that property inventory list is updated regularly.

Prepares on an annual basis, estimates for all Parish departments' insurance budgets; ensure accuracy of loss data and loss funds to prepare budgets.

Receives and reviews claim payment listings from Third Party Administrators; ensures proper payments to claimants and vendors, and initiates reimbursements to trust funds by the Parish.

Prepares direct expenditures to pay Third Party Administrators, insurance companies, insurance agent, etc; reconciles and /or balances various accounts or items specific to assigned area.

MARGINAL FUNCTIONS

While the following tasks are necessary for the work of the unit, they are not an essential part of the purpose of this position and may also be performed by other unit members.

Performs related work as directed.

NECESSARY KNOWLEDGE, SKILLS AND ABILITIES

Considerable knowledge of fundamentals of insurance.

Considerable knowledge of claims payment and risk analysis.

Knowledge of mathematical functions, i.e., addition, subtraction, multiplication, division, calculating decimals and percentages.

Ability to exchange communication in obtaining information or clarifying details.

Ability to review and analyze a wide variety of forms, statements, reports and documents to verify accuracy of claim loss data, contracts, budgets, payroll records, etc.

RISK ANALYST

Ability to provide advisement/recommendations consistent with evaluative data and supporting documentation.

Knowledge of generally accepted accounting principals and procedures with respect to government accounting.

MINIMUM QUALIFICATION REQUIREMENTS

Associate's degree with Bachelor's degree preferred in Finance, Business, Accounting, Insurance or related discipline; supplemented by three (3) years progressively knowledgeable and skilled experience in risk analysis and evaluation, insurance principles and procedures, insurance coverage analysis and evaluation and/or accounting evaluation experience that includes governmental accounting principles and procedures; or an equivalent combination of education, training and experience.

ADA COMPLIANCE

Physical Ability: Tasks involve some physical effort, i.e., some standing and walking, or frequent light lifting (5-10 pounds); or minimal dexterity in the use of fingers, limbs or body in the operation of shop or office equipment. Tasks may involve extended periods of time at a keyboard or work station.

Sensory Requirements: Some tasks require visual perception and discrimination. Some tasks require oral communications ability.

Environmental Factors: Tasks are regularly performed without exposure to adverse environmental conditions (e.g., dirt, cold, rain, fumes).

§ 2-92

JEFFERSON PARISH CODE

Sec. 2-92. Public information officer.

(a) *Appointment.* The public information officer shall be appointed by the parish president with the approval of the council.

(b) *Duties.* The public information officer shall:

- (1) Develop an education and media program to inform parish residents of major issues concerning the parish;
- (2) Manage the parish president's schedule;
- (3) Manage media relations;
- (4) Perform publication research;
- (5) Coordinate special events and publicize special events within the parish;
- (6) Be responsible for any and all publication and publications for the parish;
- (7) Direct staff assigned to public information;
- (8) Prepare policy statements and plans for public information.

(c) *Salary.* The salary of public information officer shall be established by the parish president within group III of the executive pay plan. (Ord. No. 17468, § 1, 3-9-88)

Sec. 2-93. Department and position of director created.

There is hereby created the department of risk management and the position of director of risk management which office and position shall endeavor to identify all potential sources of loss and to establish a method to assist parish departments in minimizing or eliminating their risks through implementation loss control.

(Ord. No. 17445, § 1, 2-10-88; Ord. No. 18406, § 1, 11-20-91; Ord. No. 19980, § 1, 3-26-97; Ord. No. 21410, § 1, 10-10-01; Ord. No. 21526, § 1, 2-27-02)

Sec. 2-93.1. Qualifications, appointment and salary of director.

(a) *Qualifications.* The director of risk management shall be qualified by education, training and prior administrative and/or management experience and shall devote his entire efforts to the purpose for which this position has been created.

(b) *Appointment.* The position of director of risk management shall be appointed by the parish president with the approval of the council.

(c) *Salary.* The salary of the director of risk management shall be established by the parish president within the executive pay grade 17. (Ord. No. 18406, § 1, 11-20-91; Ord. No. 19980, § 1, 3-26-97; Ord. No. 21410, § 1, 10-10-01; Ord. No. 21526, § 1, 2-27-02)

Sec. 2-93.2. Duties of director.

The director of risk management shall:

- (1) Administer the parish's risk management program and establish a risk funding system;
- (2) Manage all parish insurance covering property and liability exposure through commercial underwriters or self-insurance;
- (3) In coordination with the parish attorney, manage all tort claims made against the parish or any department of the parish;
- (4) Review, evaluate and recommend on existing and prospective insurance coverages to the insurance advisory committee;
- (5) Act in conjunction with agent(s), broker placing the parish's commercial insurance coverage, to investigate and request necessary coverages, maintain the insurance policies and files, and coordinate contracts;
- (6) Establish risk identification systems and procedures, including the organization of information, data analysis, documentation, and rules and regulations to establish procedures governing parish risk;
- (7) Coordinate insurance accounting data with finance department;
- (8) Meet regularly with the parish's third party claims administrators;
- (9) Supervise and evaluate workers involved in the risk management department;
- (10) Advise and direct security personnel on security procedures;

ADMINISTRATION

§ 2-95

- (11) In coordination with the parish attorney assist in the settlement of all claims in excess of ten thousand dollars (\$10,000.00) and direct, advise and supervise the third party administrator in the settlement of all claims not to exceed ten thousand dollars (\$10,000.00);
- (12) Prepare statistical studies, quarterly financial reports and research planning for future programs, systems and benefits;
- (13) Submit to the parish president, parish council, insurance advisory committee a formal annual report on the parish's risk management program;
- (14) Maintain an inventory of values of parish owned property and contents;
- (15) Provide policy guidance to the parish president in the area of risk management;
- (16) Manage risk prevention programs and maintain a system of accident records and reports on all departments of parish government;
- (17) All other such duties or responsibilities that are related to risk management.
(Ord. No. 18406, § 1, 11-20-91; Ord. No. 19980, § 1, 3-26-97; Ord. No. 21410, § 1, 10-10-01; Ord. No. 21526, § 1, 2-27-02)
- (2) Monitor legislative and regulatory activities concerning matters that affect the public health service delivery systems and advise the parish government as to the impact and appropriate courses of action;
- (3) Represent the parish government to the general public in matters of public health;
- (4) Serve as a member or ad hoc member, as appropriate, of related boards, committees and commission;
- (5) Assist in planning and implementation of parish budgets for public health services;
- (6) Represent the parish at national, state and regional meetings concerning public health services;
- (7) Prepare and submit impact statements on legal and regulatory initiatives concerning public health services, and monitor implementation of those initiatives as they occur;
- (8) Supervise workers involved in the department(s);
- (9) Perform all other such duties or responsibilities that are related to public health services.

(c) *Qualifications.* The director of public health services shall have a thorough working knowledge of public sector health services delivery systems and shall possess the following qualifications: A minimum of a bachelor's degree plus three (3) years' experience in public health or human services, or a master's degree in a related field of study.

(d) *Appointment.* The position of director of public health shall be appointed by the parish president with the approval of the parish council.

(e) *Salary.* The salary of the director of public health shall be established by the parish president within group III of the executive pay plan.
(Ord. No. 17874, § 1, 11-29-89)

Sec. 2-94. Director of public health services.

(a) *Position created; purpose.* The position of the director of public health services is hereby created to serve the parish council and administration as the principal director, coordinator and monitor of public health services so as to better assure the quality of life for parish citizens who receive public health services.

(b) *Duties.* The director of public health services shall:

- (1) Direct, coordinate, monitor and serve as liaison between the parish government and providers of public health services limited to departments and agencies of the federal and state governments and such other agencies and entities which form the public health service delivery system to parish residents;

Sec. 2-95. Correctional system liaison officer.

(a) *Position created; purpose.* The position of correctional system liaison officer is hereby created to serve the Parish of Jefferson, the Jefferson

BLUE WILLIAMS, L.L.P.

ATTORNEYS & COUNSELORS AT LAW

www.bluewilliams.com

3421 NORTH CAUSEWAY BOULEVARD
SUITE 900
METAIRIE, LA 70002-3760
(504) 831-4091

1590 WEST CAUSEWAY APPROACH
SUITE 1
MANDEVILLE, LA 70471-3046
(985) 626-0058

WRITER'S DIRECT DIAL (504) 830-4952
WRITER'S DIRECT FACSIMILE (504) 849-3035
dmaraldo@bluewilliams.com

REPLY TO: METAIRIE ADDRESS

TARA NUNEZ SMITH *
CRAIG R. WATSON *
ERIN H. BOYD
PAMELA F. NOYA
TIFFANY O. CAZABON
BRETT W. TWEEDLE
DAVID B. PARNELL, JR.
ERIC E. POPE
JOSEPH F. LAHATTE III
JADE C. MCKEOUGH
KELLY A. DUGAS
MICHELLE BEATY-GULLAGE
STACIE L. HROVEC
ELIZABETH S. SCONZERT *
TANIA L. NELSON

Of counsel
C.T. WILLIAMS, JR. † *
MICKAL P. ADLER
WILLIAM H. REINHARDT, JR.
JOHN C. OVERBY *
JOHN C. HENRY †
RICHARD E. GRUNER, JR.
WILLIAM L. BROCKMAN
CARL T. CONRAD *

RGE R. BLUE (1916-1986)

RICHARD S. VALE
STEPHEN M. PIZZO
THOMAS G. BUCK
BRIAN C. BOSSIER
VIRGIL A. LACY III
KURT S. BLANKENSHIP †
ALDRIC C. POIRIER, JR. † *
DANTÉ V. MARALDO
ROBERT I. BAUDOUIN †
MARY K. PEYTON
EDWIN A. ELLINGHAUSEN III
GUIDE A. GIAMBRONE III
RICHARD L. OLIVIER
CHRISTOPHER T. GRACE III
RYAN J. ROEMERSHAUSER *
FRANK J. TOWERS

† PROFESSIONAL LAW CORPORATION
* MANDEVILLE OFFICE
‡ ALSO ADMITTED IN MISSISSIPPI
◊ ALSO ADMITTED IN TENNESSEE
ALSO ADMITTED IN TEXAS
‡ ALSO ADMITTED IN VIRGINIA
◊ LL.M. IN TAXATION

September 21, 2009

VIA FACSIMILE

Mr. Michael Dupree
State of Louisiana
Department of State Civil Service
Louisiana Board of Ethics
P. O. Box 4368
Baton Rouge, LA 70821

RE: Ethics Board Docket No. 2009-674

Dear Mr. Dupree:

Aparicio, Walker & Seeling Risk Management, LLC ("AWS-RM") has received and reviewed your September 14, 2009 correspondence setting forth the additional information required by the Louisiana Board of Ethics in order to render its opinion in this matter. AWS-RM greatly appreciates the opportunity to clarify these issues for the Board.

AWS-RM provides the following direct responses to each of the questions presented by the Louisiana Board of Ethics:

1. Please provide a copy of the contract that Jefferson Parish has entered, or may enter with AWS-RM.

Response: Attached please find Risk Management Services Agreement Between Aparicio, Walker & Seeling Risk Management, LLC and the Parish of Jefferson.

2009 SEP 21 PM 4:06

REGISTRATION
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Mr. Michael Dupree
State of Louisiana
Department of State Civil Service
Louisiana Board of Ethics
September 21, 2009
Page 2

2. Would AWS-RM, through the duties set forth in their contract with Jefferson Parish, make any recommendation to the Parish to purchase insurance through any other company AWS-RM may be affiliated with? Aparicio, Walker & Seeling, Inc.? Aparicio, Walker & Seeling of Baton Rouge? Aparicio, Walker & Seeling Benefits, LLC? If so, please state how.

Response: AWS-RM will not make any recommendations to Jefferson Parish to purchase insurance through: 1) Aparicio, Walker & Seeling, Inc., 2) Aparicio, Walker & Seeling of Baton Rouge, LLC; 3) Aparicio, Walker & Seeling Benefits, LLC; or 4) any other company AWS-RM may be affiliated with. Please note that Aparicio, Walker & Seeling of Baton Rouge, LLC is defunct.

3. Does Aparicio, Walker & Seeling, Inc., act as an insurance agent broker for insurance policies? If so, does it receive compensation from companies which may sell insurance to the Parish of Jefferson? Does Aparicio, Walker & Seeling have any form of business relationship with Jefferson Parish?

Response: Yes, Aparicio, Walker & Seeling, Inc. acts as an insurance agent broker for insurance policies.

Aparicio, Walker & Seeling, Inc. does not know what companies may sell insurance to the Parish of Jefferson. This is a very ambiguous and broad question. Notwithstanding, in the event that Aparicio, Walker & Seeling, Inc. may receive compensation from companies which may sell insurance to the Parish of Jefferson, then AWS-RM stresses that 1) Aparicio, Walker & Seeling, Inc. is a separate and distinct entity from AWS-RM and 2) any compensation would **not** be from the Parish of Jefferson and would **not** be from any business written for the Parish of Jefferson or a result of business written for the Parish of Jefferson.

Aparicio, Walker & Seeling, Inc. does not have any form of business relationship with Jefferson Parish.

4. Is it possible, that any company affiliated with Aparicio, Walker & Seeling, Inc., to provide insurance to Jefferson Parish through a recommendation to purchase insurance by AWS-RM?

Mr. Michael Dupree
State of Louisiana
Department of State Civil Service
Louisiana Board of Ethics
September 21, 2009
Page 3

Response: This is a very ambiguous and broad question. Notwithstanding, no company affiliated with Aparicio, Walker & Seeling, Inc., will provide insurance to Jefferson Parish through a recommendation to purchase insurance by AWS-RM or while AWS-RM is the Risk Manager for Jefferson Parish.

5. In the scope of its duties, does AWS-RM make a final recommendation to Jefferson Parish about which insurance product to buy and from whom?

Response: As clearly set forth in the attached Risk Management Services Agreement Between Aparicio, Walker & Seeling Risk Management, LLC and the Parish of Jefferson, AWS-RM will provide the Parish of Jefferson with a list of recommended insurance products and companies. The Parish of Jefferson will make all final decisions regarding the insurance products and companies to be selected.

AWS-RM respectfully maintains that the Louisiana State Legislature has also directly addressed this issue in Louisiana Revised Statute 42:1123(37)(c), which states:

Nothing in this Paragraph shall prohibit a governmental entity from contracting with an insurance consultant separate from the producer of record to provide risk management services and to assist the governmental entity in making insurance decisions.

It is our understanding that the Parish of Jefferson will be contracting with AWS-RM, separate from the producer of record. AWS-RM will provide risk management services and assist the Jefferson Parish in making insurance decisions, separate from the producer of record, which will be a company not affiliated with either AWS-RM or Aparicio, Walker & Seeling, Inc.

Finally, the earlier Opinion of the Louisiana Board of Ethics, Opinion 2008-863d, is easily distinguished from the present matter. In the prior matter, Fontenot & Associates and/or an entity affiliated with Fontenot & Associates was seeking to be both the Risk Manager and a producer of insurance for St. John the Baptist Parish Counsel. Conversely, in the present matter, AWS-RM, while acting as Risk Manager for Jefferson Parish, will not have an entity affiliated with it act as a producer for insurance business with Jefferson Parish. As a consequence, it is clear that the Risk Management Services Agreement Between Aparicio, Walker & Seeling Risk Management, LLC and the Parish of Jefferson does not violate either the Code of Ethics or any statutory prohibitions under Louisiana law.

Mr. Michael Dupree
State of Louisiana
Department of State Civil Service
Louisiana Board of Ethics
September 21, 2009
Page 4

AWS-RM appreciates the Louisiana Board of Ethic's time and attention to this matter. If the Board requires any additional information or has any additional questions, please do not hesitate to contact our office.

Sincerely,



DANTÉ V. MARALDO

DVM/gss

Enclosure

cc: Mr. Buddy Seeling

RISK MANAGEMENT SERVICES AGREEMENT

BETWEEN

APARICIO, WALKER & SEELING RISK MANAGEMENT. LLC

AND

THE PARISH OF JEFFERSON

This agreement, hereinafter "Agreement", is made and entered into on this _____ day of _____ 2009 by and between the Parish of Jefferson, State of Louisiana, acting herein by and through its Parish Council, hereinafter called the "Client", represented by Thomas J. Capella, Council Chairman, duly authorized to act pursuant to provisions of Resolution No. 112221 adopted on the 6th day of May, 2009 and pursuant to Resolution No. _____ adopted on the ___ day of ____, 2009 and Aparicio, Walker & Seeling Risk Management, LLC, a Louisiana Corporation with its principal place of business located at 4501 West Napoleon Ave., Metairie, Louisiana 70001 hereinafter called "Consultant" or "AWS", represented by Albert Aparicio, Jr. its duly authorized Member.

All work required by the Client shall be under the direction of the Director of the Department of Risk Management and all approvals and administration of this agreement shall be through said Director. Consultant agrees at all time to abide by and be held amenable and subject to the terms and conditions of this Agreement, including Consultant's Proposal and the Request for Qualification attached hereto and made a part of hereof. In the event of conflict in provisions of this Agreement, Consultant's Proposal and the attached Request for Qualifications, the provisions in the Request for Qualifications shall prevail. In consideration of the mutual covenants and promises of the parties, Consultant agrees to furnish and Client agrees to accept those certain risk management services as defined in this instrument on the following terms and conditions:

**ARTICLE 1.
TERM**

- 1.1 The term of this Risk Management Services Agreement shall commence on _____, 2009 and shall expire on _____, 2012, unless extended in writing by mutual agreement.

**ARTICLE 2.
SCOPE OF WORK TO BE PERFORMED**

Consultant shall be available to provide the following services upon request:

- 2.1 Evaluation of the efficiency and effectiveness of Client's current systems and procedures in claims reporting, data collection and data management.
- 2.2 Development of a claims benchmarking database.

- 2.3 Develop specifications for a third party claims administration service firm for the adjudication of auto liability, general liability and public officials' liability.
- 2.4 Evaluate insurance policy(ies) and recommend insurance policies, coverages and insurance Carriers.
- 2.5 Develop insurance policy specifications for renewal purposes.
- 2.6 Conduct insurance marketplace investigation.
- 2.7 Update and verify building and contents replacement cost values for insurance purposes.
- 2.8 Any and all other risk related assignments.

**ARTICLE 3.
PROPRIETARY INTEREST**

- 3.1 **Ownership of Data:** All data created or utilized by Consultant in performance of activities under this Agreement shall belong to, and remain as property of, Client; Consultant having no ownership interest therein. Data as used herein shall include, but are not limited to, computer programs, computer equipment, formats, risk data report formats, procedures, documentation and internal reports of Client, or its insurance carrier, or third party claims administrator and shall include adjustment files, data, and/or information.
- 3.2 **Ownership of Files:** Consultant shall be entitled to full and complete access of all files and materials prepared by Client or its agents in the course of its review under this Agreement until this Agreement is cancelled or project is completed.
- 3.3 **Privacy of Data:** Consultant will make reasonable efforts to maintain the confidentiality of all data supplied to and used by Consultant in the performance of this Agreement. Consultant will not disclose this data or the contents of the data files without prior written consent of Client.

**ARTICLE 4.
INDEPENDENT CONTRACTOR STATUS**

It is understood and agreed by the parties hereto that Consultant is entering into this agreement in the capacity of an independent contractor and that nothing contained in this agreement is intended to be construed as creating any other relationship between Client and Consultant. The Parties hereto acknowledge and agree that Client shall not: (a) withhold federal or state income taxes; (b) withhold federal social security tax (FICA); (c) pay federal or state unemployment taxes for the account Consultant; or (d) pay workman's compensation insurance premiums for coverage for Consultant. Consultant agrees to be responsible for and to pay all applicable federal income taxes, federal social security tax (or self-employment tax in lieu of thereof) and any other applicable federal or state unemployment taxes.

Consultant agrees to indemnify and hold Client harmless for any and all federal and/or state income tax liability, including taxes, interest and penalties, resulting from Client's treatment of Consultant as an independent contractor. Consultant further agrees to reimburse Client for any and all costs it incurs, including, but not limited to, accounting fees and legal fees, in defending itself against any such liability.

Consultant reserves the right, at its own expense, to assign performance of activities under this Agreement to any of its personnel and to subcontract to third parties any and all of Consultant's duties with the necessity of the Director of Risk Management's prior written approval, provided, however, that any subcontracting by Consultant shall not relieve Consultant of its obligations to Client under this Agreement and provided that all subcontractors will adhere to the same terms and conditions of the Consultant. Consultant will make reasonable efforts to maintain the confidentiality of all data supplied to and used by Consultant in the performance of this Agreement including confidentiality. Consultant will not disclose this data or the contents of the data files without prior written consent of Client. Should the Consultant ask to subcontract to third parties to assist in providing professional services for the project, Consultant shall file a Notarized Affidavit with the Jefferson Parish Council in accordance with Jefferson Parish Ordinance No.22290.

ARTICLE 5. INDEMNIFICATION

- 5.1 Consultant shall indemnify and hold harmless the Client against any and all losses, damages, loss cost, claims, demands, suits, costs, liabilities or judgments for sums of money, and fines or penalties asserted by any party, firm or organization for loss of life or injury or damages to person or property, growing out of, resulting from, or by reason of any negligent acts, errors, and/or omissions, by Consultant, its agents, servants or employees, while engaged upon or in connection with the services required to be performed by Consultant under this agreement.

Further, Consultant hereby agrees to indemnify the Client for all reasonable expenses and attorneys' fees incurred by or imposed upon the Client in connection therewith for any loss, damage, injury or other casualty pursuant to this section, (7.1). Consultant further agrees to pay all reasonable expenses and attorneys fees incurred by Client in establishing the right to indemnify pursuant to the provisions of this section.

- 5.2 Client shall indemnify and hold harmless the Consultant against any and all losses, damages, loss cost, claims, demands, suits, costs, liabilities or judgments for sums of money, and fines or penalties asserted by any party, firm or organization for loss of life or injury or damages to person or property, growing out of, resulting from, or by reason of any negligent acts, errors, and/or omissions, by Client, its agents, servants or employees, in connection with the services required to be performed by Consultant under this agreement.

Further, Client hereby agrees to indemnify the Consultant for all reasonable expenses and attorneys' fees incurred by or imposed upon the Consultant in connection therewith for any

loss, damage, injury or other casualty pursuant to this section, (7.2). Client further agrees to pay all reasonable expenses and attorneys fees incurred by Consultant in establishing the right to indemnify pursuant to the provisions of this section.

- 5.3 **Insurance Coverage:** Consultant agrees to maintain General Liability, Automotive Liability, Workers Compensation, and Professional Liability Coverage at coverage limits set forth in ARTICLE 11. Consultant shall submit certificates evidencing proof of said insurance to Client.

ARTICLE 6. COMPENSATION

- 6.1 Except as otherwise provided in this Agreement, Client shall compensate Consultant for its services as follows

6.1.1 The cost of this Agreement shall not exceed \$300,000.00 for the three years of this Agreement as authorized and without prior approval of the Client,

6.1.2 All risk management consulting services shall be billed at the following hourly rates:

Senior Consultant	\$100/Hour
Consultant	\$ 75/Hour
General Clerical	\$ 50/Hour

All sums due Consultant are due and payable within 30 days of receipt of billing by Client. Should outside collection be needed, Client shall bear the cost including reasonable attorney and collection costs and fees.

- 6.2 **ANNUAL APPROPRIATION DEPENDENCY:** The continuation of this Agreement is contingent upon the appropriation of funds by the Jefferson Parish Council for the continued rendering of professional Risk Management services for and/or on behalf of the Parish of Jefferson. If the Council fails to appropriate sufficient monies to provide for the continuation of this Agreement, the Agreement shall terminate on the last day of the fiscal year for which funds were appropriated. Such termination shall be without penalty or expense to the CLIENT except for payments which have been earned prior to the termination date. Upon termination of this Agreement prior to the end of its term, the CLIENT shall be relieved of its obligations under this Agreement except for payment of Service/Work already performed and AWS shall be relieved of its obligations under this Agreement. Termination of this Agreement by the CLIENT under the provisions of this section shall not constitute an event of default. However, the CLIENT hereby consents to submit to the Jefferson Parish Council the necessary appropriation language to be adopted to allow payment by the CLIENT. The CLIENT may effect such termination by giving AWS a written notice of termination.

- 6.3 **Billing Disputes:** Except as otherwise provided in Sec. 10.4, the client shall have 30 days upon receipt of any billing by Consultant to dispute any bill or portion of a bill submitted.

- 6.4 **Method of Notification of Disputed Billings:** Client shall notify Consultant by written facsimile communication addressed to Albert Seeling, Jr., (504) 883-4111 or by electronic mail, e-mail

to _____. The communication shall reference Consultant Project number, if any, and invoice number and invoice date. Client shall also state the amount of the bill that is being disputed and the amount that is not in dispute, Client shall pay to Consultant the amount not in dispute.

ARTICLE 7. TERMINATION

- 7.1 The agreement may be terminated in its entirety by either party upon written notice to the other party provided such notice specifies an effective date for cancellation or non-renewal not less than thirty (30) days from the date of such notice.
- 7.2 Client shall inform Consultant prior to the termination date of the agreement in writing.
- 7.3 In addition to all other rights and remedies available to Consultant under this agreement and at law; Consultant may cancel this agreement and discontinue services immediately upon notice to Client.

ARTICLE 8. CONDITIONS AND LIMITATIONS

- 8.1 Consultants responsibility for the performance of activities as specified herein is conditioned upon Clients good faith cooperation with Consultant in all reasonable manners with respect to the activities of Consultant, including, but not limited to responding to Consultant's requests for information promptly, meeting with Consultant and/or third parties, as may be needed, and making decisions on matters which, as required by this Agreement, are in the professional opinion of Consultant, and performance by Client of all other obligations of this Agreement.
- 8.2 The services to be provided by Consultants are not of a legal nature, and Consultant shall in no event give, or be required to give any legal opinion or provide any legal representation to Client, nor may any communication prepared by Consultant be relied upon by Client as a legal opinion or interpretation.
- 8.3 As respects the services provided by Consultant under this agreement, any reports rendered to Client may be relied upon only to the extent of the express purpose of such reports, and such purpose will be sent forth in writing by Consultant.
- 8.4 Client shall have the right to inspect and audit the records of Consultant regarding any matter covered by this agreement including billing. Any such inspection or audit may be conducted at any time during this agreement and shall be conducted in a manner so not unnecessarily interfere with the business of Consultant. These rights of audit shall survive the termination of this Agreement. Attendance at audits at the request of Client is included in Consultant's service fees.

- 8.5 This agreement shall be binding upon the successors and assigns for the parties hereto. This agreement being for the personal services of the Consultant, shall not be assigned or subcontracted in whole or in part by the Consultant as to the services to be performed hereunder without the written consent of the Client.
- 8.6 The terms of this agreement between Consultant and Client shall be governed by the laws of the State of Louisiana. Any adjudication which invalidates any part of this Agreement shall not act to invalidate any other part thereof. Proper venue and jurisdiction for all lawsuits, claims, disputes and other matters in question between the parties to this agreement or any breach thereof, shall be in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.
- 8.7 In the event of conflict, inconsistent or incompatible provisions of the CLIENT'S Request for Statement of Qualifications, this Agreement that includes Consultant's "Proposal/Statement of Qualifications Actuarial Consulting Services, the provisions in the CLIENT'S Request for Statement of Qualifications shall take precedence and prevail, followed by this Agreement (for the sole and exclusive purpose of resolving any possible conflict, inconsistent or incompatible provisions of the CLIENT'S Request for Statement of Qualifications, this Agreement, and/or Consultant's "Proposal/Statement of Qualifications for Actuarial Consulting Services" Consultants' "Statement of Qualifications for Actuarial Consulting Services" shall not be considered a part of this Agreement) followed by Consultants' Proposal/Statement of Qualifications Actuarial Consulting Services". Any reference to actuarial consulting services in the CLIENT'S "Request for Statements of Qualifications to provide Actuarial Consulting Services" and the Consultant's "Proposal in Response to Jefferson Parish's Request for Statement of Qualifications Actuarial Consultant Resolution Number 111716" shall be disregarded and non-binding as pertains to this Risk Management Services Agreement.
- 8.8 No delay or omission in the exercise of any right or remedy accruing to Client upon any breach by AWS under this Agreement shall impair such right or remedy be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.
- 8.9 All notices to be given pursuant to the agreement shall be in writing, and shall be deemed to have been duly given when personally delivered or if mailed by United States First Class certified mail, postage prepaid, within five (5) days of deposit in the U.S. Mail. Notices shall be delivered or mailed to the following addresses:

Client: Mr. William Fortenberry
Director of Risk Management
Parish of Jefferson
1221 Elmwood Park Blvd., Suite 315
Jefferson, LA 70123

Consultants: Albert Aparicio, Jr.
Aparicio, Walker & Seeling, LLC
4501 West Napoleon Ave.
Metairie, LA 70001

**ARTICLE 9.
INSURANCE REQUIREMENTS**

- 9.1 Prior to commencing work, the Consultant shall provide at its own expense, proof of the following insurance coverage's required by the contract to the Parish of Jefferson by insurance companies acceptable to Client. Insurance is to be placed with insurers with an AM Best rating of no less than A III. This requirement will be waived for worker's compensation coverage only for those whose workers' compensation coverage is placed with an acceptable Self- Insured Fund. Annually on the renewal of each required insurance coverage, the Consultant shall provide at its own expense, proof of the required insurance coverage.
- 9.2 Thirty (30) days prior notice of cancellation shall be given to the Parish of Jefferson by registered mail on all of the required coverages provided to Jefferson Parish. All notices will name the Consultant and identify the agreement number.
- 9.3 Workers' Compensation
- 9.3.1 As required by Louisiana State Statute
- 9.3.2 Employer's liability shall be no less than \$500,000
- 9.4 Commercial General Liability
- 9.4.1 Shall provide limits not less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage.
- 9.4.2 Shall also include:
- 9.4.2.1 Premises and Operations coverage
- 9.4.2.2 Broad form contractual liability coverage
- 9.4.2.3 Use of contractors and sub-contractors
- 9.4.2.4 Personal Injury coverage
- 9.4.2.5 Broad form property damage coverage
- 9.4.3 Commercial Auto Liability

9.4.3.1 Bodily injury liability \$1,000,000 each person; \$1,000,000 each occurrence. Property damage liability \$1,000,000 each occurrence.

9.4.3.2 Bodily injury and property damage liability shall be provided for:

9.4.3.2.1 Hired and non-owned autos

9.4.4 Professional Errors & Omissions with limits of \$1,000,000 each loss / aggregate.

9.4.5 An umbrella policy or excess may be used to meet minimum requirements

9.4.6 Deductibles: No insurance required shall include a deductible greater than \$10,000.00. The cost of the deductible is borne by the contractor.

THUS DONE AND EXECUTED by the parties before the undersigned competent witnesses on the _____ day of _____, 2009.

APARICIO. WALKER & SEELING RISK MANAGEMENT, LLC

BY: _____
Albert Aparicio, Jr.
Member

PARISH OF JEFFERSON

BY: _____
Thomas J. Capella
Council Chairman



JEFFERSON PARISH LOUISIANA

OFFICE OF THE PARISH ATTORNEY

Our Mission is to
Provide the services,
leadership, and vision to
improve the quality of life
in Jefferson Parish.

AARON F. BROUSSARD
PARISH PRESIDENT

THOMAS G. WILKINSON
PARISH ATTORNEY

LOUIS G. GRUNTZ, JR.
DEPUTY PARISH ATTORNEY

PEGGY O. BARTON
DEPUTY PARISH ATTORNEY

July 20, 2009

Mr. Michael Dupree
Louisiana Board of Ethics
P. O. Box 4368
Baton Rouge, LA 70821

RE: Ethics Board Docket No. 2009-674

Dear Mr. Dupree:

In response to your letter dated July 10, 2009, please find additional information regarding this matter.

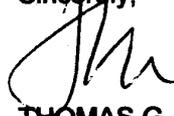
1. Please provide a copy of the contract that Jefferson Parish has entered, or may enter with AWS-RM:
A copy of the proposed contract between the Parish of Jefferson and Aparicio, Walker & Seeling Risk Management, LLC is attached for your review.
2. Would AWS-RM, through the duties set forth in their contract with Jefferson Parish, make any recommendation to the Parish to purchase insurance through any other company AWS-RM may be affiliated with? No. Aparicio, Walker & Seeling, Inc.? Aparicio, Walker & Seeling of Baton Rouge? Aparicio, Walker & Seeling Benefits, LLC? If so, please state how. AWS-RM may be recommending to purchase insurance from insurance companies affiliated with AWS, Inc.; AWS of Baton Rouge, or AWS Benefits, LLC, but until presented with an exact situation the Parish will not know for sure if this situation will in fact occur.
3. Does Aparicio, Walker & Seeling, Inc. act as an insurance agent broker for insurance policies? Not for the Parish of Jefferson.
If so, does it receive compensation for companies which may sell insurance to the Parish of Jefferson? Not applicable because the answer was no to previous question.
Does Aparicio, Walker & Seeling have any form of business relationship with Jefferson Parish? Not currently with AWS-RM, but will once the contract is signed. AWS, Inc. – No; AWS of Baton Rouge – No; AWS Benefits, LLC – No.
4. Is it possible, that any company affiliated with Aparicio, Walker & Seeling, Inc., to provide insurance to Jefferson Parish through a recommendation to purchase insurance by AWS-RM? Unknown until presented with an exact fact situation.

2009 JUL 22 PM 3:55
CAMPAIGN FINANCE
RECEIVED

5. In the scope of its duties, does AWS-RM make a final recommendation to Jefferson Parish about which insurance product to buy and from whom? They may recommend to the Parish both what product and from which insurance company; however, the Jefferson Parish Council makes the final decision/selection. They may also be involved in the recommendation of whom will be selected as Producer of Record for the Parish.

Please let me know if you need any additional information, you may contact me at (504) 364-3800.

Sincerely,



THOMAS G. WILKINSON
Parish Attorney

TGW/pob

cc: Mr. Tim A. Whitmer, CAO



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS

P. O. BOX 4368
BATON ROUGE, LA 70821
(225) 219-5600
FAX: (225) 381-7271
1-800-842-6630
www.ethics.state.la.us

October 13, 2009

Mr. Thomas G. Wilkinson
Parish Attorney
Jefferson Parish
P.O. Box 9
Suite 5200
Gretna, LA 70054

RE: Ethics Board Docket No. 2009-674

Dear Mr. Wilkinson:

The Louisiana Board of Ethics at its September 30, 2009 meeting, considered your request for an advisory opinion concerning Aparcio, Walker & Seeling Risk Management, LLC (AWS-RM) entering into a contract with Jefferson Parish to perform risk consulting services.

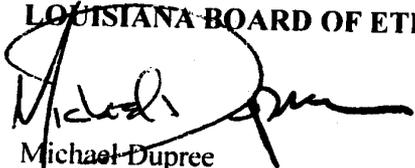
As to your request for an advisory opinion, the Board would like the following questions answered before it renders an opinion in this matter. In particular, please provide the following information:

1. Did any employees of Jefferson Parish provide the types of risk management services contained in the proposed contract with AWS, prior to Jefferson Parish's desire to contract for these services? If so, whom? When? What was the employees job description and duties? Does anyone currently fill such a roll? Has the roll been eliminated?
2. Have these risk services always been contracted out to a third party? Prior to the proposed contract, how did Jefferson Parish fulfill its risk assessment needs?

Please submit the additional requested information on or before **October 20, 2009** to the above referenced address in order to have this item placed on the Board's next agenda. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS



Michael Dupree
For the Board

General Item

Ethics Board Docket No. BD 2010-035 01/15/2010

RE: Appearance in connection with a request that the Board waive the \$500 and \$500 late fees assessed against Celeste Hood, for failure to timely file a Legislative and Executive ER-9/09 lobbying reports.

Relevant Statutory Provisions, Advisory Opinions: 24:58 & 49:76

Comments:

BRANCH: Legislative and Executive
REPORT: ER-9/09
REPORT DUE: October 26, 2009
REPORT FILED: November 9, 2009
DAYS LATE: 14
FEE ASSESSED: \$500 and \$500 (Original \$700 and \$700 fee reduced pursuant to 1204D)
ACTIVITY REPORTED: Legislative = \$0 / Executive = \$0
OTHER LATE FILINGS: 1 - Ms. Hood was assessed a late fee for the Legislative and Executive ER-3/09 lobbying reports. The fine was paid.

A request was submitted on behalf of Celeste Hood, by Sarah Rhodes, who is the person responsible for filing these reports. The requests states that although this report was officially finalized on November 9, 2009, Ms. Rhodes would like to establish that the true finalization date as October 28, 2009. On October 28, 2009, the reports were filled out but due to the failure of checking the "I agree" box the report was not properly filed.

It is recorded that the September 09' Legislative and Executive lobbying reports were submitted on October 28, 2009, however, they were finalized on November 9, 2009, after receiving a delinquency notice from the Ethics Board. (MDD)

Recommendations: Suspend all but \$500.

2010-035



F.M. Hood & Associates, L.L.C.

REGISTRATION
CAMPAIGN FINANCE
RECEIVED

2009 DEC -8 AM 11:31

November 13, 2009

Louisiana Board of Ethics
P.O. Box 4638
Baton Rouge, LA 70802

Dear Board,

I am writing to request a waiver of a portion of the fees assessed due to the delinquent filing of the September Lobbyist Expenditures report for Celeste Hood of F.M. Hood & Associates. Although officially submitted on November 9, 2009, I would like to establish the date of finalization as October 28, 2009. On October 28, the report was filled out, but due to the failure of checking the "I agree" box the report was not properly filed. I would also like to request to be present at the meeting in which my case is heard. Thank you for your consideration.

Sincerely,

Sarah Gaudet Rhodes

Louisiana Lobbyist Online System

Just Completed Registered With Late Fees
 Online Registration Lobbyists (Process Payments) | Failed to File | New Delinquencies | Old Registrations | Seminar Attend



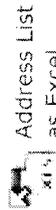
Refresh



Find



Save as PDF



Address List as Excel



Contact List



Send Group Email



Address Labels

5

Registered Lobbyist for:
 Delinquencies 2009: Leg and Exec

MISS. CELESTE N/A HOOD

Demographic	Company	Business Relationships	Expend Report	Late Fees
-------------	---------	------------------------	---------------	-----------

Reports Finalized

Reporting Period	Branch	Date of Completion
October 09	Legislative	11/24/09 2:35 PM
October 09	Executive	11/24/09 2:35 PM
September 09	Legislative	11/9/09 4:26 PM
September 09	Executive	11/9/09 4:26 PM
August 09	Legislative	9/25/09 9:42 AM

Subject Matters Reported

Report Period	Branch	Subject Matter	Date Su
October 09	Legislative	No Subject Matters	11/24/09
October 09	Executive	Manufacturing: oil and	11/24/09
September 09	Legislative	No Subject Matters	10/28/09
September 09	Executive	No Subject Matters	10/28/09
August 09	Executive	Manufacturing: oil and	9/25/09

Expenditures Reported

Job ID	Report Period	Branch	Expenditure Description	Amount	Date Su
5	October 09	Legislative	No Expense	\$0.00	11/24/09
5	October 09	Executive	executive branch official Lou Buatt	\$21.93	11/24/09
5	September 09	Executive	No Expense	\$0.00	10/28/09
5	September 09	Legislative	No Expense	\$0.00	10/28/09
5	August 09	Legislative	No Expense	\$0.00	9/25/09
5	August 09	Executive	No Expense	\$0.00	9/25/09
5	July 09	Executive	No Expense	\$0.00	8/25/09
5	July 09	Legislative	Group Reception for Louisiana State Night Attendees (ALEC)	\$600.00	8/25/09

Legislative Branch Lobbying Expenditures

for September 09
 Lobbyist: CELESTE HOOD
 Report Submitted: 11/9/2009.

Legislative Branch Subject Matters Lobbied

A listing of each subject matter lobbied during this reporting period pursuant to R.S. 24:53 (A)(4):

No Subject Matters Lobbied

Legislative Branch Expenditures

Aggregated total of all the expenditures made during this reporting period in accordance with 24:55D(1)(b):

\$0.00

List of expenditures made per individual legislator or public servant during this reporting period:

No relevant expenditures reported for this period.

List of expenditures attributable to the spouse or minor child of an legislator or public servant during this period:

No relevant expenditures reported for this period.

List of all expenditures made for reception, social gather, or other function to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee or any committee recognized caucus or any delegation thereof during this reporting period:

No relevant expenditures reported for this period.

Legislative Branch Lobbying Expenditures Reported to Date for the Current Year

Aggregated total of all the expenditures made to date for this calendar year in accordance with 24:55D(1)(b):

\$3,246.96

Aggregate total spent per individual legislator or public servant to date for the current calendar year:

Public Servant's Name	Total Amount
Robert Adley	\$44.73
Greg Comer	\$4.77
Hollis Downs	\$58.11
Noble Ellington	\$4.77
Joe Harrison	\$4.77
Jim Morris	\$44.73
Gary Smith	\$4.77
Jane Smith	\$44.73
Wayne Waddell	\$44.73

The aggregate total of expenditures attributable to the spouse or minor child of a legislator for all reporting periods during this calendar year:

The aggregate total of all expenditures attributable to the spouse of Claudia Adley was \$44.73 .

The aggregate total of all expenditures attributable to the other public servant employed by the legislature Colby Cook was \$4.77 .
The aggregate total of all expenditures attributable to the spouse of Peggy Cromer was \$4.77 .
The aggregate total of all expenditures attributable to the spouse of Cathy Downs was \$58.11 .
The aggregate total of all expenditures attributable to the spouse of Brenda Ellington was \$4.77 .
The aggregate total of all expenditures attributable to the other public servant employed by the legislature Su King was \$21.31 .
The aggregate total of all expenditures attributable to the other public servant employed by the legislature Anna Koepp was \$4.77 .
The aggregate total of all expenditures attributable to the other public servant employed by the legislature Glenn Koepp was \$4.77 .
The aggregate total of all expenditures attributable to the spouse of Katherine Smith was \$4.77 .
The aggregate total of all expenditures attributable to the other public servant employed by the legislature Beth Wilson was \$4.77 .
The aggregate total of all expenditures attributable to the other public servant employed by the legislature Sharon Work was \$33.10 .

Aggregated total of all the expenditures made for reception, social gather, or other function to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee or any committee, recognized caucus, or any delegation thereof during the calendar year: \$2,800.21

Executive Branch Lobbying Expenditures

for September 09

Lobbyist: CELESTE HOOD

Report Submitted: 11/9/2009

Executive Branch Subject Matters Lobbied

A listing of each subject matter lobbied during this reporting period pursuant to R.S. 49:74 (A)(4):

No Subject Matters Lobbied

Executive Branch Expenditures

Aggregated total of all the expenditures made during this reporting period in accordance with 49:76D(1)(b):

\$0.00

List of expenditures made per individual executive branch official during this reporting period:

No relevant expenditures reported for this period.

List of expenditures attributable to the spouse or minor child of an executive branch official during this period:

No relevant expenditures reported for this period.

List of all expenditures made for reception, social gather, or other function to which more than 25 executive branch officials were invited during this reporting period:

No relevant expenditures reported for this period.

Executive Branch Lobbying Expenditures Reported to Date for the Current Year

Aggregated total of all the expenditures made to date for this calendar year in accordance with 49:76D(1)(b):

\$61.47

Aggregate total spent per individual executive branch official to date for the current calendar year:

Executive Branch Official	Department	Agency	Total Amount
scott angelle	Department of Natural Resources	Executive Office of the Secretary	\$0.66
Courtney Baker	Department of Social Services	Executive Office of the Secretary	\$0.66
jamie bedell	Division of Administration	Executive Office of the Commissioner	\$0.66
nick cahanim	Office of the Governor	Executive Office of the Governor	\$0.66
Brent Campbell	Department of Natural Resources	Office of Conservation	\$16.31
Amy Colby	Department of Social Services	Executive Office of the Secretary	\$0.66
camille conaway	Office of the Governor	Governor's Advisory Commission on Coastal Restoration and Conservation	\$0.66
micah cormier	Department of Natural Resources	Executive Office of the Secretary	\$0.66
Angele Davis	Division of Administration	Office of the State Uniform Payroll	\$0.66
Col. Michael edmonson	Department of Public Safety and Corrections	Office of State Police	\$0.66
erin flynn	Office of the Governor	Executive Office of the Governor	\$0.66
Steven Giambrone	Department of Natural Resources	Office of Conservation	\$16.31

chris gillott	Office of the Governor	Executive Office of the Governor	\$0.66
ruth johnson	Department of Social Services	Office of Management and Finance	\$0.66
alan levine	Department of Health and Hospitals	Executive Office of the Secretary	\$0.66
jeff mayne	Department of Wildlife and Fisheries	Enforcement	\$0.66
James Mergist	Department of Natural Resources	Office of Conservation	\$16.31
malcolm myer	Department of Justice	Executive Office of the Attorney General	\$0.66
nial patel	Office of the Governor	Executive Office of the Governor	\$0.66
melissa sellers	Office of the Governor	Executive Office of the Governor	\$0.66
Timmy Teepell	Office of the Governor	Executive Office of the Governor	\$0.66
Stephen Waguespack	Office of the Governor	Executive Office of the Governor	\$0.66

The aggregate total of expenditures attributable to the spouse or minor child of an executive branch official to date for the current calendar year:

No relevant expenditures reported to date for this calendar year.

Aggregated total of all the expenditures made for reception, social gather, or other function to which more than 25 executive branch officials were invited during the calendar year:

\$0.00