

Louisiana Board of Ethics

LaSalle Building - First Floor
617 North 3rd Street
Baton Rouge, Louisiana

January 15, 2010

GENERAL SUPPLEMENTAL AGENDA

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

G29. Docket No. 09-908

Consideration of a request for an advisory opinion regarding whether Brian Fairburn, the former Director of Office of Emergency Preparedness, Livingston Parish, may be involved in a contract between his new employer and his former agency.

G30. Docket No. 10-007

Consideration of a request for an advisory opinion regarding whether Howard Stewart, who is the son of a Sabine Parish School Board member can accept employment as a teacher with a school with the Sabine Parish School Board.

G31. Docket No. 10-008

Consideration of a request for an advisory opinion regarding whether a violation of the Code would result if Terrebonne Parish Consolidated Government selects and contracts with a developer to build a housing development when Mr. Barry Blackwell, former Parish Manager, is a 50% owner of the proposed development site.

G32. Docket No. 10-034

Consideration of a request for a advisory opinion concerning whether a staff member of the National Association of Charter Authorizers (NACSA) may participate as a member of an evaluation team making recommendations to the Department of Education pursuant to a contract between NACSA and the Department of Education.

G33. Discussion of Recommendations for Proposed Legislation Regarding the Laws Administered by the Board of Ethics.

General Item

Ethics Board Docket No. BD 2009-908 01/15/2010

RE:

Consideration of a request for an advisory opinion regarding whether the former Director of Office of Emergency Preparedness, Livingston Parish, may be involved in a contract between his new employer and his former agency.

Relevant Statutory Provisions, Advisory Opinions:

1102(2)(a), 1102(3), 1121A

Comments:

Facts: Brian Fairburn was the director the Office of Emergency Preparedness for Livingston Parish. Mr. Fairburn was terminated, and upon termination, submitted a letter of resignation. Alvin Fairburn & Associates, LLC, has a contract with the Parish of Livingston to monitor debris clean up. Brian Fairburn was the manager of this project. After Mr. Fairburn's termination, he was hired by Alvin Fairburn & Associates, LLC.

Issues: May Brian Fairburn be involved with the project with Livingston Parish over which he had direction? After what time frame may Mr. Fairburn participate in projects with the Livingston Parish?

Rule: Section 1121A provides that no former agency head shall, for a period of two years following the termination of his public service as the head of such agency, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction, involving that agency or render any service on a contractual basis to or for such agency. Section 1102(2)(a) defines "agency" as the department, office, division, agency, commission, board or committee, or other organizational unit of a governmental entity. Also, Section 1102(3) defines an "agency head" as the chief executive or administrative officer of an agency.

Analysis/Conclusion: Mr. Fairburn served as Director of the Office of Emergency Preparedness (OEP) for the Parish of Livingston. His agency was the OEP, and as Director he is considered the agency head. His designation as an agency head precludes him from rendering assisting to another for compensation in a transaction or appearance before the OEP for a period of two years. He is also precluded from rendering any service on a contractual basis to OEP for two years.

(DLG)

Recommendations:

Adopt proposed advisory opinion.

Date

Layton Ricks
P.O. Box 1173
Denham Springs, LA 70727

RE: Board Docket No. 2009-908

Dear Mr. Ricks,

The Louisiana Board of Ethics, at its January 15, 2010 meeting, considered your request for an advisory opinion regarding whether Mr. Brian Fairburn, former director of Livingston Parish's Office of Emergency Preparedness (OEP), may be involved in a project between your company (Alvin Fairburn & Associates, LLC) and Livingston Parish. You stated that Brian Fairburn was the director the Office of Emergency Preparedness for Livingston Parish and that Mr. Fairburn was terminated, and upon termination, he submitted a letter of resignation. You also stated that Alvin Fairburn & Associates, LLC, has a contract with the Parish of Livingston to monitor debris clean up. Brian Fairburn was the manager of this project. You further stated After Mr. Fairburn's termination, he was hired by Alvin Fairburn & Associates, LLC.

The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics would prohibit Mr. Fairburn from working on the debris monitoring project. Section 1121A provides that no former agency head shall, for a period of two years following the termination of his public service as the head of such agency, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction, involving that agency or render any service on a contractual basis to or for such agency. Section 1102(2)(a) defines "agency" as the department, office, division, agency, commission, board or committee, or other organizational unit of a governmental entity. Also, Section 1102(3) defines an "agency head" as the chief executive or administrative officer of an agency. As Mr. Fairburn served as Director of the Office of Emergency Preparedness (OEP) for the Parish of Livingston, his agency was the OEP. As Director he was considered the agency head. His designation as an agency head precludes him from rendering assisting another for compensation in any transaction or appearance before the OEP for a period of two years. He is also precluded from rendering any service on a contractual basis to OEP for two years.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts 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 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

Deidra L. Godfrey
For the Board



U.S. Department of Homeland Security
FEMA Louisiana Transitional Recovery Office
DR-1786/1792
1250 Poydras Street, Box #43
New Orleans, Louisiana 70113
(504) 762-2018 office
(504) 762-2899 fax



FEMA

December 16, 2008

Mark S. Riley
State Coordinating Officer
State of Louisiana
415 North 15th Street
Baton Rouge, Louisiana 70802

RE: Livingston Parish Debris Management Plan
FEMA-1786/1792-DR-LA; FIPS# 063-99063-00

Dear Mr. Riley:

The purpose of this letter is to approve the Livingston Parish debris management plan, therefore allowing the Parish to participate in the Increased Federal Share Incentive component of the Public Assistance (PA) Pilot Program.

In order for an Applicant to qualify for an additional five percent Federal cost share under the PA Pilot Program, the Applicant must have adopted a debris management plan prior to the disaster declaration that satisfies FEMA's debris management plan criteria. Additionally, the Applicant must have pre-qualified two or more debris and wreckage contractors before the date of declaration of the major disaster. An Applicant may submit the debris management plan to FEMA for approval either prior to the disaster declaration or once the disaster is declared. The approval of a debris management plan is based on satisfying the thirteen criteria listed in the PA Pilot Program's Increased Federal Share Incentive Checklist (attached), as included in the *Public Assistance Pilot Program Guidance* (FEMA 598, June 2007).

FEMA has reviewed the debris management plan submitted by Livingston Parish and determined that the Parish plan meets the criteria outlined on the attached checklist. Livingston Parish is eligible for an additional five percent Federal cost share under the Increased Federal Share component of the PA Pilot Program.

Please note that the Parish may also be eligible to participate in the other three components of the PA Pilot Program. Additional guidance on the PA Pilot Program is available in FEMA 598 and at <http://www.fema.gov/government/policy/papilot.shtm>.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Stark".

for Jim Stark
Director
Transitional Recovery Office



FEMA

**Public Assistance Pilot Program
Increased Federal Share Incentive Checklist**

**Applicant Livingston Parish
FEMA-1786-DR-LA and FEMA-1792-LA**

Yes No

Debris Management Plan

- Does the plan outline the roles and responsibilities of the various functions identified (Public Works, Finance, and Solid Waste Departments, etc.)?
- Does the plan address health and safety procedures in accordance with State/Local health and safety standards/requirements?
- Does the plan identify procedures for acquiring required regulatory permits?
- Does the plan address the basis for planning which include assumptions for various events and forecasting/modeling for debris volumes?
- Does the plan include priorities for the clearance, collection, and disposal of debris?
- Does the plan address recycling?
- Is there a process for the collection and disposal of hazardous waste and/or white goods?
- Does the plan address debris monitoring of the pickup sites, Debris Management Sites (DMS) or Temporary Debris Storage and Reduction Sites (TDSR) and final disposal?
- Does the plan identify DMS' or TDSRs' and potential landfills for final disposal to include operation and site management procedures and staffing?
- Does the plan address the environmental requirements?
- Does the plan address contracting/procurement procedures?
- Does the plan address the authority and processes for private property debris removal?
- Does the plan address the dissemination of information to the general public and media?

List of Pre-qualified contractors

- Does the applicant have a list of pre-qualified contractors?
- Does the applicant have documentation demonstrating how the list was obtained?

Approved X Disapproved

Signature _____ Date _____



Livingston Parish, Louisiana

Disaster Debris Management Plan

November 2008

BBEC Barowka & Bonura
Engineers & Consultants, LLC

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Section 1

Introduction

This document will define roles, responsibilities, and procedures and provide guidance for development and implementation of all elements involved in managing debris removal operations.

The purpose of this document is to define procedures/guidance for decision-makers to manage debris removal operations. This document shall serve to facilitate and coordinate the management of debris following a disaster in order to mitigate against any potential threat to the health, safety, and welfare of the impacted citizens, expedite recovery efforts in the impacted area, and address any threat of significant damage to improved public or private property.

Section 2

Roles and Responsibilities

The Livingston Parish Office of Emergency Preparedness (OEP) and the Department of Public Works (DPW) are responsible for the debris removal function. The OEP and DPW will work in conjunction with designated support agencies, utility companies, waste management firms, and trucking companies, to facilitate the debris clearance, collection, reduction, and disposal needs following a disaster. The OEP and DPW administer the contract for removing debris from the public right-of-way. Only when pre-approved, and it is deemed in the public interest, will Livingston Parish have its debris contractor remove debris from private property. The DPW will stage equipment in strategic locations locally as well as regionally, if necessary, to protect the equipment from damage and to allow for the clearing crews to begin work immediately after the disaster.

Due to the magnitude and the widespread destruction and displacement of citizens from natural disasters such as hurricanes, the OEP and DPW do not have the staff, equipment, and funds to respond to the debris removal and disposition effort in the short-term, as well as the long-term. For this reason, Livingston Parish depends on outside resources to assist in the debris removal function for any federally declared disaster event. Because of the limited quantity of resources and service commitments following the disaster, the Parish will be relying heavily on private contractors to remove, collect, and manage debris for reuse, resource recovery, reduction, and disposal. Using private contractors instead of government workers in debris removal activities has a number of benefits. It shifts the burden of conducting the work from the Parish's limited staff to the private sector, and frees up government personnel to devote more time to their regularly assigned duties. Private contracting also stimulates local, regional, and State economies impacted by the storm, as well as maximizes State and local governments' level of financial assistance from the Federal government. Private contracting allows the State and its political subdivisions to more closely tailor their contract services to their specific needs. The entire process (i.e., clearance, collection, transporting, reduction, disposal, etc.) or segments of the process can be contracted out.

Due to the Parish's limited resources, the Parish Administration is relying on Federal and State agencies to play critical roles in the in the process. Each level of government will work together to fulfill their obligations in the funding, removal, collection and management of the debris and other waste materials.

Section 2 – Roles and Responsibilities

2.1 FEDERAL

The Federal Emergency Management Agency (FEMA) has the lead for the Federal response to federally declared disasters. FEMA is the financial and approval lead for all mission tasks. Other federal agencies that are invested with varying authorities for debris management activities include the U.S. Department of Homeland Security, the U.S. Army Corps of Engineers (USACE), the Federal Highway Administration, the Environmental Protection Agency (EPA), the U.S. Coast Guard (USCG), and the Departments of Agriculture, Commerce, and Transportation. The Robert T. Stafford Emergency Relief and Disaster Assistance Act (PL 03-288, as amended and referred to the Stafford Act) is the federal legislation that created a national program for disaster preparedness, response, recovery, and mitigation. This Act constitutes the statutory authority for most federal disaster response activities, especially as they pertain to FEMA and FEMA programs.

2.2 STATE

The two major roles of the State of Louisiana in the debris management process are the interface between the Parish and FEMA, and the approval of solid waste storage, processing, reduction and/or disposal sites in the State. As the coordinator with FEMA, the State has a major role in defining the scope of the recovery effort. As the permitting agency, the State has the major oversight in the debris management and planning. The State has developed *Comprehensive Plan for Disaster Clean-Up and Debris Management (July 2006)* that is attached to this document (**Appendix A**) to provide guidance to local government with information on hurricane debris management within the scope of effective environmental management.

2.3 PARISH

The Parish has a critical role in the debris management process. The Parish initiates the public assistance request through the State to FEMA. No action may begin without an official public assistance request. In the debris removal and disposal process, the Parish is responsible for identifying landfills, temporary debris staging and reduction sites (TDSRS) and any other methodology for the final destination of the debris. The Parish is also responsible for providing the Rights of Entry (ROE), as may be required for the removal and disposal of debris and other waste materials. The Parish also is responsible for prioritizing areas for debris removal.

Section 2 – Roles and Responsibilities

2.3.1 Parish Staff Development and Responsibilities

Livingston Parish (Applicant) is responsible for developing a debris management plan and selecting a “Debris Manager” to supervise a “Debris Management Staff”. The OEP Director serves as the Debris Manager and the DPW Director serves as the Deputy Debris Manager. The Debris Management Staff shall be comprised of personnel to perform:

1. **Administration: The Parish President’s Office and Staff**
Function: Housekeeping, supplies, equipment, funding, accounting.
2. **Contracting and Procurement: OEP and DPW**
Function: Bidding requirements, forms, advertisements for bids, instructions to bidders, contract development.
3. **Legal: Parish Attorney**
Function: Contract review, right of entry permits, community liability, condemnation of buildings, land acquisition for temporary staging and reduction sites, land acquisition for disposal sites, insurance.
4. **Operations: OEP and DPW**
Function: Supervision of government and contract resources and overall project management.
5. **Engineering: OEP and DPW**
Function: Detailed damage assessment, identification of project tasks, assignment of tasks, preparation of estimates, plans, and specifications, recommendation of contract award.
6. **Public Information Officer: OEP and DPW**
Function: Coordinate press releases, contacts with local organizations, individuals, and media; public notices for debris removal and disposal contracts.

The staff shall coordinate with all State and Federal agencies responsible for disaster response and recovery operations.

Section 2 – Roles and Responsibilities

2.3.2 Organization

The purpose of this section is to provide a structured approach to debris removal operations using the Incident Command System. In a debris-generating event, the staff is notified according to local procedures which include a designated time to return following the event. The size of the debris management operations is dependent upon the magnitude of the disaster as well as the geographic size of the area. The key staff positions are either designated in the OEP or are appointed by the Debris Manager.

2.3.2.1 Debris Manager

The Debris Manager (OEP Director) has overall responsibility for the operations, planning, logistics, and financing of the debris management activities. The Deputy Debris Manager (DPW Director) works with the Debris Manager to ensure that the roles of the Debris Manager are fulfilled in a timely and efficient manner.

2.3.2.2 Public Information

The OEP Director serves as the Public Information Officer by directing his staff to disseminate information and guidance to the public regarding debris management activities. The public information officer's duties include development of informational bulletins, hotline responses, radio and television announcements, handbills or door hangers, and newspaper notices. Both the OEP and DPW's phone lines serve as hotlines for residents following a debris-generating event.

Typical information provided to help expedite the cleanup process includes:

- Segregating hazardous waste.
- Placing debris at the curbside.
- Keeping debris piles away from fire hydrants and valves.
- Reporting illegal dumping.
- Segregating recyclable materials.

Through OEP's Public Information function, the Public is kept informed on debris removal activities, such as:

- Debris pick-up schedules.
- Location of TDSR sites.
- Disposal methods and compliance with Environmental Protection Agency Regulations.
- Restrictions and penalties for illegal dumps.

Section 2 – Roles and Responsibilities

2.3.2.3 Contracting and Procurement

The DPW works with the Parish's Purchasing Department to perform contract and procurement related duties which include but are not limited to:

- Setting bidding requirements.
- Developing forms.
- Advertising for bids.
- Instructing bidders.
- Developing contracts.
- Documenting all costs for debris removal activities.

2.3.2.4 Legal

The Legal Department responsibilities include but are not limited to:

- Developing and reviewing all contracts.
- Securing all authorizations necessary for debris removal activities.
- Ensuring compliance with all environmental and historical preservation laws/regulations/policies.
- Reviewing rights-of-entry and hold harmless agreements.
- Reviewing private property insurance information and other assets to ensure benefits and resources are fully utilized.

2.3.2.5 Operations

The DPW takes the lead role in managing the assets to implement this plan based on direction from the Debris Manager. The DPW Director will work with other agencies to coordinate resources for debris removal activities. The operations section includes the Department of Public Works and contracted services.

Department of Public Works roles include but are not limited to:

- Implementing the debris management plan.
- Deploying supplies and tracking of equipment and personnel.
- Estimating supplies needed.
- Developing debris removal priorities.
- Developing strategies for debris removal.
- Operating debris reduction sites.
- Ensuring all debris is transported to the appropriate TDSR sites or regulated waste facility.

Contracted roles include but are not limited to:

- Removing debris from public property.
- Removing debris from private property, if applicable.
- Transporting debris to TDSR sites.

Section 2 – Roles and Responsibilities

- Managing and monitoring operations at the TDSR sites.
- Operating debris reduction sites.
- Ensuring all debris is transported to the appropriate TDSR sites or regulated waste facility.

2.3.2.6 Engineering

The DPW and OEP perform typical Engineering Department responsibilities that include but are not limited to:

- Conducting debris assessments.
- Developing cost estimates and scopes of work for public employees and contractors.
- Evaluating options for recycling/reducing/disposing debris.
- Evaluating/selecting locations for TDSR's.

The OEP performs Environmental Compliance related tasks that may include but not limited to:

- Coordinating with State and Federal agencies, such as EPA, LDEQ, and the Louisiana Historic Preservation Office to ensure compliance with environmental and historic preservation laws/regulations/policies.
- Determining environmental monitoring and reporting requirements for TDSR's. Maintaining records for historical purposes.

2.3.2.7 Finance

The finance section is responsible for making sure funds are available for equipment, supplies, and all other expenses. For a specific debris-generating event, the Parish will designate a finance officer from either the DPW or Finance Department to oversee all financial issues resulting from debris management activities.

Other Finance Department staff duties include but are not limited to:

- Keeping records of financial transactions for reimbursement of debris removal activities.
- Funding of debris removal activities.

2.3.3 Emergency Communications Plan

Livingston Parish's Emergency Communications Plan is described in the Emergency Operations Plan contained in **Appendix B**.

Section 2 – Roles and Responsibilities

2.3.4 Health and Safety Plan and Procedures

Livingston Parish's Health and Safety Plan and procedures are described in the Health and Safety Plan contained in **Appendix C**.

2.3.5 Training Schedule

Livingston Parish conducts their emergency preparedness training annually as part of a regional consortium of eight Louisiana parishes that reviews response and recovery plans based on a simulated major disaster event. As part of this training, Livingston Parish injects its own locally based scenarios for inclusion in the training.

Livingston Parish also attends a monthly Louisiana Emergency Planning Committee Meeting. The Livingston Parish representatives at the meeting include the OEP Director and two representatives for the DPW. Other attendees include representatives from the Louisiana Department of Environmental Quality (LDEQ), the American Red Cross, as well as representatives from other municipalities across the state.

1 of 2

Appendix E – Increased Federal Share Incentive Checklist

Revised

Applicant LIVINGSTON PARISH PA ID _____ DR- _____

Point of Contact _____ Phone Number _____

Yes No

Debris Management Plan

- 1) Does the plan outline the roles and responsibilities of the various functions identified (Public Works, Finance, and Solid Waste Departments, etc.)?
- 2) Does the plan address health and safety procedures in accordance with State/Local health and safety standards/requirements?
- 3) Does the plan identify procedures for acquiring required regulatory permits?
- 4) Does the plan address the basis for planning which include assumptions for various events and forecasting/modeling for debris volumes?
- 5) Does the plan include priorities for the clearance, collection, and disposal of debris?
- 6) Does the plan address recycling?
- 7) Is there a process for the collection and disposal of hazardous waste and/or white goods?
- 8) Does the plan address debris monitoring of the pickup sites, Debris Management Sites (DMS) or Temporary Debris Storage and Reduction Sites (TDSR) and final disposal?
- 9) Does the plan identify DMS' or TDSRs' and potential landfills for final disposal to include operation and site management procedures and staffing?
- 10) Does the plan address the environmental requirements?
- 11) Does the plan address contracting/procurement procedures?
- 12) Does the plan address the authority and processes for private property debris removal?

Revised

LIVINGSTON PARISH DMP

2 of 2

Yes No

13) Does the plan address the dissemination of information to the general public and media?

List of Pre-qualified contractors

14) Does the applicant have a list of pre-qualified contractors?

15) Does the applicant have documentation demonstrating how the list was obtained?

Approved Disapproved

Signature [Handwritten Signature]

Date 12/10/08

Section 3

Situation and Assumptions

3.1 SITUATION

Natural disasters such as hurricanes, tornadoes and flooding precipitate a variety of debris that includes, but is not limited to, such things as trees and other vegetative organic matter, building / construction material, appliances, personal property, mud and sediment.

The quantity and type of debris generated from any particular disaster will be a function of the location and kind of event experienced, as well as its magnitude, duration and intensity. This plan is based on the debris generating capacity of a Category 3 Hurricane with sustained wind speeds up to 130 miles per hour and heavy rainfall.

A Category 3 Hurricane will cause extensive damage to large trees and shrubs in addition to substantial structural damage to homes and commercial property. Mobile homes will be destroyed.

The quantity and type of debris generated, its location, and the size of the area over which it is dispersed will have a direct impact on the type of removal and disposal methods utilized to address the debris problem, associated costs incurred, and how quickly the problem can be addressed.

3.2 ASSUMPTIONS

1. A major natural disaster that requires the removal of debris from public or private lands and waters could occur at any time.
2. The amount of debris resulting from a major natural disaster probably will exceed the Parish's removal and disposal capabilities.
3. The Parish will contract for additional resources to assist in the debris removal, reduction, and disposal process.
4. The Governor will declare a State of Emergency that will authorize State resources to assist in removal and disposal of debris.
5. The Governor will request a Presidential Disaster Declaration, if the disaster exceeds both local and State resources.

Section 3 – Situation and Assumptions

3.3 DESIGN DISASTER EVENT

Debris quantities are estimated using the following procedure:

The formula for estimating debris quantity is: $Q=H(C)(V)(B)(S)$

H (Households)=Population/3 (3 persons per household)

C (Category of Storm)=Factor (See table below)

V (Vegetation Multiplier)= Factor (See table below)

B (Commercial Density Multiplier)= Factor (See table below)

S (Precipitation Multiplier)= Factor (See table below)

Hurricane Category	Value of "C" Factor
1	2 CY
2	8 CY
3	26 CY
4	50 CY
5	80 CY

Vegetative Cover	Value of "V" Multiplier
Light	
Medium	1.3
Heavy	1.5

Commercial Density	Value of "B" Multiplier
Light	1.0
Medium	1.2
Heavy	1.3

Precipitation	Value of "S" Multiplier
None to Light	1.0
Medium to Heavy	1.3

Once the amount of debris has been estimated, the Parish will require temporary storage sites the size of which can be determined by taking the following factors into consideration:

1. The debris pile shall be stacked to a height of no more than 10 feet.
2. 60% usage of the land area will be devoted to roads, safety buffers, burn pits, household hazardous waste, etc.

Section 3 – Situation and Assumptions

3. 10 foot stack height = 3.33 yards
4. 1 acre = 4,840 square yards (sy)
5. Total volume per acre = 4,840 sy/ac x 3.33y = 16,133 cy/ac.

Using the above assumptions, the estimate of total debris from any hurricane will be within 30% plus or minus of the actual amount of debris accumulated. Given the location of Livingston Parish with respect to the coast, the Parish estimates that its largest debris generating event would be a Category 3 hurricane. Therefore, under the worst scenario, e. g., a Category 3 hurricane, heavy vegetation cover, medium commercial density, and heavy precipitation, the amount of acres needed for a temporary landfill is 626 acres. The calculation (assuming Livingston Parish's population of 300,000) is as follows:

$$Q = H(C)(V)(B)(S)$$

$$Q = 100,000 \times 26 \times 1.5 \times 1.2 \times 1.3$$

$$Q = 6,084,000 \text{ cy of debris.}$$

$$6,084,000 \text{ (cy of debris / 16,133 (cy/ac))} = 377 \text{ acres of debris.}$$

$$2,095 \text{ acres} \times 1.66 \text{ (60\% more area needed for roads, etc.)} = 626 \text{ acres.}$$

3.4 FORECASTED DEBRIS

3.4.1 Forecasted Types

To facilitate the debris management process, debris will be segregated by type. It is recommended that the categories of debris established for recovery operations be standardized. The Parish will adopt the categories established for recovery operations by the U.S. Army Corps of Engineers (USACE) following Hurricane Andrew. Debris removed will consist of two broad categories (clean) wood debris and construction and demolition debris. Most common hurricane-generated debris will consist of 30% clean woody material and 70% C&D. Of the 70% mixed C&D, it is estimated 42% will be burnable but require sorting, 5% will be soil, 15% will be metals, and 38% landfill.

Definition of classifications of debris are as follows:

Burnable Materials: Burnable materials will be of two types with separate burn locations:

Burnable Debris: Burnable debris includes, but is not limited to, damaged and disturbed trees; bushes and shrubs; broken, partially broken, and severed tree limbs and bushes.

Section 3 – Situation and Assumptions

Burnable debris consists predominately of trees and vegetation. Burnable debris does not include garbage or construction and demolition material debris.

Burnable Construction Debris: Burnable construction and demolition debris consists of non-creosote structural timber, wood products, and other materials designated by the coordinating agency representative.

Non-burnable Debris: Non-burnable construction and demolition debris includes, but is not limited to, creosote timber, plastic, glass, rubber and metal products, sheet rock, roofing shingles, carpet, tires, and other materials as may be designated by the coordinating agency. Garbage will be considered non-burnable debris.

Stumps: Stumps will be considered tree remnants exceeding 24 inches in diameter; but no taller than 18 inches above grade, to include the stump ball. Any questionable stumps shall be referred to the designated coordinating agency representative for determination of its disposition.

Ineligible Debris: Ineligible debris to remain in place includes, but is not limited to, chemicals, petroleum products, paint products, asbestos, and power transformers.

Any material that is found to be classified as hazardous or toxic waste (HTW) shall be reported immediately to the designated coordinating agency representative. At the coordinating agency representative's direction, this material shall be segregated from the remaining debris in such a way as to allow the remaining debris to be loaded and transported. Standing broken utility poles, damaged and downed utility poles and appurtenances, transformers and other electrical material will be reported to the appropriate utility(ies). Emergency workers shall exercise due caution with existing overhead and underground utilities and above ground appurtenances, and advise the appropriate authorities of any situation that poses a health or safety risk to workers on site or to the general population.

3.4.2 Forecasted Locations

The locations of debris can be forecasted to some extent based on topography and land use. The southern portion of Livingston Parish is adjacent to Lake Maurepas and is subject to flooding during a wind and rain event. For this reason, it is estimated that C&D and mixed debris associated with flood damage may be prevalent in southern Livingston Parish. Flood damage is not anticipated to occur in the portion of the Parish that is north of Interstate 12.

Section 3 – Situation and Assumptions

The most densely populated portion of the Parish is the northwest quadrant where the municipalities of Denham Springs and Walker are located. This area are anticipated to have a relatively high proportion of C&D and mixed debris associated with wind damage in populated areas than other areas of the Parish. The debris in the remainder of the Parish is anticipated to be predominantly woody debris that would be associated with a wind event. The wooded areas in the southern portion of the Parish consist primarily of cypress whereas pine trees and hardwoods predominate in the northern portion.

The relative debris amounts per area are dependent on the path of the storm and wind field. A storm tracking to the east of the Parish will affect different areas and generate much different quantities than a storm to the west side. Generally, storms that pass on the west side of the Parish will have a more devastating effect than those passing to the east. The extend of flood damage is largely dependent on how the winds push water into and over the banks of Lake Maurepas, the speed of the storm (the slower, the tendency for more flooding), and the amount of rain generated by the storm as it passes through.

General Item

Ethics Board Docket No. BD 2010-007 01/15/2010

RE: Consideration of a request for an advisory opinion regarding whether the son of a Sabine Parish School Board member can accept employment as a teacher with a school with the Sabine Parish School Board.

Relevant Statutory Provisions, Advisory Opinions: 1119B(2)(a); 2003-718, 2003-624 and 2002-444

Comments:

FACTS:

Harold Stewart holds a teaching certificate, issued by the Louisiana Department of Education, in the areas of Health and Physical Education. Presently, there is a teacher opening at Zwolle Elementary for a special education teacher. Zwolle Elementary is under the Sabine Parish School Board. Mr. Stewart's father is a member of the Sabine Parish School Board. The school board is conducting interviews this week for the special education teaching position.

ISSUE: Whether Section 1119B of the Code would prohibit Mr. Stewart's employment with Zwolle Elementary as a special education teacher while his father serves on the school board?

LAW:

Section 1119B(2)(a)(i) of the Code permits the school board to employ an immediate family member of a school board member, provided the family member is certified to teach and teaching in a classroom.

Past opinions, see 2003-718, 2003-624, and 2002-444, have stated that the immediate family member, in addition to being certified, should teach within their certification.

ANALYSIS:

Section 1119B(2) of the Code would not prohibit Mr. Stewart from accepting a teaching position at Zwolle Elementary as a special education teacher while his father serves as a member of the school board as long as his certification includes special education. (TKM)

Recommendations: Adopt proposed advisory opinion.

Date

Mr. Harold G. Stewart
2005 Mill Pond Lane
Zwolle, Louisiana 71486

Re: Ethics Board Docket No. 2010-007

Dear Mr. Stewart:

The Louisiana Board of Ethics, at its January 15, 2010 meeting, considered your request for an advisory opinion as to whether you may accept a teaching position at Zwolle Elementary School as a special education teacher while your father serves on the Sabine Parish School Board. You stated that you hold a teaching certificate issued by the Louisiana Department of Education in the areas of health and physical education. You stated that Zwolle Elementary School is located in the Sabine Parish School Board district. You also stated that your father is a member of the Sabine Parish School Board.

The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics would not prohibit you from accepting a special education teacher position with Zwolle Elementary School while you father serves as a member of the Sabine Parish School Board as long as your teaching certification includes the area of special education. Section 1119B(2)(a)(i) of the Code permits a school board to employ an immediate family member of a school board member provided the family member is certified to teach and teaching in a classroom. The Board has consistently held that the family member must also be teaching in the area of their respective teaching certification.

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 as to laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

Tracy K. Meyer
For the Board

sum

REGISTRATION
CAMPAIGN FINANCE
RECEIVED

January 4, 2010

2010 JAN -4 AM 11:37

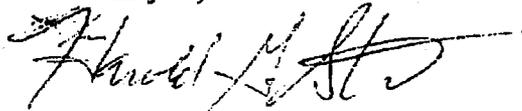
Re: Harold Gabriel Stewart

To Whom It May Concern:

My name is Harold Gabriel Stewart and I just recently got an out of state certificate to teach from the La. State Department of Education which is good for 3 years. My certification is in Health and PE. At the present time there is a job opening in Sabine Parish at Zwolle Elementary teaching Special Education. The problem that I am having is that my father is school board member in Sabine Parish for Ebarb High School. The Sabine Parish School Board is in the process of interviewing this week for the position. I am requesting an advisory opinion as soon as possible.

Parties involved in this situation include myself, Harold Stewart (Sabine Parish School Board Member-Ebarb High School), Sabine Parish School Board supervisor Sharon Dewitt. If I am approved I would like a letter to be faxed to Sabine Parish School Board, Attn: Sharon Dewitt at (318) 256-0105.

Thank you,



Harold Gabriel Stewart



2003-718

Created By: Margaret Sabadie on 10/10/2003 at 02:03 PM
Category: Ethics Advisory Opinions
Caption:

October 10, 2003

Mr. Lee A. McDowell, Member
LaSalle Parish School Board
140 Jeanell Lane
Trout, LA 71371

Re: Ethics Board Docket No. 2003-718

Dear Mr. McDowell:

The Louisiana Board of Ethics, at its October 9, 2003 meeting, considered your request for an advisory opinion concerning whether your wife may be employed as a substitute teacher by the LaSalle Parish School Board while you serve as a school board member. You stated that your wife is a retired certified teacher and that she would only teach within her area of certification.

The Board concluded and instructed me to inform you that the Code of Governmental Ethics does not prohibit your wife from being employed by the LaSalle Parish School Board as a substitute teacher since she is certified and will only be teaching within her area of certification. Generally, Section 1119B(1) prohibits an immediate family member of a member of a governing authority from being employed by the governmental entity. However, Section 1119B(2)(a)(i) of the Code provides an exception which allows for the immediate family member of a school board member to be employed by the school district if she is certified to teach and teaching within that area of certification. Therefore, the employment of your wife as a substitute teacher is permissible.

The Board issues no opinion as to laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (800) 842-6630 or (225) 763-8777.

Sincerely,

LOUISIANA BOARD OF ETHICS

**2003-624**

Created By: Kathrin Y Nielson on 08/14/2003 at 02:28 PM
Category: Ethics Advisory Opinions, Miscellaneous
Caption:

August 14, 2003

John B. Wells
Attorney at Law
317 Portsmouth Drive
Slidell, LA 70460-8429

RE: Ethics Board Docket No. 2003-624

Dear Mr. Wells:

The Louisiana Board of Ethics, at its August 14, 2003 meeting, considered your request for an advisory opinion regarding the propriety of the Belle Chasse Academy, a charter school in Plaquemines Parish, hiring the sister of a member of the school's board of directors as a teacher for the gifted students. Mr. Behrenger Brechtel is a member of the Board for the School and his sister, Ms. Rebecca U. Brechtel, is the only applicant for the position. Ms. Brechtel is a certified teacher and will be teaching within her certification.

The Board concluded and instructed me to inform you that the Code of Ethics does not prohibit Ms. Brechtel's employment under the facts as you have stated them. Section 1119B(1) of the Code prohibits the immediate family member of a school board member from being employed by the school. However, Section 1119B(2)(a) creates an exception providing that the family member may be employed "as a classroom teacher provided that such family member is certified to teach." The Board has clarified that this exception only applies when the teacher is certified to teach and is also employed to teach within her certification. Notice also that Mr. Brechtel must recuse himself from any decision involving the promotion or assignment of teaching locations regarding Ms. Brechtel.

The Board issues no opinion regarding laws other than the Louisiana Code of Governmental Ethics. Should you have any further questions, please contact me at (800) 842-6630 or (225) 763-8777.

Sincerely,



2002-444

Created By: Tiffany Lawhon on 08/20/2002 at 12:12 PM
Category: Ethics Advisory Opinions
Caption:

August 19, 2002

Thomas Craig, Jr.
106 Clista Street
Mansfield, LA 71052

Re: Ethics Board Docket No. 2002-444

Dear Mr. Craig:

The Louisiana Board of Ethics, at its August 13, 2002 meeting, considered your request for an advisory opinion as to the propriety of your daughter, Brooke Craig, being employed as a kindergarten teacher with the DeSoto Parish School Board, when you serve as a member of the school board. You stated that your daughter is certified to teach grades 1-8, but not kindergarten.

The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics prohibits your daughter's employment as a kindergarten teacher with the DeSoto Parish School Board while you serve as a member of the school board. Generally, Section 1119B of the Code prohibits an immediate family member of a school board member from being employed by that school board. Section 1119B(2)(a)(i) of the Code permits the immediate family member of a school board member who is certified to teach to be employed as a classroom teacher. The Board held that since Brooke Craig is not certified to teach kindergarten, the exception does not apply. Therefore, her employment with the DeSoto Parish School Board as a teacher for grades other than 1-8 would be prohibited. The Board issues no opinion as to laws other than the Louisiana Code of Governmental Ethics.

If you have any questions, please contact me at (225) 922-1400 or (800) 842-6630.

Sincerely,

General Item

Ethics Board Docket No. BD 2010-008 01/15/2010

RE: Consideration of a request for an advisory opinion regarding whether a violation of the Code would result if Terrebonne Parish Consolidated Government selects and contracts with a developer to build a housing development when Mr. Barry Blackwell, former Parish Manager, is a 50% owner of the proposed development site.

Relevant Statutory Provisions, Advisory Opinions: 1121B(1), 1121(C)

Comments:

Facts: Terrebonne Parish Consolidated Government (TPCG) was awarded 10 million dollars from the Louisiana Office of Community Development's Disaster Recovery Unit to develop affordable rental housing in the wake of Hurricanes Gustav and Ike. In May 2009, a Request for Proposals was developed, and Coastal Phoenix Investments, LLC submitted the highest scoring proposal. Included in Coastal's proposal is a purchase agreement with Northpark, LLC reciting a purchase price over eight million dollars. (This sale has not yet been finalized). Mr. Barry Blackwell is a 50% owner of Northpark, LLC. He is also the former Parish Manager, having served in that position from January 2004 until January 2008.

Issue: Whether Mr. Blackwell's tenure as Parish Manager presents any violation of the Code given his ownership interest in Northpark, LLC.

Law: Sections 1121B(1) and 1121(C) states that no former public employee, nor any legal entity in which he is an officer, director, trustee, or partner, or employee, shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction or in an appearance in connection with a transaction in which the former public employee participated at any time during his public employment and which involves his former public employer.

Analysis/Conclusion: No violations of the Code are presented under these facts. The RFP for the development of the rental housing was not published until May 2009, while Mr. Blackwell's employ as Parish President ended in January 2008. Therefore, Mr. Blackwell did not participate a transaction in which he participated as a former public employee as all relevant transactions occurred after the termination of his employ. (DLG)

Recommendations: Adopt proposed advisory opinion.

Date

Ms. Courtney E. Alcock
P.O. Box 1905
Houma, LA 70361

Re: Board Docket No. 2009-942

Dear Ms. Alcock:

The Louisiana Board of Ethics, at its January 15, 2010 meeting, considered your request for an advisory opinion regarding whether a violation of the Code of Governmental Ethics would result if Terrebonne Parish Consolidated Government selects and contracts with a developer to build affordable development when Mr. Barry Blackwell, former Parish Manager, is a 50% owner of the proposed development site. You stated that Terrebonne Parish Consolidated Government (TPCG) was awarded 10 million dollars from the Louisiana Office of Community Development's Disaster Recovery Unit to develop affordable rental housing in the wake of Hurricanes Gustav and Ike. In May 2009, a Request for Proposals was developed, and Coastal Phoenix Investments, LLC submitted the highest scoring proposal. Included in Coastal's proposal is a purchase agreement with Northpark, LLC reciting a purchase price over eight million dollars. (This purchase has not been finalized). You also stated that Mr. Barry Blackwell is a 50% owner of Northpark, LLC. He is also the former Parish Manager, having served in that position from January 2004 until January 2008.

The Board concluded, and instructed me to advise you that the Code of Governmental Ethics would not preclude the continuation of the Coastal Phoenix development process nor the ultimate execution of the proposal. Section 111 states that no public employee (nor any entity in which the public servant is an officer, director, trustee, partner, or employee) shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction in which the former public employee participated in connection with a transaction in which the former public employee participated at any time during his public employment and which involves his former public employment. The RFP for the development of the rental housing was not published until May 2009, while Mr. Blackwell's employ as Parish President ended in January 2008. Therefore, Mr. Blackwell will not be participating in a transaction in which he participated as a former public employee as all relevant transactions occurred after the termination of his employ.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts 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 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

**LAW OFFICE OF
COURTNEY E. ALCOCK**

COURTNEY E. ALCOCK*
MICHELLE L. NEIL

**620 SCHOOL STREET
SUITE A
HOUMA LA 70360**

*Also admitted in Virginia and
District of Columbia

December 22, 2009

**MAILING ADDRESS:
P.O. BOX 1905
HOUMA LA 70361**

**PHONE: (985) 655-6104
FAX: (985) 872-1611**

Attn: Kathleen Allen
Louisiana Board of Ethics
2415 Quail Drive, Third Floor
Baton Rouge, LA 70808

Re: Does any violation of the ethics code result against Terrebonne Parish Consolidated Government (TPCG) or Mr. Barry Blackwell from TPCG selecting and/or ultimately contracting with a developer to build an affordable housing development where the proposed site of the development is currently owned by NORTH PARK, LLC a company fifty percent owned by the former Parish Manager of TPCG, Mr. Barry Blackwell, who served in that position from January 2004 until January 2008 and who is now currently serving as Director of the Terrebonne Parish Consolidated Waterworks District #1 (a political subdivision separate from TPCG)?

Honorable Members of the Board:

Please submit the following opinion inquiry at the January meeting of the Ethics Board:

Does any violation of the ethics code result against Terrebonne Parish Consolidated Government (TPCG) or Mr. Barry Blackwell from TPCG selecting and/or ultimately contracting with a developer to build an affordable housing development where the proposed site of the development is currently owned by NORTH PARK, LLC a company fifty percent owned by the former Parish Manager of TPCG, Mr. Barry Blackwell, who served in that position from January 2004 until January 2008 and who is now currently serving as Director of the Terrebonne Parish Consolidated Waterworks District #1 (a political subdivision separate from TPCG)?

By way of background information, I offer the following:

Terrebonne Parish Consolidated Government was awarded \$10 million dollars from the State of Louisiana Office of Community Development's Disaster Recovery Unit as a result of damage caused by Hurricanes Gustav and Ike in 2008 for the sole purpose of developing affordable rental housing. This grant was issued in response to the well documented need for affordable work force housing in the parish. In May of 2009, a "Request for Proposals"¹ was developed and a public notice was published in The Courier and other Louisiana newspapers. The "Request for Proposals" was also posted on Terrebonne Parish Consolidated Government's

¹ Copy of the Request for Proposal is attached as Exhibit 1

website www.tpcg.org. A proposer's conference was held on May 15, 2009, at which 20 potential proposers were in attendance. Prospective proposers were given the latitude to determine the number of units they would construct and the location of the development. Terrebonne Parish Consolidated Government did not direct nor influence the locality of the proposed developments. The deadline to submit proposals was June 8, 2009 at 4:00 pm. A total of four proposals were submitted by the deadline.

A non-partisan committee was established to review the proposals and to make recommendations. The committee included representatives from Catholic Housing Services, Nicholls State University, Terrebonne Parish Housing & Human Services Department, Terrebonne Parish Planning & Zoning Department, Terrebonne Economic Development Authority and a local community bank. On June 11, 2009, the committee met to review and preliminarily evaluate the proposals. The proposals were scored based on the factors listed in the published "Request for Proposals". On June 16, 2009, the committee convened to accept oral presentations from the four proposers. After all presentations were made and the final scores tabulated, it was determined that Coastal Phoenix Investments, LLC (Coastal Phoenix) submitted the highest scoring proposal.^{2&3} Coastal Phoenix Investments, LLC proposed a total of 335 housing units utilizing \$10,000,000.00 of disaster funds and leveraging \$67,441,773.00 from other sources. Subsequently, a presentation to the Terrebonne Parish Council was made by Coastal Phoenix Investments, LLC. The Terrebonne Parish Council unanimously approved the conditional recommendation to fund the project.⁴

Included in the Coastal Phoenix proposal is a purchase agreement with Northpark, LLC for approximately 145 acres of land to provide the site for the affordable housing development (purchase agreement flagged in Exhibit 2). The purchase agreement cites a purchase price of Eight Million Three Hundred Twenty-Five Thousand and No/00 Dollars (\$8,325,000.00) with One Hundred Dollars (\$100.00) of earnest money to be delivered by Coastal Phoenix to Northpark, LLC. Upon information and belief, this purchase agreement remains in effect today as the sale of the property has yet to be finalized.

In late November/early December of 2009, Coastal Phoenix began the planning commission process of having the affordable housing development approved. Nearby property owners living in a residential subdivision along with members of the parish council became concerned about the development proposal and voiced their concerns, which included, among other issues, the propriety of the use of Northpark's property for the site given that Mr. Blackwell was employed by TPCG until January 15, 2008.

² Copy of Coastal Phoenix Investments, LLC proposal is attached as Exhibit 2

³ Copy of June 24, 2009 notice of recommendation of conditional award to Coastal Phoenix from TPCG Department of Housing and Human Services

⁴ Copy of conditional award Resolution 09-373 of the Terrebonne Parish Council attached as Exhibit 4

Citizens appeared before the Terrebonne Parish Council on December 6 and December 14 and the Councilperson for that District, Terri Cavalier, held a meeting with residents, Coastal Phoenix and Northpark to air and to address concerns of the neighbors. In addition to Coastal Phoenix, a representative from Northpark, LLC was present at these meetings.⁵

The Houma-Terrebonne Regional Planning Commission recently approved the preliminary and conceptual design of the Coastal Phoenix development; the engineering phase of planning approval has not occurred.

TPCG has yet to execute a loan agreement with Coastal Phoenix, LLC for the ten million dollars in CDBG appropriations as the funding is conditioned upon receiving the approval of the Louisiana Recovery Authority, the Louisiana Office of Community Development, and the United States Department of Housing and Urban Development.

Given that the approval of Coastal Phoenix development is ongoing with the ultimate execution of the CDBG loan agreement not yet signed, may this process continue and/or does any violation of the ethics code result against TPCG or Mr. Barry Blackwell due to the timing of his tenure as Parish Manager?

Please contact my office for any additional information you require and that information will be provided immediately upon request.

Thank you for your expedited assistance in this matter of great importance to Terrebonne Parish.

Sincerely,



COURTNEY E. ALCOCK

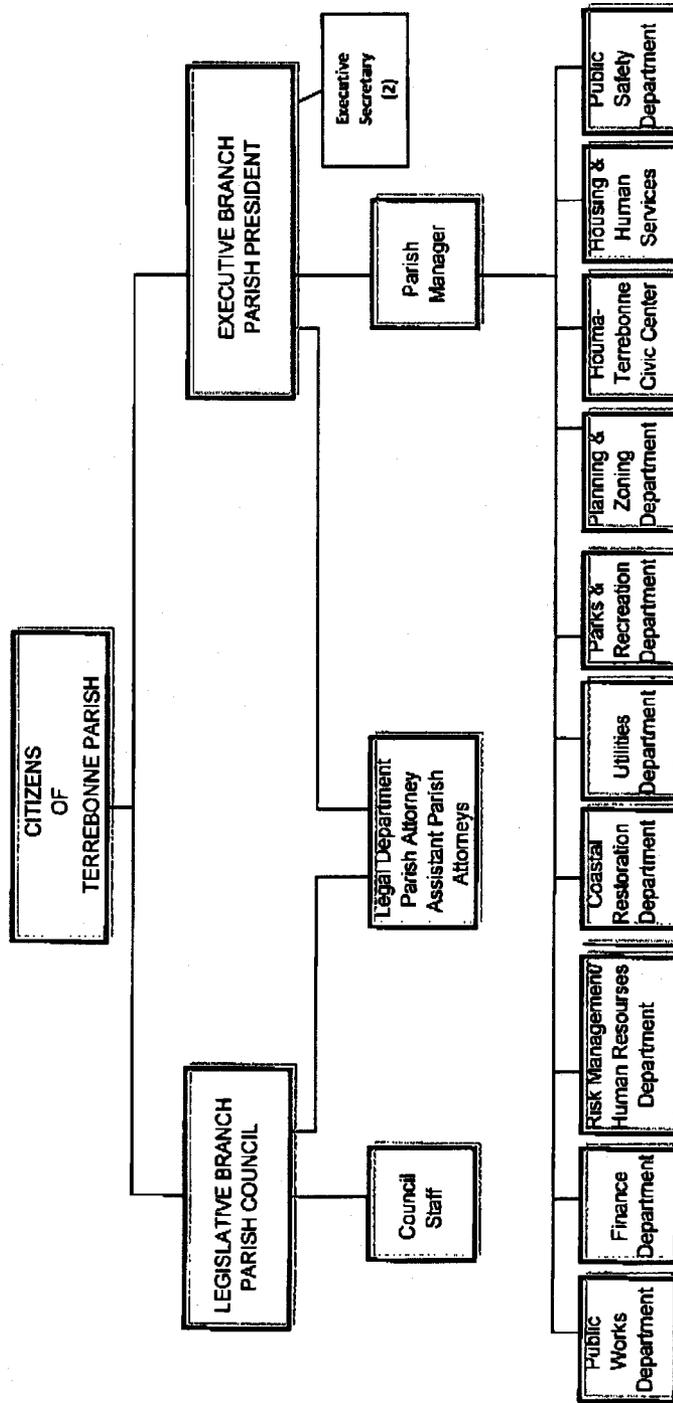
Parish Attorney

CEA/lv

Cc: *Council Reading File (w/encl)*
All members of the Terrebonne Parish Council (w/o encl)
Michel Claudet, Parish President (w/o encl)
Al Levron, Parish Manager (w/ encl)
Darrel Waire, Department of Housing and Human Services (w/o encl)
Pat Gordon, Department of Planning and Zoning (w/o encl)

⁵ Copies of information provided by Northpark, LLC are attached as Exhibits 5 and 6.

TERREBONNE PARISH CONSOLIDATED GOVERNMENT



LAW OFFICES
DUVAL, FUNDERBURK, SUNDBERY, LOVELL & WATKINS

(A Professional Law Corporation)

101 WILSON AVENUE
P. O. BOX 3017
HOUMA, LOUISIANA 70361

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Area Code 985
Telephone 876-6410
Fax 851-1490

www.duvallawfirm.com
(see website for e-mail address)

OF COUNSEL
WILLIAM S. WATKINS

January 10, 2010

Ms. Kathleen Allen, Esq.
Louisiana Board of Ethics
Post Office Box 4368
Baton Rouge, Louisiana 70821

Via Fax (225) 381-7271

Re: Docket Number 2010-008
Ethics Opinion requested by the Terrebonne Parish
Consolidated Government

2010 JAN 11 PM 1:47

REGISTRATION
FINANCE
RECEIVED

Dear Ms. Allen:

This firm represents Coastal Phoenix Investments, LLC, ("Coastal Phoenix") and we are in receipt of a letter dated December 22, 2009 from Courtney E. Alcock, Terrebonne Parish Attorney to you requesting an opinion as to whether the Terrebonne Parish Consolidated Government ("TPCG") can execute a contract with Coastal Phoenix regarding the building of affordable housing units in Terrebonne Parish.

On behalf of Coastal Phoenix, I hereby join in the request for that opinion.

As Ms. Alcock set forth in her letter, Coastal Phoenix's proposal was selected by the non-partisan committee established by TPCG. The proposal submitted by Coastal Phoenix included the purchase agreement referenced by Ms. Alcock, whereby Coastal Phoenix will purchase property from NORTH PARK, LLC, which property will be the site to build the affordable housing units. We have been informed that Mr. Blackwell owns 50% of NORTH PARK, LLC. By way of additional information, Mr. Blackwell does not own any interest in Coastal Phoenix, nor has he ever owned any such interest. Mr. Blackwell's sole connection with Coastal Phoenix is that he happens to own 50% of the LLC from which Coastal Phoenix will purchase the property which will become the site of the affordable housing units. Mr. Blackwell receives no income from Coastal Phoenix, nor will he in the future. He is not employed by, nor does he have any other contractual relationship with Coastal Phoenix.

Thank you for your attention to this matter, and should you need additional information please do not hesitate to contact me.

DUVAL, FUNDERBURK, SUNDBERY, LOVELL & WATKINS

Sincerely yours,

A handwritten signature in black ink, appearing to read 'C. Berwick Duval, II', with a stylized flourish extending to the right.

C. BERWICK DUVAL, II

CBDII/jbl

cc: Ms. Courtney E. Alcock

General Item

Ethics Board Docket No. BD 2010-034 01/15/2010

RE: Consideration of a request for an advisory opinion concerning whether a staff member of the National Association of Charter Authorizers (NACSA) may participate as a member of an evaluation team making recommendations to the Department of Education pursuant to a contract between NACSA and the Department of Education

Relevant Statutory Provisions, Advisory Opinions: 1112

Comments:

FACTS: The Department of Education submits a request for an advisory opinion concerning individuals who may serve on evaluation teams which make recommendations to the Department of Education. La. R.S. 17:3973 requires the chartering authority to review each Type 5 charter school proposal in compliance with the Principles and Standards for Quality Charter School Authorizing as promulgated by the National Association of Charter School Authorizers. The Department of Education contracts with the National Association of Charter Authorizers (NACSA) to make recommendations concerning Type 5 charter school proposals which have been submitted to the State Board of Elementary and Secondary Education (BESE). NACSA works with the Department to assemble and manage evaluation teams to evaluate and make recommendations concerning the applications. The evaluation teams consist of both local and national experts on law, education, finance, law, and not-for-profit corporation management. Evaluation teams sometimes include a NACSA staff member with the appropriate expertise. The evaluation team submits a consensus recommendation to the Department. The Department reviews the NACSA recommendation and makes its own recommendation to BESE concerning the charter school application. BESE is not bound by the recommendation of either NACSA or Department and has the final decision on whether or not to approve a charter application.

ISSUE: (1) May an evaluation team member who may be a NACSA staff member, evaluate and make recommendations to the Department of Education concerning a proposal submitted to the Department by a NACSA associate member or organization? Associate members include charter school operators, researchers, education management organizations, or other entities which are active in the charter school sector. They pay dues to NACSA but do not have voting privileges in the governance of the organization. (2) May an evaluation team member, who may be a NACSA staff member, evaluate and make recommendations to the Department regarding a charter school proposal in which a NACSA associate member is to be the education management organization.

ANALYSIS: Section 1112 prohibits a public servant from participating in a transaction in which he, a person of whom he serves as an officer, director, trustee, partner or employee, or a person with whom he is negotiating or has an arrangement concerning prospective employment, has a substantial economic interest. A threshold issue is whether the NACSA staff members who may serve on the evaluation team are public employees. NACSA, a private entity, contracts with the Department of Education to make recommendations to BESE concerning charter school applications. BESE retains the authority to make the final decision on all charter school applications, and is not bound by the recommendations of NACSA or the Department of Education. NACSA's function, therefore, is simply to provide guidance to BESE, which is done on a contractual basis. This function does not make the NACSA staff members public employees. Therefore, Section 1112 of the Code is not implicated. (CDJ)

Recommendations: Adopt the proposed advisory opinion

DATE

Mr. Paul G. Pastorek, State Superintendent of Education
Department of Education
P.O. Box 94064
Baton Rouge, LA 70804-9064

RE: Louisiana Board of Ethics Docket No. 2010-034

Dear Superintendent Pastorek:

The Louisiana Board of Ethics, at its January 15, 2010 meeting, considered your request for an advisory opinion concerning whether staff members of the National Association of Charter School Authorizers (NACSA) may participate as part of evaluation teams assembled by NACSA and the Department of Education, to make recommendations concerning Type 5 charter school proposals. You state that the Department of Education contracts with the NACSA to make these recommendations, pursuant to La. R.S. 17:3973. You state that the evaluation teams consist of national and local experts in the fields of education, law, finance, and not-for-profit management, and that sometimes an NACSA staff member with the appropriate qualifications will serve on the evaluation team. You request an opinion as to whether an evaluation team member who may be a NACSA staff member, may make recommendations to the Department regarding a charter school proposal submitted by a NACSA associate member organization, and whether NACSA, or a staff member who serves on an evaluation team, may make a recommendation concerning a proposal in which a NACSA associate member is to be the education management organization for the nonprofit organization applying for the charter contract.

Based upon the information which you have provided, the Board concluded, and instructed me to inform you, that it determined that the NACSA and its employees are not public servants pursuant to the Code of Governmental Ethics. Accordingly, there is no conflict of interest arising under the Code presented by either of the scenarios which you describe.

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

Courtney D. Jackson
For the Board



January 2010

General Supplemental Page 43 of 49

2010-034

65

STATE OF LOUISIANA

DEPARTMENT OF EDUCATION

POST OFFICE BOX 94064, BATON ROUGE, LOUISIANA 70804-9064

Toll Free #: 1-877-453-2721

<http://www.louisianaschools.net>

December 7, 2009

Louisiana Board of Ethics
Post Office Box 4368
Baton Rouge, LA 70821

Re: Request for advisory opinion from the Board of Ethics

To the Louisiana Board of Ethics:

Please include this request for an advisory opinion on the agenda for the February, 2010 meeting of the Louisiana Board of Ethics.

2009 DEC 10 PM 4:08
UNIVERSITY OF LOUISIANA
FINANCE
RECEIVED

I. Background

In 2005, the Louisiana Legislature amended La. R.S. 17:3973 to require that "the chartering authority shall review each Type 5 charter proposal in compliance with the Principles and Standards for Quality Charter School Authorizing as promulgated by the National Association of Charter School Authorizers." Since that time, either the State Board of Elementary and Secondary Education (BESE) or the Department of Education has contracted with the National Association of Charter Authorizers (NACSA) to conduct and manage the process by which Type 5 and/or Type 2 charter school proposals¹, and the nonprofit corporations that have submitted those proposals, are evaluated.

NACSA is a nonprofit organization comprised of (1) Voting Members: state and local public education agencies that are empowered by law to contract with charter school operators for the operation of charter schools and to monitor their performance and (2) Associate Members: charter school operators, researchers, education management organizations² that manage charter schools on behalf of charter school operators, and others active or interested in the charter school sector. Only Members have voting privileges. Associate Members have no role in the governance or management of the Association. NACSA provides a variety of resources to its members (charter school authorizers) and associate members (charter school operators and education management organizations), including publications and seminars on various topics related to the governance and operation of charter schools. NACSA's associate members pay NACSA a yearly \$500 membership fee for access to these resources. NACSA currently has 106 charter authorizers as members and 75 associate member organizations. Total Income from all types of membership represents less than 5% of NACSA's overall budget.

Pursuant to its contract with the Department of Education, NACSA works with the Department to assemble and manage evaluation teams composed of local and national experts on education, finance, law

¹ A Type 5 charter school is preexisting public school transferred to the Recovery School District pursuant to La. R.S. 17:10.5 or 10.7 and operated pursuant to a charter contract between a nonprofit corporation and the State Board of Elementary and Secondary Education. A Type 2 charter school is a new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the State Board of Elementary and Secondary Education. A Type 2 charter school is not a school under the jurisdiction of the Recovery School District.

² An education management organization (EMO) is usually a for-profit company that specializes in managing the day-to-day operation of charter schools on behalf of a non-profit corporation that holds a charter contract.

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and not-for-profit corporation management to review Type 2 and Type 5 charter school proposals. Based on need and availability, evaluation teams sometime include a NACSA staff member with appropriate expertise. The evaluation teams review written submissions and conduct in-person capacity interviews with applicant groups. For each application, the team generates a consensus recommendation to the Department of Education regarding whether it believes the application warrants approval or denial. The Department of Education, in turn, reviews the evaluator recommendations and makes its own recommendations to BESE regarding approval or rejection of each charter proposal.

NACSA's primary responsibility throughout the evaluations is to manage the process and to ensure that the teams apply consistent, high standards to their assessments of each application. To this end, NACSA assigns teams leaders; conducts an orientation to review the process and criteria; facilitates scheduling and communications between the Department and the evaluation teams; ensures timely completion of each phase of the evaluation process; and provides a consistent structure and format for delivery of the recommendations.

In assembling evaluation teams, the Department of Education typically recommends a local (Louisiana) charter school expert and NACSA recommends two to three national experts for participation on each team. NACSA screens all team members for potential conflicts of interest. A copy of the conflict of interest questionnaire used by NACSA in the aforementioned screening process is attached to this letter.

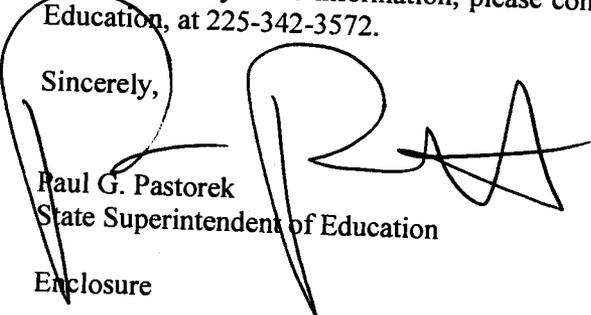
II. Questions

Is it a violation of La. R.S. 42:1112, or any other provision of the Code of Governmental Ethics, for any evaluation team member, who may be a NACSA staff member, to evaluate, and to make recommendations to the Department of Education, regarding a charter school proposal submitted to the Department of Education by one of NACSA's associate member organizations?

Is it a violation of La. R.S. 42:1112, or any other provision of the Code of Governmental Ethics, for NACSA, or for any evaluation team member, who may be a NACSA staff member, to evaluate, and to make recommendations to the Department of Education, regarding a charter school proposal submitted to the Department of Education, in which a NACSA associate member is to be the education management organization for the nonprofit organization applying for the charter contract?

If you need any more information, please contact Christopher Fruge, an attorney for the Department of Education, at 225-342-3572.

Sincerely,


Paul G. Pastorek
State Superintendent of Education

Enclosure

PGP:JCH:rcf

C: Ollie S. Tyler, Deputy Superintendent of Education
James C. Hrdlicka
Kenneth Campbell

Conflict of Interest Questionnaire for Louisiana Charter School Application Evaluation
Team Members

1. Have you worked for or with, or do you know, any of the applicants that either you are responsible for reviewing or that, to your knowledge, have otherwise submitted an application to the Louisiana State Board of Elementary and Secondary Education (the "applicant" or "applicants")?

Yes

No

If yes, please specify.

2. Have you worked for or with, or do you know, any of the applicants' proposed partners?

Yes

No

If yes, please specify.

3. Have you worked for or with, or do you know, any of the individuals proposed as trustees for any of the applicants?

Yes

No

If yes, please specify.

4. Have you worked for or with, or do you know, any of the potential employees of the applicants?

Yes

No

If yes, please specify.

5. To the best of your knowledge, have any of your relatives worked for or with, or do they know any of the applicants or the applicants' proposed partners, trustees or employees?

Yes

No

If yes, please specify.

6. Have you, or, to the best of your knowledge, any of your relatives assisted or been asked to assist in preparing the applications that you have been asked to review?

Yes

No

If yes, please specify.

7. Have any of the applicants or the applicants' proposed partners, trustees or employees offered employment to you, or, to the best of your knowledge, any of your relatives within the last two years?

Yes

No

If yes, please specify.

8. To the best of your knowledge, does any individual or organization with whom or which you are affiliated (as an employee, consultant or otherwise) have any financial relationship with any of the applicants and/or applicants' proposed partners, trustees or employees, including but not limited to contracts to supply services or real estate?

Yes

No

If yes, please specify.

9. To the best of your knowledge, in the event that an applicant is granted a charter, does any individual or organization with whom or which you are affiliated (as an employee, consultant or otherwise) have any intention to enter into, or seek to enter into, any financial relationship with such charter school or its partners, trustees or employees, including but not limited to contracts to supply services or real estate?

 Yes No

If yes, please specify.

10. In the event that an applicant is granted a charter, do you, or, to the best of your knowledge, do any of your relatives, have any intention to enter into, or seek to enter into, a relationship with such charter school or its partners, trustees or employees, including but not limited to contracts to supply services or real estate.

 Yes No

If yes, please specify.

11. Do you anticipate that any of your children, or the children of any of your relatives or persons by whom you are employed or affiliated with, will attend any of the proposed charter schools that you have been asked to evaluate should such schools be granted a charter?

 Yes No

If yes, please specify.

12. Do you have a preference for how a charter school is established, i.e., in conjunction with a for-profit, college or university, museum, non-profit, or corporate entity?

 Yes No

If yes, please specify.

13. Do you have a preference for what the mission of any particular charter school should be, or how it should be organized?

Yes

No

If yes, please specify.

14. The charter schools law in Louisiana states that a preference should be given to schools serving "at-risk students." The law does not define "at risk." Will you be open to various definitions of "at risk" that may be employed by the applicants?

Yes

No

If no, please specify.

15. Do you have any beliefs pertaining to class size, curriculum, performance assessment, parental involvement or facilities that may prohibit you from providing an objective evaluation of an applicant with different views or beliefs?

Yes

No

If yes, please specify.

16. Please check the appropriate box for you.

I am able to serve as an objective and unbiased Evaluation Team member.

I am unable to serve as an objective and unbiased Evaluation Team member. Please see reason(s) below:

17. Do you own any stock, or have any financial interests, in a Charter Management Organization (CMO), an Educational Service Provider (ESP) or other charter school partner organizations?

Yes

No

If yes, please specify.

Print Name

Signature

Date