

Louisiana Board of Ethics

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

April 16, 2010

**General Supplemental Agenda
LaBelle Room
9:00 a.m.**

Discussion in Executive Session of litigation involving Morning in America (*Ethics Board Docket No. 2008-1154*)

G56. Docket No. 07-157

Consideration of a proposed consent opinion concerning Bonnie Fruge, a former member of the Madisonville Town Council, seeking to obtain payment in connection with a building project.

G57. Docket No. 07-247

Consideration of a consent opinion regarding several Ethics Code violations by DeSoto Parish Waterworks District No. 1 Board Member John Neilson.

G58. Docket No. 10-165

Consideration of a request for an advisory opinion regarding whether the Mayor of Cottonport, La., may appoint an alderman to the Housing Authority.

G59. Docket No. 10-204

Consideration of a request for an advisory opinion regarding Kristie Bardell, an employee with DHH, Office of Public Health, Maternal and Child Health Program, accepting a position as the Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years following her termination of employment with the Maternal and Child Health Program.

G60. Docket No. 10-314

Consideration of a request for an advisory opinion regarding the propriety DonahueFavret Contractors, Inc. a company partially owned by Senator Jack Donahue may enter into a contract with LCTCS Facilities Corporation.

G61. Docket No. 10-322

Consideration of a request for an advisory opinion regarding whether the Board of Directors for Property Insurance Association of Louisiana are required to file annual personal financial disclosure statements pursuant to Section 1124.2.1.

G62. Docket No. 10-333

Notice of Ethics Disclosures received by the Board for March 2010.

G63. Docket No. 08-718

Consideration of the decision rendered by the Ethics Adjudicatory Board following the public hearing in this matter.

General Item

Ethics Board Docket No. BD 2010-165 04/16/2010

RE: Consideration of a request for an advisory opinion regarding whether the Mayor of Cottonport, La., may appoint an alderman to the Housing Authority.

Relevant Statutory Provisions, Advisory Opinions: 1113A(1)(a), 1113A(1)(b)(ii)

Comments:

FACTS: The Mayor has asked Katedral Ducote, Executive Director of the Cottonport Housing Authority, whether there were any prohibitions to appointing an alderman to the Governing Board for the Housing Authority. The Governing Board for the Housing Authority is comprised of five members all appointed by the Mayor and confirmed by the Town Council or Board of Aldermen. HUD is opposed to the appointment because the appointee, as a member of the governing body which confirms all commissioners to the board, may intimidate other members. Also, there may be conflicts concerning contractual arrangements.

Issue: Whether a member of the Board of Aldermen may be appointed to the Housing Authority.

LAW: Section 1113A(1)(a) of the Code prohibits public servants, their immediate family members, or legal entities in which they have a controlling interest, from entering into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant. However, this statute does not prohibit a municipal or parish governing authority from appointing one of its members to a board or commission for which the governing authority is the appropriate appointing authority and the appointee receives no salary or per diem for service on the board or commission. Section 1102(11) defines a governing authority as the body which exercises the legislative functions of a political subdivision. The agency for a member of a governing authority is the governmental entity.

ANALYSIS/CONCLUSION: The Code of Ethics would not prohibit such an appointment. Section 1113 generally prohibits an alderman from entering into a transaction under the supervision or jurisdiction of his agency. However, the exception outlined in 1113A(1)(b)(ii) allows a "governing authority" to appoint one of its members to a board or commission to which the "governing authority" is the appropriate appointing authority. In this matter, pursuant to Cottonport's Code of Ordinances, appointees to the Governing Board must be confirmed by the Board of Aldermen. As such, the Board of Aldermen would be considered a "governing authority" within the purview of the exception, and the appointment would be permitted as long as the appointee does not receive a salary or per diem for his service on the board. (DLG)

Recommendations: Adopt proposed advisory opinion.

April, 2010

Keteral Ducote
Executive Director, Cottonport Housing Authority
650 Jacob Drive
Cottonport, LA 71327

Re: Board Docket No. 2010-165

Dear Mr. Ducote:

The Louisiana Board of Ethics, at its April 16, 2010 meeting, considered your request for an advisory opinion regarding whether the Mayor of Cottonport, La., may appoint an alderman to the Cottonport Housing Authority. You stated that the Governing Board for the Housing Authority is comprised of five members all appointed by the Mayor and confirmed by the Town Council or Board of Aldermen. You also stated that HUD is opposed to the appointment because the appointee, as a member of the governing body which confirms all commissioners to the board, may intimidate other members, and because there may be conflicts with contractual obligations.

The Board concluded, and instructed me to inform you that the Code of Governmental Ethics will not prohibit this appointment. Section 1113A(1)(a) of the Code prohibits public servants, their immediate family members, or a legal entities in which they have a controlling interest, from entering into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant. Section 1113 generally would prohibit an alderman from entering into a transaction that is under the supervision or jurisdiction of his agency. However, an exception outlined in Section 1113A(1)(b)(ii) allows a governing authority to appoint one of its members to a board or commission to which to governing authority is the appropriate appointing authority.

In this matter, pursuant to Cottonport's Code of Ordinances, appointees to the Governing Board must be confirmed by the Board of Aldermen. As such, the Board of Aldermen would be considered a governing authority within the purview of the above-mentioned exception, and the appointment would be permitted as long as the appointee does not receive a salary or per diem for his service on the board.

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

Enclosure

April 2010

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TOWN OF COTTONPORT

(Home of the Christmas Festival on Bayou Rouge)

MAYOR: Paul A. Gauthier
TOWN CLERK: Theresa Jenkins-William
CHIEF OF POLICE: Charles I. Jenkins

433 Bryan Street / P.O. Box 118 / Cottonport, Louisiana 71327 0118

Telephone (318) 876-348
FAX (318) 876-335

ORDINANCE AMENDMENT BY THE MAYOR AND TOWN COUNCIL COTTONPORT, LOUISIANA

The following Ordinance Amendment to Article IV of the Code of Ordinances of the Town of Cottonport, Louisiana, entitled **BOARDS AND COMMISSIONS ORDINANCE**, which amends Article IV, Section 2.102-Housing Authority, which was previously introduced and laid over for publication of Notice of Public hearing, was moved for final adoption.

BE IT ORDINATED by the Mayor and Town Council of the Town of Cottonport, Louisiana in regular session, convened that the amendment of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Cottonport, Louisiana:

Article IV Housing Authority

Section 2.102 Creation; composition; appointment; removal:

There is hereby created a municipal housing authority which shall consist of five (5) people. Members of the housing authority shall be appointed and / or removed by Mayor to the confirmation of the Town Council Members.

Said Ordinance Amendment having been introduced July 11, 2006, Notice of Public hearing having been published, public hearing having been held, the title having been read and the Ordinance considered, on motion by Kenneth Friels and seconded by Lonis Laurent to adopt the Ordinance Amendment, a record vote was taken and the following result was had:

- Yeas: Curtis Francisco, Louie Laborde, Kenneth Friels and Lonis Laurent
- Nays: None
- Abstain: None
- Absent: Margaret Jenkins

Mayor Pro-Tem
Curtis J. Francisco

District 1
Council Member
Margaret Prater-Jenkins

District 2
Council Member
Kenneth Friels

District 3
Council Member
Louie Laborde

District 4
Council Member
Lonis J. Laurent


April 2010

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WHEREUPON the presiding officer declared the above Ordinance Amendment duly adopted on July 11, 2006.

ATTEST:

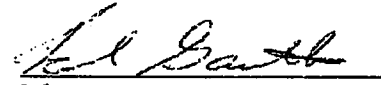

Town Clerk


Mayor


I certify that the above Ordinance Amendment was presented to the mayor by me on July 11, 2006.


Town Clerk

I acknowledge receipt of the above Ordinance Amendment from the Town Clerk on July 11, 2006.


Mayor

I hereby approve the above Ordinance on this 11th day of July 2006.


Mayor

I certify that the above Ordinance was received by me from the mayor on July 11, 2006.


Town Clerk

General Item

Ethics Board Docket No. BD 2010-204 04/16/2010

RE: Consideration of a request for an advisory opinion regarding Kristie Bardell, an employee with DHH, Office of Public Health, Maternal and Child Health Program, accepting a position as the Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years following her termination of employment with the Maternal and Child Health Program.

Relevant Statutory Provisions, Advisory Opinions: 1121B

Comments:

FACTS:

Kristie Bardell is the MCH Health Education Coordinator for the Maternal and Child Health Program with the Department of Health and Hospitals, Office of Public Health. Her job duties include managing the Parenting Newsletter, educating on perinatal substance abuse and other health promotion projects. Ms. Bardell stated that she does not educate on sudden infant death syndrome in her position as the MCH Health Education Coordinator.

Ms. Bardell's job appointment with DHH will expire in June 2010. Ms. Bardell is considering accepting a position with the Southeast Louisiana Area Health Education Center in Hammond as the Sudden Infant Death Syndrome Risk Reduction Coordinator. La R.S. 40:2019 established the Louisiana Child Death Review Panels, which reviews unexpected child deaths of children less than 15 years of age, including sudden infant death syndrome, and recommended the implementation of a SIDS prevention effort based on its findings. The Maternal and Child Health Program has contracted with the Southeast Louisiana Area Health Education Center to provide for a Sudden Infant Death Syndrome Risk Reduction Coordinator to help fulfill the child death review obligations pursuant to La R.S. 40:2019. In this position, Ms. Bardell would not be working with her former division/department, MCH Health Education Coordinator.

The Southeast Louisiana Area Health Education Center was activated through a grant written by Louisiana State University Medical Center, which petitioned the federal government for funding. The education centers have completed their six year cycles of federal funding and are now supported through cooperative endeavor agreements with the LSU School of Medicine.

LAW:

For the two year period subsequent to the termination of his employment with the agency, Section 1121B of the Code prohibits a former public employee from rendering, on a contractual basis to or for the agency with which he was formerly employed, any service which such former public employee had rendered to the agency during the term of his public employment. Section 1121B also prohibits a former public servant for the two year period following the termination of

his public service from assisting another person for compensation in a transaction, or in an appearance in connection with a transaction, in which the former public servant participated at any time during his public service and involving his former agency.

Section 1102(16) of the Code defines a "person" as an individual or legal entity other than a governmental entity, or an agency thereof.

ANALYSIS:

It appears that the Southeast Louisiana Area Health Education Center is a quasi public entity as it was created by LSU School of Medicine. As such, since Ms. Bardell is not assisting a person, the prohibitions sets forth in Section 1121B of the Code are not applicable.

However, in an abundance of caution, if the Southeast Louisiana Area Health Education Center is deemed to be a private entity, Ms. Bardell is still not prohibited from accepting the position as the Sudden Infant Death Syndrome Risk Reduction Coordinator. Ms. Bardell did not perform any education services involving SIDS in her position as MCH Health Education Coordinator. Further, in the position as Sudden Infant Death Syndrome Risk Reduction Coordinator, she will not have any contact with her former department where she held the position as MCH Health Education Coordinator. Therefore, since she will not be assisting the Southeast Louisiana Area Health Education Center in a transaction involving her former agency, the MCH Health Education Coordinator division, and in which she participated in during her employment as the MCH Health Education Coordinator, she is not prohibited from accepting the position of Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years of her termination of employment with the Maternal and Child Health Program. (TKM)

Recommendations: Adopt proposed advisory opinion.

Date

Ms. Kristie Bardell
Louisiana Department of Health and Hospitals
Maternal and Child Health Program
P.O. Box 60630
New Orleans, Louisiana 70160

Re: Ethics Board Docket No. 2010-204

Dear Ms. Bardell:

The Louisiana Board of Ethics, at its April 16, 2010 meeting, considered your request for an advisory opinion as to whether you may accept the position of Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years of your termination as the MCH Health Education Coordinator for the Maternal and Child Health Program with the Louisiana Department of Health and Hospitals, Office of Public Health. You stated that your job duties as MCH Health Education Coordinator include managing the Parenting Newsletter, educating on perinatal substance abuse and other health promotion projects. You stated that you do not educate on sudden infant death syndrome in your position as the MCH Health Education Coordinator.

You also stated that your job appointment with DHH will expire in June 2010. You stated that you are considering accepting a position with the Southeast Louisiana Area Health Education Center in Hammond as the Sudden Infant Death Syndrome Risk Reduction Coordinator. La R.S. 40:2019 established the Louisiana Child Death Review Panels, which reviews unexpected child deaths of children less than 15 years of age, including sudden infant death syndrome, and recommended the implementation of a SIDS prevention effort based on its findings. The Maternal and Child Health Program has contracted with the Southeast Louisiana Area Health Education Center to provide for a Sudden Infant Death Syndrome Risk Reduction Coordinator to help fulfill the child death review obligations pursuant to La R.S. 40:2019. In this position, you would not be working with your former division/department, MCH Health Education Coordinator.

The Southeast Louisiana Area Health Education Center was activated through a grant written by Louisiana State University Medical Center, which petitioned the federal government for funding. The education centers have completed their six year cycles of federal funding and are now supported through cooperative endeavor agreements with the LSU School of Medicine.

Ms. Kristie Bardell

Date

Ethics Board Docket No. 2010-204

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The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics would not prohibit you accepting the position as Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years of your termination as the MCH Health Education Coordinator for the Maternal and Child Health Program with the Louisiana Department of Health and Hospitals, Office of Public Health. Section 1121B of the Code prohibits a former public employee, for the two year period subsequent to the termination of his employment with the agency, from rendering, on a contractual basis to or for the agency with which he was formerly employed, any service which such former public employee had rendered to the agency during the term of his public employment. Further, Section 1121B of the Code prohibits a former public servant for the two year period following the termination of his public service from assisting another person for compensation in a transaction, or in an appearance in connection with a transaction, in which the former public servant participated at any time during his public service and involving his former agency. Section 1102(16) of the Code defines "person" as an individual or legal entity other than a governmental entity, or an agency thereof. Based on the information provided, it appears that the Southeast Louisiana Area Health Education Center is a quasi public entity and therefore not a person under the Code of Governmental Ethics. As such, Section 1121B of the Code would not be applicable.

However, the Board concluded, and instructed me to inform you, that in the event the Southeast Louisiana Area Health Education Center is deemed to be a private entity, Section 1121B of the Code still would not prohibit you from accepting the position as Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years of your termination as the MCH Health Education Coordinator for the Maternal and Child Health Program. Based on the information provided, you did not perform any education services involving SIDS in your position as MCH Health Education Coordinator. Further, in the position as Sudden Infant Death Syndrome Risk Reduction Coordinator, you stated that you will not have any contact with your former department where you held the position as MCH Health Education Coordinator. Therefore, since you will not be assisting the Southeast Louisiana Area Health Education Center in a transaction involving your former agency, the MCH Health Education Coordinator division, and in which you participated in during your employment as the MCH Health Education Coordinator, you are not prohibited from accepting the position of Sudden Infant Death Syndrome Risk Reduction Coordinator with the Southeast Louisiana Area Health Education Center within two years of your termination of employment with the Maternal and Child Health Program.

Ms. Kristie Bardell
Date
Ethics Board Docket No. 2010-204
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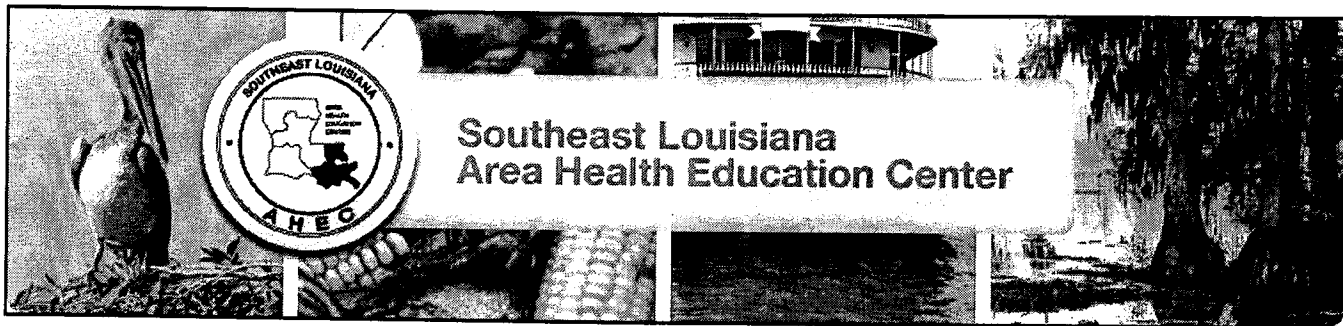
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Sincerely,

LOUISIANA BOARD OF ETHICS

Tracy K. Meyer
For the Board

DRAFT



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The National AHEC mission is the national organization that supports and advances the Area Health Education Center (AHEC) network in improving the health of individuals and communities by transforming health care through education.

Connecting students to careers, professionals to communities, and communities to better health

We're here for you, Louisiana.

The mission of the Louisiana Area Health Education Centers is to improve the supply and distribution of health care professionals within the state through community and academic educational partnerships, in an effort to increase access to quality health care for all Louisiana residents.

SERVING THE FOLLOWING PARISHES

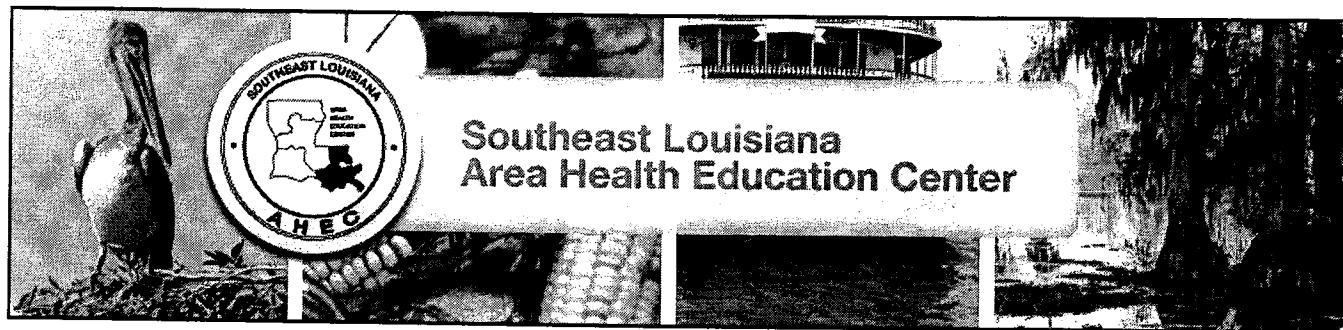
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| Assumption | St. Bernard | |
| Jefferson | St. Charles | Tangipahoa |
| Lafourche | St. James | Terrebonne |
| Orleans | St. John | Washington |
| Plaquemines | St. Tammany | |

Our history

The Federal AHEC Program began in the early 70's and the Louisiana AHEC was activated in 1988 through a grant written by Louisiana State University Medical Center. [Index Page.](#)

The Louisiana AHEC system began operation in 1988 through the efforts of the LSU School of Medicine which petitioned the federal government for funding. Four centers across the state were opened on a staggered basis with Southeast Louisiana beginning in 1989. The Louisiana Centers have all completed their six year cycles of federal funding and are now supported through cooperative agreements with the LSU School of Medicine.

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Recent News

Reach out and Read

Reach Out and Read (ROR) is a national non-profit organization that promotes early literacy by giving new books to children and advice to parents about the importance of reading aloud in pediatric exam rooms across the nation. [Click here for pictures from a recent ROR event in St. Tammany parish.](#)

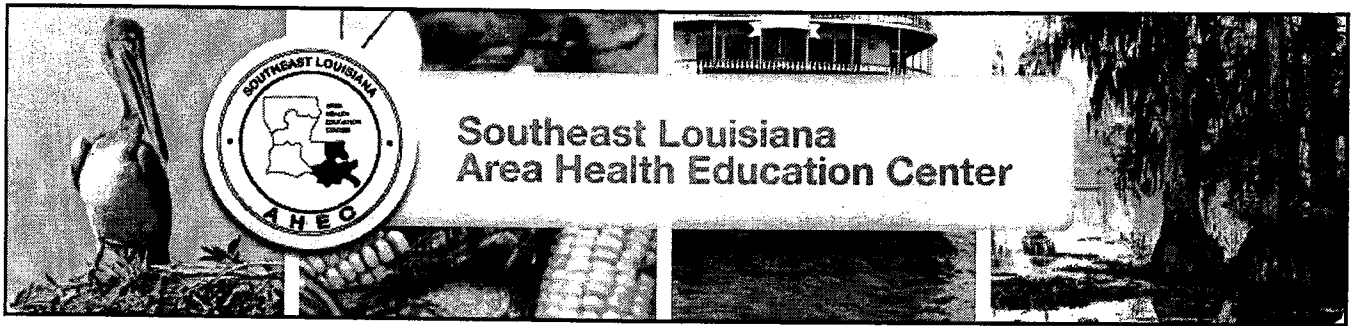
Our history

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The Louisiana AHEC system began operation in 1988 through the efforts of the LSU School of Medicine which petitioned the federal government for funding. Four centers across the state were opened on a staggered basis with Southeast Louisiana beginning in 1989. The Louisiana Centers have all completed their six year cycles of federal funding and are now supported through cooperative agreements with the LSU School of Medicine.

- Serve as a bridge between Schools of Health Professions, health providers, and communities.
- Conduct "needs assessments" to determine health care manpower needs and help communities fill those through a "grow your own approach".
- Organize links with others to provide clinical training for students in medicine, nursing, allied health, and dentistry.
- 10% of students medical education facilitate outside of the medical school.
- Recruit and retain health care professionals in rural and underserved areas.
- Educate and attract students, especially those under-represented, to careers in medicine, nursing, dentistry, and allied health fields.
- Sponsor adult and student health career fairs, summer health career camps, and elementary school health education programs.
- Supported the Louisiana Health Careers Handbook and www.lahealthcareers.com a statewide resource, which describes health care occupations and educational requirements within the state.
- Establish and maintain Learning Resource Centers for electronic access to worldwide medical databases and information retrieval via Library holdings.
- Present affordable, high quality educational seminars on health care issues for professionals and the public.
- Prepare and manage grants related to health and well-being of Louisiana citizens.

To read more please [click here](#)



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- [LSU Admissions Committee](#)
- [ROR](#)
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- [RWJ](#)
- [Rural Loan Fund](#)
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- [Day with doctors 2009](#)
- [Daisey Foundation](#)
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Rural Loan Fund

Southeast Louisiana AHEC receives in excess of \$837,000 to support revolving loan fund

The Robert Wood Johnson Foundation (RWJ), the Louisiana Public Facilities Authority (LPFA) and the Louisiana Department of Health and Hospitals (DHH) collectively awarded more than \$837,000 in grants and an interest free loan to the Southeast Louisiana Area Health Education Center Foundation, Inc. (SELAHEC) to support its' Louisiana Rural Loan Fund.

Two loan recipients, Tina Monlezun, CRNP, a nurse practitioner at Lake Arthur Health Clinic, and Linda Sharpless, RN, owner of JD Kid Kare Multi Practice Clinic, both shared their personal stories of how their loans have enabled them to improve access and service to their patients.

The Louisiana Rural Loan Fund, a required component of the Louisiana Rural Health Access Program, is a joint project of the Louisiana State University Health Science Center – New Orleans and DHH. Administered by SELAHEC, the fund was created in 1999 with a \$500,000, 10-year no interest loan from LPFA and a \$99,990 grant from the USDA's Rural Business Enterprise Program.

The \$500,000 RWJ grant and an additional \$300,000 LPFA 10-year interest free loan add much needed capital to provide direct and subordinated loans to help improve access to primary healthcare in rural Louisiana communities. The \$37,248 grant awarded on behalf of the DHH Community-Based and expedite loan request processing. Grant monies also will be used to provide technical assistance, advice and financial underwriting support. A part-time loan specialist will also be recruited to support loan requests in the central and northern Louisiana parishes.

In addition to assisting health care providers, the Rural Loan Fund should help improve the economic stability of rural Louisiana communities.

Both non-profit and for-profit healthcare providers will be eligible for loans. Loan amounts can range from \$10,000 to \$500,000 and can be used for start-up costs, equipment, renovations, new construction, working capital and refinancing of existing loans. "There are areas in our state where no primary care facilities exist and patients are driving miles to see a doctor, physician assistant, nurse practitioner or other health professional," said Brian Jakes, CEO- SELAHEC.

Since its inception, the Rural Loan Fund has reviewed or provided technical assistance for \$37 million in direct or subordinated loans. With the new funding provided by RWJ, LPFA, and DHH it is estimated that \$6 million in new loans will be developed to improve access to primary healthcare in rural Louisiana.

Buy Good Standing Certificate

Name	Type	City	Status
SOUTHEASTERN LOUISIANA AREA HEALTH EDUCATION CENTER FOUNDATION	Non-Profit Corporation	HAMMOND	Active

Business: SOUTHEASTERN LOUISIANA AREA HEALTH EDUCATION CENTER FOUNDATION

Charter Number: 34334189 N

Registration Date: 6/22/1989

Domicile Address

1302 J.W. DAVIS DRIVE
HAMMOND, LA 70403

Mailing Address

C/O CHERYL TANNER
1302 J.W. DAVIS DRIVE
HAMMOND, LA 70403

Status

Status: Active
Annual Report Status: In Good Standing
File Date: 6/22/1989
Last Report Filed: 6/1/2009
Type: Non-Profit Corporation

Registered Agent(s)

Agent:	BRIAN P. JAKES
Address 1:	1302 J.W. DAVIS DR.
City, State, Zip:	HAMMOND, LA 70403
Appointment Date:	5/13/1994

Officer(s)

Additional Officers: No

Officer:	SHERRY H. BEALL
Title:	Secretary/Treasurer
Address 1:	1302 J.W. DAVIS DR.
City, State, Zip:	HAMMOND, LA 70403
Officer:	RICHARD L. MULLER
Title:	Vice-President
Address 1:	1302 J. W. DAVIS DR.
City, State, Zip:	HAMMOND, LA 70403
Officer:	VIRGINIA PELEGRIN
Title:	President
Address 1:	21304 PAT O'BRIEN RD.
City, State, Zip:	COVINGTON, LA 70433

Amendments on File (2)

Description	Date
Amendment	5/16/1990
Domicile, Agent Change or Resign of Agent	4/1/1993

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**PART IV-C. SIMULATION MEDICAL TRAINING AND
EDUCATION COUNCIL FOR LOUISIANA**

§2048.61. Simulation Medical Training and Education Council for Louisiana; creation; membership

A. The Louisiana Legislature recognizes that health care organizations take seriously their responsibility to deliver safe and competent care to patients and clients. Professions that have an inherent level of risk, such as the health care disciplines, are incorporating simulation as a means to improve both quality of care and patient safety through individual and team-based programs. Such programs can target learning new medical techniques, inter-professional teamwork, and preparedness for effective response to rare and crisis situations without real life consequences. Louisiana's health care students and practicing professionals statewide will benefit from greater access to simulation medical training, particularly those serving in rural areas. As a result, Louisiana's citizens benefit from better quality health care.

B. There is hereby created in the Department of Education, under the jurisdiction of the Board of Regents, the Simulation Medical Training and Education Council for Louisiana, hereafter referred to as "council". The council shall be placed under the Louisiana Health Works Commission and shall exercise and perform its powers, duties, functions, and responsibilities in the manner provided for agencies transferred in accordance with the provisions of R.S. 36:801.5.

C. The purpose of the council is to develop an infrastructure and governing process to coordinate and maximize simulation training resources and expertise, in both urban and rural areas of the state, and to enhance effective use of simulation training for students, faculty, and practitioners throughout the health professions statewide.

D. The council shall be composed of the following members:

- (1) The commissioner of higher education or his designee.
- (2) The secretary of the Department of Health and Hospitals or his designee.
- (3) The executive director of the Louisiana Workforce Commission or his designee.
- (4) The state superintendent of education or his designee with expertise in career education.
- (5) The chancellor of the Louisiana State University Health Sciences Center at New Orleans or his designee.
- (6) The chancellor of the Louisiana State University Health Sciences Center at Shreveport or his designee.
- (7) The president of the University of Louisiana System or his designee.
- (8) The president of the Southern University System or his designee.
- (9) The president of the Louisiana State University System or his designee.
- (10) The president of the Louisiana Community and Technical College System or his designee.
- (11) One member representing and appointed by the Louisiana Association of Independent Colleges and Universities.
- (12) One member representing and appointed by the Louisiana Area Health Education Center Program.
- (13) One member representing and appointed by the Louisiana Hospital Association.
- (14) One member representing and appointed by the Louisiana Nursing Home Association.
- (15) One member representing and appointed by the Louisiana Ambulance Alliance.
- (16) One member representing and appointed by the Louisiana State Board of Medical Examiners.
- (17) One member representing and appointed by the Louisiana State Board of Nursing.
- (18) One member representing and appointed by the Louisiana State Board of Practical Nurse Examiners.
- (19) One member of the House of Representatives, or his designee, appointed by the speaker of the House of Representatives.

(20) One member of the Senate, or his designee, appointed by the president of the Senate.

(21) The executive director of the Governor's Office of Elderly Affairs or his designee.

(22) The governor's policy advisor on health care.

(23) The dean of the Tulane School of Medicine or his designee.

(24) One member representing and appointed by the Louisiana Council of Administrators of Nursing Education.

E. Each member shall be appointed for a term of three years and may be reappointed for subsequent terms.

F. The Board of Regents shall provide the staff and facilities needed by the council to accomplish its tasks. Each group, organization, and agency shall submit the names of members to the Board of Regents.

G. Upon appointment of the members, the council shall elect by majority vote an individual to serve as chair of the council.

H. Members shall serve without compensation or reimbursement for travel.

I. No action shall be taken by the council except by a favorable vote of a majority of the members. An absent member's designee may cast a vote on behalf of the absent member.

J. Prior to March first of each year, the council shall submit a status report on the state of simulation medical training in Louisiana and the proposed plan for meeting the goals of the council to the Louisiana Health Works Commission, who shall submit the report to the governor, the speaker of the House of Representatives, the president of the Senate, and the chairs of the House and Senate health and welfare committees.

Acts 2009, No. 421, §1.

§2019. Child death investigation**A. Findings and purpose.**

(1) The legislature hereby finds and declares that:

(a) Protection of the health and welfare of the children of this state is a goal of its people, and the unexpected death of infants and children is an important public health concern that requires legislative action.

(b) Collecting data on the causes of unexpected deaths will better enable the state to protect some infants and children from preventable deaths and will help reduce the incidence of such deaths.

(c) Identifying persons responsible for abuse or neglect resulting in unexpected death will better enable the state to protect other children who may be under the care of the same persons and will help reduce the incidence of such deaths.

(d) Multidisciplinary and multiagency reviews of child deaths can assist the state in the investigation of child deaths, in the development of a greater understanding of the incidence and causes of child deaths and the methods for preventing such deaths, and in identifying gaps in services to children and families.

(2) The purpose of this Section is to identify the cause of death of children fourteen years of age and below, and thereby reduce the incidence of injury and death to infants and children by requiring that a death investigation be performed in the case of all unexpected deaths of children fourteen years of age and below, and establishing the Louisiana State Child Death Review Panel to collect data from such investigations and report to the legislature regarding the causes of such deaths and share information among local and regional panels, health care providers, and state agencies which provide services to children and families.

B. Definitions. For the purpose of this Section, the following terms shall have the following meaning:

(1) "Autopsy" means a post-mortem external and internal physical examination conducted in accordance with accepted medical practice and the laws of this state using a standardized child death investigation protocol performed by a forensic pathologist or, if a forensic pathologist is unavailable, a pathologist licensed or otherwise appointed to conduct such an examination under such laws.

(2) "Death investigation" means the process of determining the cause and manner of death and shall include the following:

(a) A postmortem examination which may be limited to an external examination or may include an autopsy.

(b) An inquiry by any law enforcement agency having jurisdiction into the circumstances of the death, including a death scene investigation and interview with the child's parent, legal guardian, or caretaker, and the person who reported the child's death.

(c) A review of information regarding the child from any other relevant agency, professional, or health care provider.

(3) "Unexpected death" means a death which is a result of undiagnosed disease, or trauma in which the surrounding circumstances are suspicious, obscure, or otherwise unexplained, or other death the circumstances of which are suspicious, obscure, or otherwise unexplained. A clinical diagnosis of death due to Sudden Infant Death Syndrome (SIDS) shall be deemed an unexpected death.

C. Child Death Review Panel. There is established within the Department of Health and

Hospitals the Louisiana State Child Death Review Panel, hereinafter referred to as the "state panel" which shall be composed of twenty-five persons. Members of the panel shall include:

- (1) The state health officer or his designee.
- (2) The secretary of the Department of Health and Hospitals or his designee.
- (3) The secretary of the Department of Social Services or his designee.
- (4) The superintendent of the office of state police or his designee.
- (5) The state registrar of vital records in the office of public health or his designee.
- (6) The attorney general or his designee.
- (7) A member of the Senate appointed by the president of the Senate.
- (8) A member of the House of Representatives appointed by the speaker of the House of Representatives.
- (9) The commissioner of the Department of Insurance or his designee.
- (10) The executive director of the Highway Safety Commission of the Department of Public Safety and Corrections or his designee.
- (11) The state fire marshal or his designee.
- (12) A representative of the injury research and prevention section of the office of public health appointed by the assistant secretary of the office of public health.
- (13) The executive director of the Louisiana Maternal and Child Health Coalition.
- (14) A district attorney appointed by the Louisiana District Attorneys Association.
- (15) A sheriff appointed by the Louisiana Sheriff's Association.
- (16) A police chief appointed by the Louisiana Association of Chiefs of Police.
- (17) A forensic pathologist certified by the American Board of Pathology and licensed to practice medicine in the state appointed by the chairman of the Louisiana State Child Death Review Panel, subject to Senate confirmation.
- (18) A pathologist experienced in pediatrics appointed by the Louisiana Pathology Society.
- (19) A coroner appointed by the president of the Louisiana Coroner's Association.
- (20) Six persons appointed by the governor, subject to Senate confirmation, for a term of three years as follows:
 - (a) A health professional with expertise in Sudden Infant Death Syndrome appointed from a list of three names submitted by the Louisiana State Medical Society.
 - (b) A pediatrician with experience in diagnosing and treating child abuse and neglect appointed from a list of three names submitted by the state chapter of the American Academy of Pediatrics.
 - (c) Four citizens from the state at large who represent different geographic areas of the state.

D. Functions and duties of panel.

- (1) The state panel shall:
 - (a) Establish a standardized child death investigation protocol which shall require at a minimum that all death investigations be completed within thirty working days of the report of the death. The protocol shall include procedures for all law enforcement agencies and local departments of social services to follow in response to a child death.
 - (b) Establish criteria for information that must be included in a death investigation report and provide such information to the appropriate agencies and medical providers to be used as a

guideline in preparing the death investigation report.

(c) Collect, review, and analyze all death investigation reports prepared in accordance with this Section, and such other information as the state panel deems appropriate, to use in preparation of reports to the legislature concerning the causes of and methods of decreasing unexpected deaths of infants and children.

(d) Recommend changes within the agencies represented on the state panel which may prevent child deaths.

(2) The state panel may:

(a) Establish local and regional panels to which it may delegate some or all of its responsibilities under this Section.

(b) Analyze any data available through any state systems that may decrease the incidence of injury and unexpected death to infants and children below the age of fourteen.

E. Child death investigation.

(1) In each unexpected death of a child fourteen years of age and below, a death investigation shall be performed in accordance with the child death investigation protocol established by the Louisiana State Child Death Review Panel which may include, at the discretion of the coroner but not be limited to, a complete autopsy performed by the coroner of the parish where the death occurred pursuant to the death investigation procedure established by R.S. 33:1563. The death investigation findings shall be reported to appropriate authorities including the police, health care providers, and the child protective services if appropriate, within three days of the conclusion of the death investigation.

(2) A copy of the death investigation report, or any portion thereof, including law enforcement, coroner, fire department, and medical providers, or any other information relative to the death investigation shall be provided to the state panel within thirty days from the date the state panel requests such information.

(3) Nothing in this Section shall be construed to change, alter, or restrict the authority or jurisdiction of a coroner as established in R.S. 33:1551 et seq.

(4) Nothing in this Section shall be construed as requiring a finding of negligent treatment or maltreatment when the state panel determines that the parents or guardians were treating the child solely according to the tenets and practices of a well-recognized religious method of treatment which has a reasonable, proven record of success.

F. Records; confidentiality; prohibited disclosure and discovery.

(1) Notwithstanding any other provision of law to the contrary, the state panel, and any local or regional panel or its agent thereof, shall be authorized to access medical and vital records in the custody of physicians, hospitals, clinics, and other health care providers, and the office of public health, and to any other information, documents, or records pertaining to the completed investigation of unexpected deaths of infants and children below the age of fourteen in the custody of any law enforcement agency or child protective service agency in order that it may perform its functions and duties as provided in Subsection D. All such records obtained by the state panel or any local or regional panel or its agent in accordance with the provisions of this Subsection, as well as the results of any child death investigation report, shall be confidential and shall not be available for subpoena nor shall such information be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding nor shall such records be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.

(2) The furnishing of confidential information, documents, and reports in accordance with this Section by any person, agency, or entity furnishing such information, documents, and reports shall not expose such person, agency, or entity to liability and shall not be considered a violation of any privileged or confidential relationship, provided the participant has acted in good faith in the reporting as required in this Section.

(3) Nothing in this Subsection shall prohibit the publishing by the state panel of statistical compilations relating to unexpected child deaths of infants and children fourteen years of age or below which do not identify individual cases or individual physicians, hospitals, clinics, or other health care providers.

G. Report. The state panel shall report to the legislature annually concerning the causes of unexpected deaths of infants and children below the age of fourteen. The report shall include analysis of factual information obtained through review of death investigation reports required in Subsection D of this Section.

Acts 1992, No. 745, §1, eff. July 7, 1992; Acts 1995, No. 893, §1; Acts 1999, No. 736, §1; Acts 1999, No. 965, §1, eff. July 9, 1999.

April 2010

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2010-204

Bobby Jindal
GOVERNOR



Alan Levine
SECRETARY

State of Louisiana
Department of Health and Hospitals
Maternal and Child Health Program

March 2, 2010

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

To Whom It May Concern:

I am writing to ask for an advisory opinion from the Board of Ethics regarding the following situation:

I am a current full-time employee of the Department of Health and Hospitals, Office of Public Health, Maternal and Child Health Program since 2007. My current position is classified as a job appointment position which will expire in June 2010. A job appointment extension has been requested by the Maternal and Child Health Program but a decision has not been rendered. Please view the attached job description for my current role as a Program Monitor, serving as the MCH Health Education Coordinator.

The Maternal and Child Health Program in the Louisiana Office of Public Health has contracted with Southeast Louisiana Area Health Education Center, in Hammond for a Sudden Infant Death Syndrome Risk Reduction Coordinator position to help fulfill child death review obligations pursuant to RS 40.2019. I am requesting an advisory opinion to determine whether the two-year restriction below would pertain to me applying to Southeast Louisiana Area Health Education Center and if offered accepting the position with Southeast Louisiana Area Health Education Center. Please view the attached statement of work detailing the job description for the SIDS Risk Reduction and Safe Sleep Coordinator.

"During the two year period following the termination of public service as a public employee, these individuals may not assist another for compensation, in a transaction, or in an appearance in connection with a transaction involving the agency in which the former public employee participated while employed by the agency nor may the former public employee provide on a contractual basis to his former public employer, any service he provided while employed there."

Please contact me if you need any further information or clarification of any details presented in this letter. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Kristie Bardell".

Kristie Bardell, MPH, CCHC
(225) 284-3712
Kristie.Bardell@LA.GOV

DUTIES AND RESPONSIBILITIES

Provide a brief statement describing the function of work or reason why the position exists. List duties indicating the percent of time spent for each area of responsibility. When applicable, describe the physical demands and/or unavoidable hazards while performing the duties listed below. Attach additional pages if necessary.

If duty(s) are short-term / temporary and nonrecurring, note beginning and ending dates and percent of time required to perform the duty(s). Begin the writing of your short-term duty statement(s) as follows: (SHORT-TERM - beginning and ending dates) - Example: (SHORT-TERM - 1/1/99 thru 1/31/99) I court.....

%
MUST
TOTAL
100%

LIST DUTIES IN DECREASING ORDER OF IMPORTANCE / COMPLEXITY. THE NEED FOR SPECIAL LICENSE, POLICE COMMISSION, KNOWLEDGE OR TRAINING MUST BE INDICATED BELOW, IF APPLICABLE

This Program Specialist/Social Services position is assigned to the Maternal and Child Health Section of the Center for Preventive Health in the Office of Public Health and is responsible for serving as the program administrator for the Parenting Newsletter, perinatal smoking cessation, substance abuse programs and other health promotion efforts in MCH as assigned. In addition this position will serve as the MCH health education coordinator. This includes administrative responsibilities for MCH health education materials and the MCH website.

- 30% **Parenting Newsletter**
Coordinate and manage the development, production, printing, distribution and evaluation of the parenting newsletter to be offered to all Louisiana parents of newborns. Manage and oversee necessary updates. Develop and coordinate promotion activities for the newsletter. Develop, maintain, monitor, and evaluate newsletter distribution to Louisiana Parents, Parish Health Units, Hospitals and other agencies as appropriate.
- 30% **Perinatal Substance Abuse**
Provide the coordination, management, evaluation of statewide MCH health promotion activities surrounding perinatal substance abuse and smoking cessation. Monitor the development of media campaign activities related to substance abuse. Develop, negotiate and monitor programs and contracts related to the implementation and evaluation of perinatal smoking cessation and substance abuse programs.
- 25% **Other Health Promotion Projects**
Work with MCH staff to provide technical assistance and maintain the OPH/ MCH website. Assist with the coordination of monthly/quarterly meetings of OPH health education/promotion staff. Develop and monitor a plan of implementation for Infant Abandonment Law in Public Health Units and assist with implementation in other DHH agencies, as appropriate. Provide assistance with implementation of health education/promotion activities for SIDS risk reduction and Partner for Healthy Babies. Coordinate activities for health fairs and designated MCH health issues awareness events, i.e Child Health Month, Prematurity Awareness Day etc.
- 10% **Health Promotion Materials Distribution**
Coordinate the supply and distribution of various health education materials (such as the Parenting Education Series, Domestic Violence Resource Cards, and Bete Channing series) to Parish Health Units and private providers, as appropriate. Oversee and evaluate usage of these health promotion materials. Organize distribution of materials around designated months of the year to Parish Health Units (i.e. Dental Health for Kids Month, Child Health Month, etc.). Conduct periodic evaluation of materials.
- 5% **Other**
Represent MCH program at appropriate meetings and conferences. Preparation of reports for MCH Block Grant and Annual Report.

Attachment B
STATEMENT OF WORK
Southeast Louisiana Area health Education Center

**Regional Maternal and Child Health (MCH) Child Safety Initiative and
Sudden Infant Death Syndrome (SIDS) and Infant Safe Sleep Initiative**

REGIONAL MCH CHILD SAFETY INITIATIVE

Background:

Injuries are the leading cause of death in children and young adults nationally as well as in Louisiana. The Louisiana Child Death Review which has been reviewing all unexpected deaths in children since it was established in 1993, has recommended implementation of prevention efforts based on its findings. This recommendation is consistent with the MCH priority need to decrease mortality and morbidity due to injuries in the MCH population. The Maternal and Child Health Program has established Regional MCH Child Safety Coordinators who work to decrease injuries of children, ages 0-14 years, and Sudden Infant Death syndrome (SIDS)-related deaths in the MCH population in their regions through community and individual education activities and other child safety/injury prevention activities indicated by needs in their community. Although working with the community in general, the coordinators work to target families who are at high-risk for injury-related mortality and morbidity.

Objective 1. To provide child safety education and program development through coordinated efforts of the Office of Public Health (OPH)/MCH, Emergency Medical Services for Children, and Injury Research and Prevention Programs, as well as with other state and local partners. (Percent of time is 40% annually)

Outcomes:

The Contractor will:

- Conduct region-wide educational presentations and/or participate in events (e.g., health fairs) for the general public, health care providers, educators and other community leaders on childhood injury prevention. The activity will include but is not limited to the distribution of relevant program materials, policies and procedures, training sessions, advocacy initiatives relating to pending legislative actions which will have an impact on targeted childhood injury prevention activities. (minimum of 15 presentations and/or events per year and a minimum of 300 individuals to reach).
- Conduct local child injury prevention activities related to motor vehicles, including but not limited to child motor vehicle occupant injury, such as occupant protection systems and car safety seat check up programs and child backover injury, with special emphasis on populations at high risk. (minimum of 100 car seat checks, per coordinator per corresponding OPH region, each year and a minimum of 400 individuals to reach, including but not limited to clients at Public Health Units, child care centers, and fitting stations).
- Participate in Child Passenger Safety Month Activities
- Work with Child Care Centers in the provision of safety and injury prevention education as a Child Care Health Consultant or in conjunction with a Child Care Health Consultant. Trainings will include, but are not limited to: Indoor/Outdoor Safety, Home Safety, Hand-washing, Medication Administration, Food Safety, SIDS/Safe Sleep, Play Area Safety, Poisons Safety, and Motor Vehicle/Child Passenger Safety. (minimum of 5 child care centers reached, per parish in respective OPH region, per year)

- Implement at least 4 specific projects per year related to injury prevention in children based on community needs and congruent with MCH and/or Regional directives such as Safe Sleep and SIDS Risk Reduction.
- Submit monthly reports of activities including quarterly and annual total on car seat check.
- Participate in Quarterly Statewide Child Safety Coordinators meetings, conference calls, and ad hoc meetings, as determined by the MCH State Child Safety Coordinator and/or Child Health Medical Director. (minimum of 75% attended)

Performance Measure:

- Number of region-wide educational presentations conducted (minimum of 15 presentations per year and a minimum of 300 individuals to reach).
- Number of car seat checks (minimum of 100 car seat checks per coordinator, each year and a minimum of 400 individuals to reach).
- Proof of current national certification as a Child Occupant Protection Specialist.
- Proof of current certification as a Child Care Health Consultant
- Number of Child Care centers reached (minimum 5 centers reached per parish in respective OPH region, per year)
- Participation in SIDS Awareness Month Activities (in collaboration with the SIDS Risk Reduction/Safe Sleep Program)
- Attendance at meetings and conference calls

Objective 2. To coordinate local Child Death Review Panels in respective OPH region.
(Percent of time is 40% annually)

Outcomes:

The Contractor will:

- Coordinate local Child Death Review Panels (CDRP) in the respective OPH region, which will include contacting representatives of agencies to serve on the local Child Death Review Panel, arranging the logistics for the meetings including the place and time for meetings, and facilitating the meetings. (minimum of one meeting every two or three months)
- Provide to the State Child Death Review Coordinator reports related to case reviews and follow-up.
- Act as the liaison between the local CDRP and the state CDRP.
- Submit prevention initiatives, per case, on a quarterly basis in a CDR Tracking Table approved by the State Child Death Review Coordinator
- Manage regional case review information both manually and electronically (when applicable)

Performance Measure:

- Number of local Child Death Review Panel meetings held (minimum of one meeting every two or three months)
- Number of cases reviewed (minimum 4 cases annually)
- Reports of local Child Death Review Panel meetings, including case reports, submitted
- Current electronic database (when applicable)

Objective 3. To provide technical assistance to state and community agencies to eliminate or reduce preventable injuries and SIDS-related deaths in the local MCH population. (Percent of time is 10% annually)

Outcomes:

The Contractor will:

- Serve as a liaison to the respective OPH Regional Office, SIDS Risk Reduction and Safe Sleep Program, Louisiana Emergency Medical Services for Children (EMSC) Program, other child safety or injury prevention partners (including media and the general public) and conduct at least one joint childhood injury prevention/child safety event per year, including but not limited to EMSC Day, Louisiana Partnership for Youth Suicide Prevention (LPYSP) "Yellow Ribbon" Week, Louisiana Child Passenger Safety (LA CPS) Taskforce activities, Fetal Infant Mortality Review (FIMR), and Prevent Child Abuse of Louisiana (PCAL) meetings and activities.
- Submit monthly reports of activities.
- Participate in Quarterly Statewide Child Safety Coordinators meetings, conference calls, and ad hoc meetings, as determined by the MCH State Child Safety Coordinator and/or Child Health Medical Director.

Performance Measure:

- Monthly activity reports including participation in meetings with local child safety/injury prevention related agencies, technical assistance to community agencies and organizations in child safety/injury prevention and specific prevention activities.

Objective 4: To coordinate a region wide system of injury prevention initiatives targeted to preventing injuries for children under 15yrs of age focusing on the leading causes of unintentional injury mortality and morbidity. (Percent of time is 10% annually)

Outcome 4:

The contractor will:

- Develop injury prevention initiatives to address the leading causes of unintentional injury of children under 15yrs of age, as identified by the Louisiana Child Death Review.
- Distribute approved products addressing the leading causes of unintentional injury for children under 15yrs of age, including but not limited to car seats, booster seats, pack n' plays, bike helmets, smoke detectors, and/or carbon monoxide detectors.
- Conduct presentations on the leading causes of unintentional injuries for children under 15yrs of age, and injury prevention measures, to MCH settings including, but not limited to, prenatal care facilities, hospitals, primary care settings, home visiting programs (e.g.

Nurse-Family Partnership Program), WIC, parenting classes, child care settings, and/or School-Based Health Centers (SBHCs)

- Collaborate with child safety/injury prevention partners to address injury prevention measures for the leading causes of death for children under 15yrs of age; including, but not limited to pediatricians and their staff, Office of Community Services (OCS), ECSS, NFP, IRPP, hospitals, AMR, other child advocacy and family service agencies.

Performance Measures:

- Number of car/booster seats and bike helmets distributed, related to motor vehicle injuries; # of pack n' plays distributed, related to injuries in accidental suffocation; # of smoke/CO detectors distributed, related to fire injuries; # of monitors distributed, related to drowning; and all other items distributed in relation to the leading causes of unintentional injury of children under 15yrs of age.
- Number of events and presentations given on the leading causes of unintentional injuries of children under 15 yrs of age
- Number of child restraints checked

Objective 5: To identify the environmental, behavioral, or policy issues which put the MCH population, especially children, at heightened risk for preventable injuries through collaborative work with community partners through mortality case reviews and an inventory of community resources for injury prevention. (Percent of time 10%)

Outcomes 5:

The contractor will:

- Conduct a community resource inventory of regional and parish community agencies involved in injury prevention in children.
- Participate in MCH Program's Needs Assessment, as need arises.
- Conduct annual regional assessment of child safety/injury prevention priority areas

Performance Measure:

- Copies of reports and other printed material developed related to information on childhood injury.
- Copy of community resource inventory, annually.
- Copy of annual regional assessment of priority areas

Monitoring Plan:

- Quarterly face to face meetings of Regional MCH Child Safety Coordinators with MCH, including SIDS Risk Reduction/Safe Sleep Program.
- Review of monthly reports by State MCH Program.
- Monthly teleconference with all MCH Child Safety Coordinators and MCH Program, including SIDS Risk Reduction/Safe Sleep Program.
- Annual Assessment of priority areas and community resource inventory.
- Department of Health and Hospital (DHH) will reimburse contractor for staff's use of personal time according to contract agency's leave policy. Evaluation of contract

performance will include use of staff's personal time.

- All full time contractor staff members providing contractual services hereunder shall provide services 40 per week except when on approved leave. The contractor shall require all personnel to sign in and out daily for all hours worked and indicate all personal time taken, on time sheets approved by DHH. The original time sheets must be submitted to the DHH contract monitor with the monthly invoice and payment can only be made upon approval of the time sheets and invoices by the contract monitor.
- Monitoring of the contract will be performed by Gina P. Lagarde, MD, MBA – Child Health Director

SIDS Risk Reduction and Infant Safe Sleep Initiative

Background:

Sudden Infant Death Syndrome, or SIDS, is the leading cause of infant deaths ages 1 month to 12 months in Louisiana. Pursuant to RS 40.2019, Louisiana Child Death Review reviews unexpected child deaths of children <15 years of age, including infant deaths due to SIDS since it was established in 1993 and recommends the implementation of SIDS prevention efforts based on its findings. This recommendation is consistent with the MCH priority need to decrease mortality and morbidity due to SIDS in the MCH population. The Maternal and Child Health Program has established the SIDS Risk Reduction and Safe Sleep Program, which is tasked with moving data/findings from child death reviews of sudden unexpected infant deaths/sudden infant deaths to effective statewide prevention actions. With this position, the SIDS Risk Reduction and Safe Sleep Program Coordinator will be responsible for the management of the SIDS Risk Reduction and Safe Sleep Program within the Louisiana Office of Public Health's Maternal and Child Health Program. Supervision is from the Child Health Medical Director, which will provide a social marketing campaign and community outreach activities to educate the targeted audience of parents and caregivers regarding the reduction of deaths due to Sudden Infant Death Syndrome and unsafe sleep practices. Particular attention will be paid to addressing health disparities in the maternal and child health population.

Objective 1

To manage and coordinate the statewide program for the reduction of infant deaths due to Sudden Infant Death Syndrome (SIDS) and unsafe sleep conditions. (Percent of time is 80% annually)

Outcome:

The contractor will:

Develop and implement an annual comprehensive statewide plan for the reduction of deaths related to SIDS and unsafe sleep environments, based on Louisiana Vital Statistics and findings from Child Death Review.

- Develop and implement an evaluation plan of statewide unexpected infant death reduction efforts to inform message development, to determine effectiveness, and to refine programmatic activities.
- Manage, coordinate, monitor, and evaluate the statewide SIDS and infant safe sleep environment social marketing campaign, based on the framework of social marketing principles.
- Manage and provide oversight of advertising, marketing and public relations related to SIDS and infant safe sleep, which includes working DHH/OPH communications on press releases and approval of media messaging, such as television, print, web, radio, and outdoor advertising, for public education and awareness
- Research effective, evidence-based/promising/best practices for SIDS risk reduction and safe sleeping education and incorporate into existing efforts to improve program effectiveness.

- Pursue (grant) funding opportunities which may support and enhance programmatic efforts for reducing unexpected infant deaths related to SIDS and unsafe sleep environments.
- Assist with the coordination of infant death case review monthly/quarterly meetings with the SIDS Medical Director, State Child Death Review Panel Coordinator, and Child Health Medical Director and select stakeholders to develop prevention actions based on data from case reviews.
- Attend the State CDRP meetings and SIDS to assist in the discussion of developing effective prevention interventions.
- Work with the SIDS Program Medical Director and/or Child Health Medical Director in the review of sudden unexpected infant deaths, dissemination of review findings, and implementation of prevention recommendations
- Manage database of risk factors for SIDS deaths and analyze data for programmatic planning
- Develop and coordinate implementation of policies and monitoring procedures for unexpected infant deaths.

Performance Measure:

- Submission of the annual statewide strategic plan and evaluation plan for the reduction of deaths related to SIDS and unsafe infant sleep environments.
- Submission of the annual social media plan for SIDS and Infant Safe Sleep.
- Submission of the evaluation results of the annual strategic plan's program efforts.
- Monthly status reports which will include information regarding all social marketing and programmatic activities.
- Number of SIDS Program case review meetings held.
- Number of State Child Death Review meetings attended (minimum 75 percent attendance).
- Updated database of risk factors for SIDS deaths.

Objective 2

To provide technical assistance for the development of SIDS risk reduction and infant safety educational initiatives through coordinated efforts of OPH/MCH. (20%)

Outcome:

The contractor will:

- Collaborate with governmental/non-governmental agencies to develop, review, and/or make recommendations for revision of rules, policies, procedures, and legislation which support SIDS risk reduction and infant safe sleep practices.
- Provide guidance to the MCH Regional Child Death Review Panel/ Child Safety Coordinators, FIMR Coordinators, Child Care Health Consultants, and other partners (i.e. NFP, IRPP, DSS-OFS, OCS) in the implementation of SIDS risk reduction and infant safe sleep promotion activities and educational initiatives.
- Provide in-services and trainings to state partners, community leaders, and health professionals on current SIDS prevention and infant safe sleep recommendations.

- Provide programmatic information for and assist in the preparation of the MCH Block Grant; the SUID/SIDS section of the State CDRP Annual report, Health Report Card, and other DHH/OPH/MCH documents.
- Work with OPH/MCH health education staff to provide updated program information regarding SIDS and infant safe sleep community and media activities and to ensure for the MCH helpline, DHH-OPH website, and Partners for Healthy Baby website

Performance Measure:

- Submit monthly reports detailing technical assistance provide to programs in infant safety, preparation of grants and reports, and meetings attended.
- Submission of information for Block Grant, CDRP Annual Report, Health Report Card, and other DHH/OPH/MCH documents
- Updates to website and MCH helpline
- Number of SIDS and safe sleep education and outreach activities conducted

Monitoring Plan:

- Department of Health and Hospital (DHH) will reimburse contractor for staff's use of personal time according to contract agency's leave policy. Evaluation of contract performance will include use of staff's personal time.
- All full time contractor staff members providing contractual services hereunder shall provide services 8 hours per day, 5 days per week except when on approved leave. The contractor shall require all personnel to sign in and out daily for all hours worked and indicate all personal time taken, on time sheets approved by DHH. The original time sheets must be submitted to the DHH contract monitor with the monthly invoice and payment can only be made upon approval of the time sheets and invoices by the contract monitor.
- In order to assure contract compliance and successful delivery of outlined deliverables and performance measures, submitted status reports, completed work documents along with invoices will be reviewed monthly and quarterly. Meetings with the contractor will be held on a weekly basis.

Gina Payton Lagarde, M.D., MBA – Child Health Medical Director will monitor the contract.

General Item

Ethics Board Docket No. BD 2010-314 04/16/2010

RE: Consideration of a request for an advisory opinion regarding the propriety DonahueFavret Contractors, Inc. a company partially owned by Senator Jack Donahue may enter into a contract with LCTCS Facilities Corporation.

Relevant Statutory Provisions, Advisory Opinions: 1113D, 1102(18)

Comments:

FACTS: Maura Donahue, the wife of Senator Jack Donahue, has submitted a request for an advisory opinion regarding DonahueFavret Contractors, Inc. submitting a quotation in response to a Request for Qualification (RFQ) issued by the LCTCS Facilities Corporation for construction work on the LE Fletcher TCC Campus in Houma. Jack Donahue owns 46% interest in the company, Maura Donahue owns 5% of the company, John Donahue, the son of Senator Donahue owns 17% of the company, and the remaining 32% interest of the company is owned by Bob Favret who passed away February 2, 2010. The RFQ states that the LCTCS Facilities Corporation was established to facilitate the acquisition, purchase, construction, renovation, improvement or expansion of public facilities for designated institutions under the supervision and management of the Board of Supervisors of LCTCS pursuant to LSA-RS 17:3390. LSA-RS 17:3390 further provides that any organization formed pursuant to the statute shall be a private entity that shall not be deemed to be a public or quasi public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education for any purpose whatsoever. Act 391 of the 2007 Regular Session enumerates the specific facilities within the Louisiana Community and Technical Colleges system that are in need of capital improvement. LE Fletcher is among those facilities listed.

LAW: Section 1113D prohibits a legal entity in which a legislator owns more than 5% from entering into any contract with state government. "State government" is defined as any branch, agency, department or institution of state government, the Louisiana Insurance Guaranty Association, the Louisiana Health Insurance Guaranty Association, or any other state quasi public entity created in law.

ISSUES: Is LCTCS Facilities Corporation an agency of state government or a state quasi public entity created in law?

Does the language in the statute that the private entity shall not be deemed to be a public or quasi public corporation for any purpose whatsoever make Section 1113D of the Code inapplicable to the LCTCS Facilities Corporation?

ANALYSIS: In *LIGA v. Commission on Ethics*, the First Circuit held that LIGA was a state or public agency within the contemplation of the Ethics Code. In its analysis, the First Circuit started with the factors set forth by the Louisiana Supreme Court in *State v. Smith*, 357 So.2d 505, 507 (La. 1978) to be considered when determining whether an entity is a state agency or public agency or in finding an individual to be a state or public officer: (1) the entity was created by the legislature; (2) the powers were specifically defined by the legislature; (3) the property of the entity belonged to the public; and (4) the entity's functions were exclusively of a public character and performed solely for the public benefit.

The First Circuit acknowledged the language contained in the enabling statute, which stated that "the association is not and may not be deemed a department, unit, agency, or instrumentality of the state for any purpose." However, the First Circuit stated that if the Legislature intended to exempt LIGA from the Ethics Code it could have in the statute. The Legislature did not specifically exempt organizations created pursuant to 17:3390 from the Ethics Code. Further 17:3390 specifically defines the powers of the organization.

The First Circuit also found that the LIGA functions were of a public character exclusively and were performed solely for the public benefit. The RFQ states that the LCTCS Facilities Corporation was established to facilitate the acquisition, purchase, construction, renovation, improvement or expansion of public facilities for designated institutions under the supervision and management of the Board of Supervisors of LCTCS.

The First Circuit was also guided by the analysis in *Polk v. Edwards*, 626 So.2d 1128, 1145-47 (La. 1993), in which the Louisiana Supreme Court held that "despite the specific language in the Casino Act itself stating that the Casino Corporation is not a state agency, except as expressly provided in the act, the Casino Corporation is an instrumentality of the state." The First Circuit found, despite any language in the enabling statute that LIGA is not a state agency, that LIGA is a state or public agency within the contemplation of the Ethics Code.

Based on the aforementioned considerations, LCTCS Facilities Corporation is a state quasi public entity created in law and despite any language in the enabling statute stating that it is not a public entity for any purpose, it is subject to the Code. Therefore, DonahueFavret is prohibited from entering into a contract with the corporation for the renovation of LE Fletcher TCC Campus. (AMA)

Recommendations: Adopt the proposed advisory opinion.

DATE

Maura Donahue
DonahueFavret Contractors, Inc.
3030 East Causeway Approach
Mandeville, LA 70448

Re: Ethics Board Docket No. 2010-314

Dear Ms. Donahue:

The Louisiana Board of Ethics, at its April 16, 2010 meeting, considered your request for an advisory opinion as to the propriety of DonahueFavret Contractors, Inc., a legal entity partially owned by Senator Jack Donahue, entering into a contract with LCTCS Facilities Corporation for the design and construction of LE Fletcher TCC Campus. Senator Donahue owns a 46% interest in DonahueFavret Contractors, Inc. The Request for Qualifications (RFQ) issued by LCTCS Facilities Corporation states that the LCTCS Facilities Corporation was established to facilitate the acquisition, purchase, construction, renovation, improvement or expansion of public facilities for designated institutions under the supervision and management of the Board of Supervisors of Louisiana Community and Technical College System pursuant to LSA-RS 17:3390. LSA-RS 17:3390 provides that any organization formed pursuant to the statute shall be a private entity that shall not be deemed to be a public or quasi public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education for any purpose whatsoever. Act 391 of the 2007 Regular Session enumerates the specific facilities within the Louisiana Community and Technical Colleges system that are in need of capital improvement and LE Fletcher is among those facilities listed.

The Board concluded, and instructed me to inform you that DonahueFavret is prohibited from entering into a contract with LCTCS Facilities Corporation for the design and construction of LE Fletcher TCC Campus. Section 1113D of the Code prohibits a legislator, his spouse, or a legal entity of a person, from entering into contracts with state government. "Legal entity of a person" means any corporation, partnership, or other legal entity in which a legislator or his spouse owns an interest greater than five percent. "State government" is defined as any branch, agency, department or institution of state government, the Louisiana Insurance Guaranty Association, the Louisiana Health Insurance Guaranty Association, or any other state quasi public entity created in law.

The Board concluded, and instructed me to inform you, that it based its decision on the analysis by the Court of Appeal, First Circuit in *Louisiana Insurance Guaranty Association v. Commission on Ethics for Public Employees*, 95-0021 (La. App. 1 Cir. 5/5/95), 656 So.2d 670. The Louisiana Insurance Guaranty Association ("LIGA") is a entity created by statutes that include similar language to that included in LSA-R.S. 17:3390 regarding the corporation not being deemed as a public corporation for any purpose. The LCTCS Facilities Corporation was established to facilitate the acquisition, purchase, construction, renovation, improvement or expansion of public facilities for designated institutions under the supervision and management of the Board of Supervisors of Louisiana Community and Technical College System. Both LIGA's and LCTCS Facilities' powers and duties are set by the legislature in statute. Further, both LIGA's and LCTCS Facilities' functions

Ethics Board Docket No. 2010-130
February 19, 2010
Page 2 of 2

are of a public character exclusively and are performed solely for the public benefit. Based on these factors, the First Circuit concluded, despite the enabling statute containing language stating that LIGA was not a state agency, that LIGA was indeed a state or public agency within the contemplation of the Ethics Code.

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



DonahueFavret
CONTRACTORS, INC

April 1, 2010

Kathleen Allen
State of Louisiana
Board of Ethics
P. O. Box 4368
Baton Rouge, LA 70821

RE: RFQ for LE Fletcher Technical College Campus

Dear Kathleen:

Please consider this letter our request for a formal opinion on whether we can team up with a local architectural firm to submit a Quotation for the above referenced construction project.

Our construction company, DonahueFavret Contractors, Inc. has four partners. Jack Donahue owns 46% interest in the company. I own 5% of the company. Jack's son, John, owns 17% of the company. The remaining 32% interest is owned by our business partner, Bob Favret, who passed away on February 2nd of this year.

I have attached a copy of the RFQ for the board's use in making a determination on our request. Thank you for your guidance in this process.

Sincerely yours,
DONAHUEFAVRET CONTRACTORS, INC.
Maura Donahue
Maura W. Donahue
Vice President of Business Development

ANNIVERSARY

3030 East Causeway Approach
Mandeville, Louisiana 70448
985.626.4431 • 985.626.3572 Fax
www.donahuefavret.com

LCTCS Act 391 Program
State of Louisiana



REQUEST FOR QUALIFICATIONS FOR DESIGN BUILDER

**LE FLETCHER TCC CAMPUS
HOUMA, LOUISIANA**

For

LCTCS FACILITIES CORPORATION
(A LOUISIANA NON-PROFIT CORPORATION)



SECTION I PROJECT DEFINITION

1. INVITATION

LCTCS Facilities Corporation, a Louisiana non-profit corporation (the "Corporation"), was established to facilitate the acquisition, purchase, construction, renovation, improvement, or expansion of public facilities for designated institutions under the supervision and management of the Board of Supervisors of the Louisiana Community and Technical College System, (the "Board"), as provided in Act No. 391 of the Regular Session of the 2007 Louisiana Legislature, enacted as La. R.S. 17:3394.1 - 3394.3 ("Act No. 391"). In accordance with La. R.S. 17:3390, the Corporation is a private entity which shall not be deemed to be a public or quasi public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education for any purpose whatsoever.

The Corporation is issuing this Request for Qualifications ("RFQ") for Design/Build teams for the design and construction of LE Fletcher TCC, described below (the "Project") on property owned by the State of Louisiana (the "State") through the Board of Supervisors of the Louisiana Community and Technical College System (the "Board") for use by the College and by the Board. Each response must be submitted in strict accordance with the conditions prescribed herein. The Corporation seeks to receive Statements of Qualifications (SOQ) from qualified respondents ("Proposers").

The Corporation is seeking qualifications from only those who have a proven record of being capable of designing, equipping and constructing educational facilities such as will be required for the Project. Only those Proposers who have experienced and qualified staff in place will be considered. The Corporation will evaluate the RFQ responses and will "shortlist" qualified proposers. The shortlisted proposers will be invited to submit a competitive pricing proposal through an RFP process in accordance with the schedule outlined in this RFQ.

2. PROJECT SCOPE

The Project scope, per La. R.S. 17:3394.3, generally consists of the Design and Construction of a new technical community college campus in Houma, Louisiana. The Project will include new buildings, related site development and landscaping to house the following TCC functions and program offerings:

- A. Campus Administration
- B. Student Services
- C. Business Technology
- D. Drafting and Design



- E. Art and Sciences
- F. Library
- G. General Use Spaces

It is anticipated that the budget for design and construction shall not exceed \$17,800,000.00 dollars.

Architectural character shall be consistent with the requirements and design standards defined in the subsequent RFP provided to successful Proposers.

3. PROJECT OBJECTIVES

The Corporation's objectives in issuing this RFQ and offering this Project for development are to:

- A. Satisfy College requirements for a new campus.
- B. Further the education and public service functions of the College and the Board.
- C. Establish a "shortlist" of qualified Design/Build Teams who will be invited to submit a competitive pricing proposal based on a Request for Proposal (RFP) to be issued subsequent to this RFQ.

4. CONDITIONS

- A. The Corporation shall have final approval of all design work and improvements built, renovated or installed as part of the Project. No such approval shall in any way relieve Proposer from its sole responsibility to properly design the Project.
- B. Evaluation of qualifications will favor those Proposers with experience and expertise in design and construction of educational facilities.
- C. All materials and equipment used in connection with the Project must be new and of a quality typically used in Class A construction and comply in all respects with standards and requirements of the Louisiana Division of Administration Office of Facility Planning and Control ("FP&C").
- D. Proposer shall not unlawfully discriminate against any employee or applicant for employment because of race, color, age, religion, ancestry, sex, national origin, local custom, or sexual orientation.
- E. Notwithstanding any information provided by the Corporation, Board, College, State or FP&C, Proposer shall be and shall remain solely



responsible for inspecting site conditions and verifying data including, but not limited to, subsurface conditions not readily observable.

- F. All contracts involving the Corporation and Proposer and/or third persons shall incorporate by reference and shall be in accordance with all Federal, State and Local laws, ordinances, rules, regulations and orders. Proposer shall be responsible for compliance with all Federal, State and Local laws, ordinances, rules, regulations and orders in the design and construction of the Project.
- G. Proposer shall comply with La. R.S. 9: 4801 through 9:4855 and shall obtain payment and performance bonds from an approved surety, which bonds shall name the Corporation (or its designee) as an obligee. The performance bond and the payment bond shall each be in an amount equal to 100% of the contract amount and shall serve as security for the payment of all labor, materials, equipment and supplies as well as the full and complete performance of the entire work and services to be performed by the Proposer including but not limited to all design work performed by or on behalf of the Proposer. Proposer shall include in the Proposal information on its surety including the name, address, telephone number, contact person and duration of relationship.
- H. Proposer shall include in the Proposal evidence of insurance coverage on the part of Proposer and all contractors and design professionals Proposer identifies in the Proposal. Proposer shall delivery to Corporation a complete certified copy of all insurance policies prior to commencing work and as a condition precedent to any payment. The Corporation (or its designee) shall be named as an additional insured, without restriction to cross claims, on all policies of insurance except for professional liability. Proposer shall be required to carry Builders Risk insurance at all times during construction until final acceptance and occupancy of the completed facility.
- I. Proposer shall in addition provide all insurance required by the Procedures Manual for Insurance Requirements in Contracts and Indemnification Agreement (Hold Harmless) for the State of Louisiana, latest edition.
(Reference: <http://doa.louisiana.gov/orm/word/uwcontr.doc>)
- J. All design and construction documents must be prepared by design professionals who, as of the date of the Proposal, are duly licensed and authorized to practice in the State of Louisiana. All contractors and subcontractors identified in the Proposal must be licensed in accordance with Louisiana Law.
- K. All construction work and design services must be: in conformance with standards adopted by FP&C including, but not limited to, the Louisiana



Capital Improvement Projects Procedure Manual for Design and Construction, Instructions to Designers, and Building Code for State Owned Buildings (latest editions)

Reference: http://www.doa.louisiana.gov/fpc/I_to_D_Link_Files.htm
<http://www.doa.louisiana.gov/FPC/CodeforStateOwnedBldgs.doc>

- L. To avoid any conflict of interest or the appearance of any conflict of interest in connection with this RFQ, Proposer must disclose any relationship Proposer, its parent or subsidiary, its current or former owners, officers, directors or employees or others affiliated with Proposer including anyone identified in the Proposal to perform any of the work or services, have or in the past have had with: (1) current or former Corporation, College or Board members or employees or relatives of Board members or employees; or (2) anyone who has a contract or other relationship with a current or former Corporation, College or Board member or employee or relative of a Board member or employee who is or was significantly involved in the organization, preparation, or administration of this RFQ or otherwise was in a position to significantly affect the RFQ either through a decision-making capacity or through a review process.

To further avoid any conflict of interest or the appearance of any conflict of interest in connection with this RFQ, all persons or entities identified in the Proposal must disclose any relationship such person or entity, or their employees, agents or representatives, have or in the past have had with: (1) current or former Corporation, College or Board members or employees; or (2) anyone who has a contract or other relationship with a current or former Corporation, Board or College board member or employee who is or was significantly involved in the organization, preparation, or administration of this RFQ or otherwise was in a position to significantly affect the RFQ either through a decision-making capacity or through a review process.

- M. Proposer must, to the extent applicable, comply with the policies of the Board including, but not limited to, Policy #4.007 on "Managing Alternative Financing Projects" (latest edition).
- N. Proposer must include in its Proposal a comprehensive plan to maximize the use of minority businesses in the services and work to be performed.



SECTION II RULES FOR PROCESS

1. PROPOSERS' QUESTIONS/CONTACT FOR INFORMATION

Proposers' questions regarding this RFQ shall be submitted in writing either by email, written correspondence either hand delivered, delivered by overnight mail delivery or U.S. mail. Questions shall be received by (insert date and time). Questions shall be directed to:

CSRS, Inc.
6767 Perkins Road, Suite 200
Baton Rouge, Louisiana 70808

Attention: Brian J. LaFleur
lafleur@csrsonline.com

Neither oral nor written communications by Corporation, Board or College directors, officers, employees, or consultants, other than by written addenda to the RFQ, shall have any effect or be binding on the Board, Corporation or the College.

Oral communications with the Board, the Corporation, the College or any person or entity connected with them are expressly prohibited and may be grounds for disqualification.

2. SCHEDULE FOR REQUEST FOR QUALIFICATIONS

The Corporation expects to adhere to the following schedule in undertaking the selection process. However, this schedule is subject to modification at the sole and absolute discretion of the Corporation.

	DATE
Issuance of Request for Qualifications	3/18/10
Questions for Requests for Clarification	4/2/10
Answers to Questions	4/8/10
Final Response Due	4/15/10
 Announcement Shortlisted Firms	 5/13/10

3. ADDENDA

The Corporation may modify the RFQ, prior to the date fixed for submission of the responses, by issuance of an addendum to all parties who have formally requested a copy of the RFQ.



Any supplemental instructions, answers to written questions, or interpretations of the meaning of the RFQ will be made in the form of a written addendum to the RFQ which, if issued, will be mailed to all prospective Proposers who have requested an RFQ within a period of at least seventy-two (72) hours prior to the due date for responses, excluding Saturdays, Sundays, and any other legal holidays.

4. DELIVERY OF QUALIFICATIONS

Ten (10) copies of all Proposer responses must be received no later than 5:00 PM CDT April 15, 2010, at:

**CSRS, Inc.
6767 Perkins Road, Suite 200
Baton Rouge, Louisiana 70808**

Attention: Brian J. LaFleur

The date fixed for submission of responses may be extended if, in the sole judgment of the Corporation, it is warranted.

Timely receipt of responses by the Corporation is the sole responsibility of the Proposer.

The entire response shall be sealed.

Preparation of responses shall be at Proposer's expense. Responses must be complete in all respects as required by the preceding and following sections.

To assure consideration, all responses must be signed by an individual who is authorized to bind the Proposer contractually. The name and title of the individual signing the response shall be typed immediately below the signature. An unsigned response will be rejected.

All exhibits to the response to the RFQ must be signed and returned with the response.

5. EVALUATION AND SELECTION PROCESS

A comprehensive evaluation of the RFQ responses will be conducted by the Advisory Committee of the Corporation, composed of representatives of the Louisiana Board of Regents; the Louisiana Community and Technical College System; LCTCS Campuses; and the Division of Administration, State of Louisiana.



The Advisory Committee will recommend a shortlist of qualified Proposers to the Corporation for final approval. Only Proposers recommended by the Advisory Committee and approved by the Corporation will receive invitations to submit pricing proposals in accordance with a RFP issued subsequent to this RFQ solicitation.

The criteria to be used to determine qualified Proposers are as follows:

- A. (20 points) Qualifications and Experience
 - 1) Successful experience in providing design/build services.
 - 2) Performance history
 - 3) Professional licenses to provide the required design/build services
 - 4) Expertise in education facility design and construction.

- B. (30points) Proposed Design Build Team
 - 1) Organization of the project team and inter-relationship between entities if more than one firm is involved.
 - 2) Prior experience between team entities
 - 3) Availability, qualifications and experience of personnel assigned to the Project
 - 4) Location of Proposer's office and that of other team entities relative to the Project location
 - 5) Proposer's experience in design and construction of similar projects

- C. (10 points) Financial Capabilities
 - 1) Overall financial soundness of the Proposer
 - 2) Ability of the Proposer to secure labor and material payment bonds required by this RFQ
 - 3) Ability of the Proposer to provide the types and limits of insurance required by this RFQ

- D. (30 points) Methodology and Approach
 - 1) Design Management
 - 2) Construction Management
 - 3) Cost, Schedule and Quality Controls
 - 4) Safety Management Plan

- E. (10 points) Women and Minority Business Enterprise (WMBE) Participation
 - 1) Quality and effectiveness of Proposer's WMBE subcontracting plan
 - 2) Demonstrated commitment to equal opportunity in employment through a diversified workforce



6. REJECTION

It is the policy of the Corporation not to solicit responses unless there is a bona fide intention to develop a shortlist of qualified firms. However, the Corporation does reserve the right to reject any and all responses for any reason or no reason whatsoever and to waive informalities.

Without limitation to the generality of the foregoing, the Corporation may elect to reject a proposal on any of the following grounds:

- A. The response contains false and misleading statements of references which, in the sole judgment of the Corporation, do not support an attribute or condition contended by the Proposer.
- B. The response is submitted by a Proposer, Proposer 's parent or subsidiary, Proposer 's current or former owners, officers, directors or employees, that have, or in the past have had, an undisclosed relationship with a current or former Corporation, College or Board members or employees or relative of a board member or employee; or anyone who has a subcontract or other relationship with a current or former Corporation, College or Board member or employee or relative of a /board member or employee who is or was significantly involved in the organization, preparation, or administration of this RFQ or otherwise was in a position to significantly affect the RFQ either through a decision-making capacity or through a review process.
- C. The response is submitted by a Proposer when the principals or employees of the design/build team listed in the Proposer 's response to the RFQ, have, or in the past have had, an undisclosed relationship with: (1)a current or former Corporation, College or Board members or employees or relative of a board member or employee; or (2)anyone who has a subcontract or other relationship with a current or former Corporation, College or Board member or employee or relative of a board member or employee who is or was significantly involved in the organization, preparation, or administration of this RFQ or otherwise was in a position to significantly affect the RFQ either through a decision-making capacity or through a review process.
- D. Acceptance of the terms, conditions or obligations of the response would cause or tend to cause the Corporation or the College to be in default of existing contractual obligations.

7. MODIFICATION OR WITHDRAWAL OF RESPONSE

Any response may be withdrawn or modified by written request of the Proposer received by the Corporation at the above address before the time and date set for receipt of responses. The Proposer agrees that, after the time and date set for



receipt of responses passes, this Response shall be good and may not be withdrawn for a period of Sixty (60) calendar days.

The Corporation reserves the right to withdraw this RFQ and not proceed with the Project if it is deemed not to be in the best interest of the College or the Corporation.

8. DISPOSITION OF RESPONSES

All materials submitted in response to this RFQ 1) will become the property of the Corporation, 2) may, subsequent to the selection of a Proposer and the execution of a contract, be reviewed by any person, and 3) may be returned only at the College's option and at Proposer's expense. One copy of each response shall be retained for official Corporation files.

9. PROPRIETARY DATA

A response may include data, which the Proposer does not want disclosed to the public or used by the Corporation for any purpose other than response evaluation. Proprietary data must be specifically identified as such on every page where it appears. It will be used by the Corporation or the College or its designated representatives, including staff and consultants, solely for the purpose of evaluating the response. Reasonable care will be exercised so that identified data will not be disclosed or used without Proposer's permission except to the extent provided in any resulting contract or the extent required by law. This restriction does not limit the Corporation's right to use or disclose any data that are obtainable from another source without restriction.

The College and Corporation will not be liable for the accidental disclosure of any proprietary data.

SECTION III RESPONSE FORMAT AND CONTENTS

1. Response Format

Responses must be submitted in the format outlined below, with each of the described tabs and exhibits completed in full. Each response will be reviewed to determine if it is complete prior to actual evaluation. The Corporation reserves the right to eliminate from further consideration any response deemed to be substantially or materially unresponsive to the request for qualifications contained herein. A response may be considered unresponsive if it includes extraneous information not specifically requested in this section; the clarity and succinctness of responses will be valued over volume.



A. The RFQ response should conform to the following:

- 1) 8.5 x 11 size format with some 11 X17 (folded) graphics allowable
- 2) 50 physical sheet limit (using front and back, no more than 25 pages total, including resumes); Tabs do not count as pages.
- 3) PDF format on CD (1 copy)
- 4) One original and Ten (10) hard copies bond in three ring binders

B. The statement of qualifications should be presented in a clear and concise manner, be bound and include six (6) tabs for the following information:

Tab 1: Cover Letter

Clearly indicate the single contact and authorized representative of the Proposer with mailing address, telephone, facsimile number, e-mail address and website. The representative shall certify that the information provided in response to this Request for Qualifications is true and accurate. Address the cover letter to:

CSRS Inc.
6767 Perkins Road Suite 200
Baton Rouge, Louisiana 70808
Attention: Mr. Brian J. LaFleur

Tab 2: Qualifications and Experience

Proposer shall provide information that highlights Design/Build experience and experience with designing and constructing educational facilities. Provide references with appropriate contact information. Provide requisite licensing certifications that will be required to design and construct the proposed facility. At a minimum, provide the appropriate State of Louisiana General Contractor license and Louisiana Architectural and Engineering registrations.

Tab 3: Proposed Design Build/Team

Proposer shall provide information that describes the overall organization of the project team and the anticipated roles and responsibilities of each team entity. Provide an organizational chart that illustrates team management structure and lines of authority. Provide brief resumes describing key project team personnel that will be assigned to the project.



Key personnel shall include:

- Principal in Charge
- Lead Project Manager
- On-site Project Manager
- Project Architect
- Project Engineer(s)
- Safety Engineer

Identify any material litigation (claims in excess of 100K), disciplinary actions or penalties, and/or administration proceedings (1) in the last five (5) years and currently affecting all firms (and the individual[s] to be assigned to the proposed project and (2) the disposition of such litigation, actions, investigations, penalties or proceedings.

Tab 4: Financial Capabilities

Provide financial information that supports the overall financial soundness of the lead firm in the Proposal. This information should be enclosed in a separate sealed envelope clearly marked on the exterior as "Tab 4: Financial Capabilities". At a minimum, provide the following information:

- Current financial statement prepared by a Certified Public Accountant including balance sheet, income statement, statement of changes in net worth, sources and uses of funds, and explanatory notes (identify whether audited or unaudited).
- Statement from insurance/surety brokers confirming in writing that the necessary bonds and insurance can be secured for the project and site proposed
- List of bank, accounting and credit references

The Corporation may contact any or all of the above persons and institutions listed as references.



Tab 5: Methodology and Approach

Provide information that describes the Proposer's functional approach and the methodology that will be utilized to successfully complete the project. Specific points to cover include:

- Design Management
- Construction Management
- Project Pricing and Value Engineering
- Project Cost Control
- Scheduling
- Quality Control/Quality Assurance
- Safety Program

Identify location of the home office that will be utilized for the Project. Identify what functions will be performed at the home office and which functions will be performed at the on-site project office.

Tab 6: Women and Minority Business Enterprise Participation

Provide information that describes the Proposer's plan to include women and minority owned business on the Project Team.



PROPOSER RESPONSE FORM (Exhibit 1)

DATE: _____

TO: LCTCS Facilities Corporation

Gentlemen:

In compliance with your Request for Qualification for new campus facilities for LCTCS Campuses, we have examined the request with related documents and provide our response thereto.

Proposer understands that the Owner reserves the right to reject any or all responses and to waive any informalities. Proposer acknowledges that the LCTCS Facilities Corporation is a private non-profit corporation, and that this selection process is not governed by any statute, rule or regulation applicable to public entities.

The Proposer agrees that this Response shall constitute an offer which shall remain open and available for acceptance and may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving Responses.

Respectfully submitted,

IF PROPOSER IS A CORPORATION OR L. L. C.

IN WITNESS WHEREOF, the undersigned Corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this __ day of _____, 2010.

Name of Corporation or L.L.C.

By: _____

Signature in Ink

Title: _____

Attest: _____

Secretary

Telephone: _____

Telecopier: _____

LCTCS Act 391 Program
State of Louisiana



RESPONSE FORM (Continued)

IF PROPOSER IS A SOLE PROPRIETOR OR PARTNERSHIP

IN WITNESS WHEREOF, the undersigned Corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this __day of _____, 2010.

Signature of Proposer

Title: _____

Telephone: _____

Telecopier: _____

Westlaw

Page 1

656 So.2d 670, 95 0021 (La.App. 1 Cir. 5/5/95)
 (Cite as: 656 So.2d 670, 95 0021 (La.App. 1 Cir. 5/5/95))

▽

Court of Appeal of Louisiana,
 First Circuit.

LOUISIANA INSURANCE GUARANTY ASSO-
 CIATION

v.

COMMISSION ON ETHICS FOR PUBLIC EM-
 PLOYEES.

No. 95 CW 0021.

May 5, 1995.

Rehearing Denied June 21, 1995.

Louisiana Commission on Ethics for Public Employees, No. 94-174, issued advisory opinion that Louisiana Insurance Guaranty Association (LIGA) directors, staff and employees were "public employees" within meaning of Code of Governmental Ethics. LIGA applied for supervisory writs. The Supreme Court granted supervisory writs to review opinion. The Court of Appeal, Carter, J., held that: (1) application for supervisory writs was appropriate procedural vehicle for appellate review of advisory opinion by Commission, and (2) LIGA was state or public agency within contemplation of ethics code.

Writ recalled and application denied.

West Headnotes

[1] Courts 106 ↪ 207.1

106 Courts

106VI Courts of Appellate Jurisdiction

106VI(A) Grounds of Jurisdiction in General

106k207 Issuance of Prerogative or Remedial Writs

106k207.1 k. In General. Most Cited

Cases

Application for supervisory writs filed by Louisiana Insurance Guaranty Association (LIGA) was appropriate procedural vehicle for appellate review of ad-

visory opinion by Commission on Ethics for Public Employees. LSA-R.S. 42:1142, subd. A.

[2] Officers and Public Employees 283 ↪ 110

283 Officers and Public Employees

283III Rights, Powers, Duties, and Liabilities

283k110 k. Duties and Performance Thereof in General. Most Cited Cases

(Formerly 360k21)

Article of Louisiana Constitution directing Louisiana legislature to enact Code of Ethics for "all officers and employees of the state and its political subdivisions" does not forbid promulgation of code of ethics that is applicable to persons other than public servants. LSA-Const. Art. 10, § 21; LSA-R.S. 42:1101 et seq.

[3] Insurance 217 ↪ 1470

217 Insurance

217VII Guaranty Funds or Associations

217VII(A) In General

217k1470 k. In General. Most Cited Cases

(Formerly 217k8)

Louisiana Insurance Guaranty Association (LIGA) is neither person nor corporation; it is sui generis type of association. LSA-R.S. 22:1380.

[4] Insurance 217 ↪ 1470

217 Insurance

217VII Guaranty Funds or Associations

217VII(A) In General

217k1470 k. In General. Most Cited Cases

(Formerly 217k8)

Louisiana Insurance Guaranty Association (LIGA) is private nonprofit, unincorporated legal entity created by legislature. LSA-R.S. 22:1380.

[5] Insurance 217 ↪ 1470

217 Insurance

217VII Guaranty Funds or Associations

217VII(A) In General

656 So.2d 670, 95 0021 (La.App. 1 Cir. 5/5/95)
 (Cite as: 656 So.2d 670, 95 0021 (La.App. 1 Cir. 5/5/95))

217k1470 k. In General. Most Cited Cases
 (Formerly 217k8)

Because Louisiana Insurance Guaranty Association (LIGA) is legislative creation, it can operate only within legislative parameters. LSA-R.S. 22:1382.

[6] Insurance 217 ↪ 1480

217 Insurance

217VII Guaranty Funds or Associations

217VII(B) Administration

217k1480 k. Supervision or Regulation.

Most Cited Cases

(Formerly 217k8)

Louisiana Insurance Guaranty Association (LIGA) is state or public agency within contemplation of ethics code, despite language in statute stating that LIGA is not state agency; LIGA was created by legislature, which specifically defined its powers, and is subject to regulation and oversight by Commissioner of Insurance and legislative committees on insurance. LSA-Const. Art. 10, § 21; LSA-R.S. 22:1376, 22:1382, 42:1101 et seq., 42:1142.

*671 Rolfe H. McCollister, Baton Rouge, for relator, La. Ins. Guar. Ass'n.

R. Gray Sexton, Maris LeBlanc McCrory, Patricia H. Douglas, Baton Rouge, for respondent, Com'n on Ethics for Public Employees.

Before LOTTINGER, C.J., and SHORTESS and CARTER, JJ.

**2 CARTER, Judge.

We granted supervisory writs in this case to review an advisory opinion of the Louisiana Commission on Ethics for Public Employees (Commission).

FACTS

On or about June 23, 1994, the Louisiana Insurance Guaranty Association (LIGA) requested an advisory opinion from the Commission as to whether LIGA's board of directors, staff, and contract em-

ployees were "public employees" within the meaning of the Code of Governmental Ethics, posing several hypothetical questions.^{FN1} The Commission considered LIGA's request at its August **3 4, 1994, meeting, but took the matter under advisement. On October 21, 1994, the Commission concluded that "all members of the LIGA Board and all employees of LIGA are 'public employees' as defined by the Code of Ethics." The Commission also concluded that "those individuals or businesses which have a contractual relationship with LIGA may also be public employees as defined in the Code of Ethics in certain situations." By letter, dated November 4, 1994, the Commission rendered a written opinion, advising LIGA as follows:

FN1. LIGA requested an opinion as to the following questions:

1. (a) Are *none*, *some*, or *all* of the members of the Board "public employees" within the meaning of the Code (the Board is made up of four appointees and five elected members)?

(b) If "yes" as to *some* or *all* of; then would an employee of a member insurer be in violation of the Code by serving on the Board or could such person avoid a conflict by recusing himself/herself when appropriate?

(c) If "yes" as to *some* or *all*, then would someone in the insurance agency business in Louisiana be in violation of the Code by serving on the Board or could such person avoid a conflict by recusing himself/herself when appropriate?

(d) If "yes" as to *some* or *all*, then would someone in law school who serves on the Board be in violation of the Code if he/she upon finishing school takes a job as an attorney with a law firm representing LIGA?

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2. (a) Are LIGA's staff members "public employees" within the meaning of the Code?

(b) If "yes", then what is meant by the term "staff"?

3. (a) Are all persons who contract to provide services to LIGA "public employees" within the meaning of the Code?

(b) If "yes", are there limitations on this with respect to the type of services provided and/or by whom? For example, does this apply to all attorneys, adjusters, mediators, certified public accountants, financial advisors, and all other service providers? Where is the line drawn?

[A]ll of the members of the LIGA Board and ... all of the employees of LIGA are "public employees" as that term is used in Title 42, Chapter 15 of the Louisiana Revised Statutes and [as] that ... term is defined at Section 1102(18) of the Code of Governmental Ethics. Accordingly, as such, members of the board and the employees of LIGA are subject to the provisions of the Code of Governmental Ethics.

[A] person serving on the LIGA Board who is "in the insurance agency business" may be in violation of ... Sections 1111C(2)(d) and 1112B(2) and (3) as well as Section 1113B of the Code, depending on the particular facts that might subsequently be presented to the Commission in the *672 context of a specific request for an advisory opinion.

[A] member of the LIGA Board may be prohibited by virtue of the application of Section 1111C(2)(d) of the Code from rendering compensated services to a "law firm representing LIGA" and depending on the particular facts that might be presented to the Commission.

[T]hose persons who are engaged in the performance of a governmental function by virtue of a contractual relationship with LIGA may be "public employees" within the meaning of the provisions of the Code of Governmental Ethics and, again, depending on the particular facts that might be presented to the Commission for consideration.

On January 5, 1995, LIGA filed the instant application for supervisory writs with this court, assigning the following errors:

1. The Commission on Ethics for Public Employees erred in finding that the Officers, Directors, Employees, and Contract Employees of LIGA are "public employees" for the purposes of the authority of the Commission.

2. The Commission on Ethics for Public Employees erred in finding that the Officers, Directors, Employees, and Contract Employees of LIGA are subject to the authority of the Commission.

The Commission opposed the application, raising the following issues:

**4 1. Should appellate review be granted of a purely advisory opinion rendered on the basis only of hypothetical "facts" without any real and adverse issues and absent a real and definable "case or controversy"?

2. May the board members and employees of a legislatively created insurance guaranty association which is subject to extensive governmental control and regulation avoid the application of the constitutionally mandated Ethics Code?

APPELLATE REVIEW OF ADVISORY OPINION

[1] The Commission argues that LIGA's application for supervisory writs is premature in that there is no pending case or controversy between the parties.

LSA-R.S. 42:1142 A provides as follows:

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Appeals to the Court of Appeal, First Circuit. Whenever action is taken against any public servant or person by an ethics body or by an agency head by order of the commission, or whenever any public servant or person is aggrieved by any action taken by an ethics body, he may appeal therefrom to the Court of Appeal, First Circuit, if application to the ethics body is made within thirty days after the decision of the ethics body becomes final. Any preliminary, procedural, or intermediate action or ruling by an ethics body is subject to the supervisory jurisdiction of the appellate court as provided by Article V, Section 10 of the constitution. The Court of Appeal, First Circuit, shall promulgate rules of procedure to be followed in taking and lodging such appeals. (emphasis added.)

The law is clear that an advisory opinion rendered by the Commission is a preliminary or intermediate action or ruling by an ethics body within the meaning of LSA-R.S. 42:1142. *Midboe v. Commission on Ethics for Public Employees*, 94-2270 (La. 11/30/94); 646 So.2d 351, 355; *In re Amtext, Inc.*, 625 So.2d 693, 695 (La.App. 1st Cir.1993); *Board of Commissioners, Fifth Louisiana Levee District v. Commission on Ethics for Public Employees*, 484 So.2d 845, 849 (La.App. 1st Cir.), writ denied, 487 So.2d 440 (La.1986).

In the instant case, the application for supervisory writs filed by LIGA is the appropriate procedural vehicle for appellate review of an advisory opinion by the Commission. See ****5***City of Baton Rouge, Parish of East Baton Rouge, Donald Nijoka and Roy Hutchinson v. Commission on Ethics for Public Employees* (La.App. 1st Cir. 1995), 655 So.2d 457, and *Board of Trustees of the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge v. Commission on Ethics for Public Employees* (La.App. 1st Cir. 1995), 655 So.2d 1355.

***673 APPLICABILITY OF CODE OF ETHICS TO
LIGA**

LSA-Const. art. 10, Section 21 provides as follows:

The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions. The code shall be administered by one or more boards created by the legislature with qualifications, terms of office, duties, and powers provided by law. Decisions of a board shall be appealable, and the legislature shall provide a method of appeal.

This article directed the legislature to enact a code of ethics for all officials and employees of the state and its political subdivisions and to create one or more boards to administer the code. *Glazer v. Commission on Ethics for Public Employees*, 431 So.2d 752, 755 (La.1983). Pursuant to this mandate, the legislature enacted the Code of Ethics for Governmental Employees, LSA-R.S. 42:1101 *et seq.* *Glazer v. Commission on Ethics for Public Employees*, 431 So.2d at 755. Among the multiple policy objectives of the Code of 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 (wherein enters the matter of appearances); and prevention of use of public office for private gain. LSA-R.S. 42:1101 B; *Glazer v. Commission on Ethics for Public Employees*, 431 So.2d at 755.

[2] In *Glazer v. Commission on Ethics for Public Employees*, 431 So.2d at 755-56, the Louisiana Supreme Court noted that:

[T]he primary objective of the legislation is to prevent public officers and employees from becoming involved in conflicts of interest. A conflict of interest is a situation which would require an official to serve two masters, presenting a potential, rather than an actuality, of wrongdoing. The wrongdoing does not have to occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in

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danger of doing wrong. The Code is aimed at avoiding even this danger. For this purpose, the Code of Ethics for Governmental Employees identifies certain **6 types of conflicts of interests and prohibits conduct by public officials which would bring these conflicts into being. Additionally, the Code empowers the Commission on Ethics to determine when a conflict of interest exists and to impose certain sanctions. (citations omitted).

Moreover, there is no language in the constitutional provision which forbids the promulgation of a code of ethics that is applicable to persons other than public servants. *Anzelmo v. Louisiana Commission on Ethics for Public Employees*, 435 So.2d 1082, 1084 (La.App. 1st Cir.), writ denied, 441 So.2d 1220 (La.1983).

At issue in the instant writ application is whether LIGA or its Board of Directors, staff, and contract employees are subject to the provisions of the Ethics Code. LIGA contends that it is not a governmental entity, that it is not engaged in activities that are governmental functions, and that it is not subject to the direct supervisory control of any governmental employee or publicly elected official. As such, LIGA reasons that it, its directors, staff, and employees are not public employees subject to the Ethics Code.

The Ethics Code generally prohibits payments to public servants from nonpublic sources (LSA-R.S. 42:1111), participation in certain transactions involving a governmental entity (LSA-R.S. 42:1112), and assistance to certain persons after termination of public service (LSA-R.S. 42:1121), among other things. "Governmental entity" is defined in LSA-R.S. 42:1102(12) as "the state or any political subdivision which employs the public employee or employed the former public employee or to which the elected official is elected, as the case may be." LSA-R.S. 42:1102(18) defines a "public employee" as anyone, whether compensated or not, who is:

(a) An administrative officer or official of a gov-

ernmental entity who is not filling an elective office.

(b) Appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the *674 **7 governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof.

(c) Engaged in the performance of a governmental function.

(d) Under the supervision or authority of an elected official or another employee of the governmental entity.

A public employee shall be in such status on days on which he performs no services as well as days on which he performs services. The termination of any particular term of employment of a public employee shall take effect on the day the termination is clearly evidenced.

The courts of this state have been confronted with the question of whether a certain entity was a state office or agency or whether a certain individual was a state or public officer on numerous occasions. See *State v. Smith*, 357 So.2d 505, 507 (La.1978). In *Smith*, the court noted that a consistent theme ran throughout the cases presented with this question. The following factors were considered in finding an entity to be a state or public agency or in finding an individual to be a state or public officer: (1) the entity was created by the legislature; (2) the powers were specifically defined by the legislature; (3) the property of the entity belonged to the public; and (4) the entity's functions were exclusively of a public character and performed solely for the public benefit. *State v. Smith*, 357 So.2d at 507.

1. Created by the legislature.

[3][4] In the instant case, we note that LIGA is neither a person nor a corporation; it is a sui generis type of association. *Louisiana Insurance Guaranty*

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Association v. Gegenheimer, 93-3021 (La. 4/21/94); 636 So.2d 209, 210. As set forth in LSA-R.S. 22:1380 A, LIGA is a private non-profit, unincorporated legal entity. *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210; *Louisiana Insurance Guaranty Association v. Bernard*, 393 So.2d 764, 767 (La.App. 1st Cir.1980). However, the legislature created the Louisiana Insurance Guaranty Association by enacting LSA-R.S. 22:1380. All insurers, as defined in LSA-R.S. 22:1379, are required, as a condition of their authority to transact insurance in this state, to become and **8 remain members of LIGA. LSA-R.S. 22:1380 A. Further, we acknowledge that LSA-R.S. 22:1380 B expressly provides that LIGA is not a state instrumentality for any purpose.^{FN2} See *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210. However, if the legislature had intended to exempt LIGA from the Ethics Code or to enact special provisions applicable only to LIGA, the legislature could have expressly set forth such exemption in LSA-R.S. 22:1380. However, the legislature did not.^{FN3} Moreover, although LIGA is not technically a public body, it is required to have open meetings and keep public records. LSA-R.S. 22:1380 C; *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210.

FN2. LSA-R.S. 22:1380 B provides as follows:

The association is not and may not be deemed a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of the association, whenever incurred, shall be the debts, claims, obligations, and liabilities of the association only and not of the state, its agencies, instrumentalities, officers, or employees. Association monies may not be considered part of the general fund of the state. The state may not budget for or

provide general fund appropriations to the association, and the debts, claims, obligations, and liabilities of the association may not be considered to be a debt of the state or a pledge of its credit.

FN3. We noted that, since the legislature has not seen fit to exempt LIGA from the provisions of the Ethics Code, it is not necessary to the resolution of the issues presented herein to determine whether the legislature has the constitutional authority to exempt a governmental entity or any public employees from the provisions of the Ethics Code.

2. Powers defined by the legislature.

[5] Additionally, the powers and duties of the association are specifically outlined in LSA-R.S. 22:1382. Because LIGA is a legislative creation, it can operate only within legislative parameters. *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210. LIGA is not authorized to act in any manner *675 inconsistent with the powers expressly granted to the association in LSA-R.S. 22:1382. The legislature also required that LIGA submit a plan of operation to **9 the Commissioner of Insurance and the Senate and House committees on insurance for oversight. LSA-R.S. 22:1383 A(1). Any plan of operation by LIGA is not effective until approved in writing by the Commissioner of Insurance, and the Senate and House committees on insurance may hold hearings on any plan of operation. LSA-R.S. 22:1383 A(1). Moreover, LIGA is expressly prohibited by statute from implementing any plan of operation rejected by a legislative committee. LSA-R.S. 22:1383 A(1). If LIGA fails to submit a plan of operation, the Commissioner of Insurance is authorized to adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the statutory provisions, subject to review and approval by the Senate Committee on Insurance and the House Committee on Insurance. LSA-R.S. 22:1383 A(2).

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The required plan of operation covers the procedures for handling assets of the association (LSA-R.S. 22:1383 C(2)); the amount and method of reimbursing the members of the board of directors under LSA-R.S. 22:1381 (LSA-R.S. 22:1383 C(3)); procedures by which claims may be filed with the association and acceptable forms of proof of covered claims (LSA-R.S. 22:1383 C(4)); places and times for meetings of the board of directors (LSA-R.S. 22:1383 C(5)); procedures for record keeping of all financial transactions of the association, its agents, and the board of directors (LSA-R.S. 22:1383 C(6)); procedures for members to appeal association decisions to the commissioner (LSA-R.S. 22:1383 C(7)); and procedures for the selection of the board of directors for submission to the commissioner. (LSA-R.S. 22:1383 C(8)). Further, LSA-R.S. 22:1388 subjects LIGA to examination and regulation by the Commissioner of Insurance.

3. Property of entity belongs to the public.

LIGA obtains its funds from member insurers pursuant to assessments under LSA-R.S. 22:1382 A(3)(a). However, these assessments, which are evidenced by a certificate of contribution, are offset against the member insurer's premium tax liability, not to exceed a total offset of 100%. LSA-R.S. 22:1382 A(3)(c); ****10** *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210. Moreover, any sums acquired by refund under LSA-R.S. 22:1382 B(6) from the association, which were written off by the insurer and offset against premium taxes, but which are not needed to effectuate the purposes of the Louisiana Insurance Guaranty Act, are required to be paid by LIGA to the Commissioner of Insurance and deposited with the state treasury for credit to the general fund of the state. LSA-R.S. 22:1382 A(3)(d).

4. Entity functions for public benefit.

Further, LIGA functions solely and exclusively for public benefit. See *Louisiana Insurance Guaranty Association v. Bernard*, 393 So.2d at 767. LSA-R.S. 22:1376 sets forth the purpose of the association as follows:

The purpose of this Part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies and to allow the association to provide financial assistance to member insurers under rehabilitation or liquidation, and to provide an association to assess the cost of such operations among insurers.

[6] Considering the above, we find that, despite any language in LSA-R.S. 22:1380 that LIGA is not a state agency, LIGA is a state or public agency within the contemplation of the Ethics Code. LIGA was created by the legislature, which specifically defined its powers, and is subject to regulation and oversight by the Commissioner of Insurance and the Senate and House committees on insurance. LIGA's property, which is derived from mandatory assessments upon all insurers operating in this state, entitles the member insurers to tax credits, and all remaining funds are transferred into the state general fund. Moreover, LIGA functions are ***676** of a public character exclusively and are performed solely for the public benefit. Because LIGA is a state or public agency within the contemplation of the Ethics Code, its board of ****11** directors, staff, and contract employees are also subject to the Ethics Code.

In reaching this conclusion, we are guided by the Louisiana Supreme Court's analysis in *Polk v. Edwards*, 626 So.2d 1128, 1145-47 (La.1993). In *Polk*, the court examined the Louisiana Economic Development and Gaming Corporation (Casino Corporation). The court held that, **despite the specific language in the Casino Act itself stating that the Casino Corporation is not a state**

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agency, except as expressly provided in the act, the Casino Corporation is an instrumentality of the state. The court noted:

After considering its powers and functions, as well as its interrelationship with the state in many areas, we find that the Casino Corporation is an instrumentality of the state and is subject to the provisions of the civil service system. The Casino Corporation does not enjoy an existence separate from the state. It does not independently transact its business and hire its personnel. Furthermore, its actions determine the progress of the gaming industry, which the legislature has designed to assist the growth of tourism and generate revenue as a benefit to the general welfare. To treat this legislative entity as a nongovernmental agency outside of the civil service system would effectively emasculate the constitutional provision, which mandates civil service for "all persons holding offices and positions of trust or employment in the employ of ... any instrumentality" of the state.

Polk v. Edwards, 626 So.2d at 1147. See also *City of Baton Rouge, Parish of East Baton Rouge, Donald Nijoka and Roy Hutchinson v. Commission on Ethics for Public Employees* (La.App. 1st Cir. 1995); 655 So.2d 457 and *Board of Trustees of the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge v. Commission on Ethics for Public Employees* (La.App. 1st Cir. 1995); 655 So.2d 1355.

Further, in *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210, the court was presented with the issue of whether an amendment to LSA-R.S. 13:4521, ^{FN4} which exempts state agencies from prepayment of court ****12** costs, was unconstitutional. In upholding the constitutionality of the exemption for LIGA, the court noted that, although LIGA is liable for court costs pursuant to LSA-R.S. 22:1382 A(1)(b), LIGA is a legislative creation which operates within legislative parameters. Because the legislature's plenary power is only limited by the

Louisiana Constitution, the legislature may give LIGA an exemption generally afforded to state agencies. *Louisiana Insurance Guaranty Association v. Gegenheimer*, 93-3021 (La. 4/21/94); 636 So.2d at 210.

FN4. LSA-R.S. 13:4521 addresses the exemption of the state and its subdivisions, boards, and commissions from the prepayment of court costs and provides as follows:

A. Except as provided in R.S. 13:5112, R.S. 19:15 and 116, and R.S. 48:451.3, and as hereinafter provided, neither the state, nor any parish, municipality, nor other political subdivision, public board, or commission, nor any officer or employee of any such governmental entity when acting within the scope and authority of such employment or when discharging his official duties shall be required to pay court costs in any judicial proceeding instituted or prosecuted by or against the state, or any such parish, municipality, or other political subdivision, board, or commission, in any court of this state or any municipality of this state, including particularly but not exclusively those courts in the parish of Orleans and the city of New Orleans. **This Section shall also apply to the Louisiana Insurance Guaranty Association and the Louisiana Life and Health Insurance Guaranty Association in any judicial proceeding instituted by or against them. This Section shall also apply to employees or agents of the state if they are named as defendants in a suit arising out of the course and scope of their employment or agency. Costs which are temporarily deferred pursuant to this Section cannot be shifted to opposing parties during the pendency of such deferment. (emphasis added.)**

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DECREE

In accordance with the above reasoning, the writ previously issued herein is hereby recalled, and the writ application filed by LIGA is denied. The advisory opinion of the *677 Commission is correct. Costs in the amount of \$202.00 are to assessed against the Commission and LIGA equally.

WRIT RECALLED AND APPLICATION DENIED.

La.App. 1 Cir.,1995.
Louisiana Ins. Guar. Ass'n v. Commission on Ethics for Public Employees
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END OF DOCUMENT

Westlaw

LSA-R.S. 17:3390

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C

West's Louisiana Statutes Annotated Currentness

Louisiana Revised Statutes

Title 17. Education (Refs & Annos)

▣ Chapter 26. Colleges and Universities (Refs & Annos)

▣ Part IX. Miscellaneous Provisions

→ **§ 3390. Private nonprofit corporations which support public higher education institutions; findings; status; private funds**

A. The legislature finds that private support enhances the programs, facilities, and research and educational opportunities offered by public institutions of higher education in Louisiana. Therefore, each higher education management board and institution is hereby encouraged to promote the activities of alumni associations, foundations, and other private, nonprofit organizations that raise private funds for the support of public institutions of higher education. Further, it is recognized that private, nonprofit organizations under the direction and control of private individuals who support institutions of higher education are effective in obtaining private support for those institutions.

B. A nonprofit corporation, whose principal purpose is to support one or more programs, facilities, or research or educational opportunities offered by public institutions of higher education, including but not limited to any nonprofit corporation whose primary purpose is to finance the design, construction, renovation, or equipping of facilities to be leased to such public institutions of higher learning, shall be a private entity that shall not be deemed to be a public or quasi public corporation or an administrative unit, public servant, employee, or agent of any institution of higher education for any purpose whatsoever if it meets all of the following criteria:

- (1) The majority of the voting members of the corporation's board of directors are not members or employees of a higher education management board.
- (2) The corporation is under the management and control of a board of directors elected by the members or shareholders of the corporation.
- (3) The corporation reimburses, either directly or through in-kind services, the cost of housing, personnel, which personnel shall remain public servants for all purposes, and other support furnished to the corporation by any institution of higher education, if any such support is furnished.

C. The receipt, investment, or expenditure of public funds shall not affect the private status of any corporation meeting the criteria set forth in Subsection B of this Section; however, books and records of any such corporation, to the extent that such books and records directly pertain to the receipt, investment, or expenditure of public funds, shall be subject to R.S. 44:1 et seq. No other books and records of any such corporation shall be sub-

ject to R.S. 44:1 et seq.

D. (1) Alumni associations, alumni foundations, and other private, nonprofit alumni organizations that raise private funds for the support of public institutions of higher education, and nonprofit corporations whose primary purpose is to finance the design, construction, renovation, or equipping of facilities to be leased to such public institutions of higher education, shall have a financial accounting system established pursuant to customary and current accepted accounting standards. Except as provided in Paragraph (3) of this Subsection, the financial affairs of the organizations shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to the legislative auditor copies of his annual audit.

(2) With regard to an audit received by the legislative auditor from any nonprofit corporation, the primary purpose of which is to design, construct, renovate, or equip a facility to be leased to a public institution of higher learning which is under the management of the Board of Supervisors of Community and Technical Colleges, the legislative auditor may recommend to the Legislative Audit Advisory Council that an audit be conducted by the legislative auditor pursuant to and in the manner provided in R.S. 24:513. Upon such recommendation, the Legislative Audit Advisory Council may direct that such an audit be conducted.

(3)(a) Any alumni association, alumni foundation, or other private, nonprofit alumni organization that raises private funds for the support of a public institution of higher education which receives seventy-five thousand dollars or less in funds in a fiscal year shall not be required to have an audit. However, the organization shall execute a certification indicating that it received seventy-five thousand dollars or less in funds in the fiscal year and shall prepare a sworn financial statement.

(b) The sworn financial statement required by this Paragraph shall be prepared in accordance with generally accepted accounting principles and include the disclosures required by state and federal regulations. The sworn financial statement shall include a recital that it presents fairly, in all material respects, the financial condition and results of operations of the organization; that the organization has maintained a system of internal control structure sufficient to safeguard assets and comply with laws and regulations; and that the organization has complied with all laws and regulations or shall acknowledge exceptions thereto.

(c) Copies of the certification and sworn financial statement shall be furnished to the legislative auditor.

E. (1) Any institution of higher education may permit a private, nonprofit corporation to purchase tickets to any event sponsored by the institution not to exceed twelve percent of the tickets available for the event.

(2) In addition to any tickets purchased pursuant to the authorization in Paragraph (1) of this Subsection and only with the prior approval of the appropriate higher education management board, any institution of higher education may permit a private, nonprofit corporation to purchase tickets to any athletic event sponsored by the institution when the event is held in a facility owned by the institution and the tickets provide access to seats or seating areas located in an addition to the facility which is constructed by the corporation.

(3) If the corporation pays the full price of admission for which such tickets are sold to other members of the public, then any funds received by the corporation from the resale of the tickets shall not be public funds for any purpose.

F. Notwithstanding any other provision of this Section or of other law to the contrary, any request for payments of over one thousand dollars for any single transaction to, or on behalf of, or to reimburse the expense of a public employee of a public higher education institution or a public employee or officer of a management board of a public higher education institution by a nonprofit organization shall be approved in writing by the appropriate public higher education management board in accordance with written policies and procedures. All requests, approvals, and documents provided to a higher education institution or management board in connection with such requests or approvals, shall be retained by the public higher education institution or public higher education management board and shall be subject to inspection, examination, copying, and reproduction in accordance with the provisions of R.S. 44:1 et seq.

CREDIT(S)

Added by Acts 1992, No. 1055, § 1. Amended by Acts 1998, 1st Ex.Sess., No. 125, § 1, eff. May 5, 1998; Acts 2004, No. 533, § 1, eff. June 25, 2004; Acts 2004, No. 710, § 1; Acts 2008, No. 505, § 1, eff. June 25, 2008.

APPLICATION--ACTS 2004, NO. 533

<Section 2 of Acts 2004, No. 533 (§ 1 of which amended subsecs. B and D of this section) provides:>

<“Section 2. This Act is remedial and procedural and shall apply to any nonprofit corporation whose primary purpose is to finance the design, construction, renovation, or equipping of facilities to be leased to public institutions of higher learning formed prior to or after enactment of this Act.”>

HISTORICAL AND STATUTORY NOTES

2010 Electronic Update

Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended by Acts 2004, No. 710, in the section heading “Private nonprofit” was substituted for “Provide nonprofit”.

2001 Main Volume


Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as enacted in 1992, “quasi-public” was changed to “quasipublic” in the introductory paragraph of subsec. B; A comma was deleted following “R.S. 44:1” in subsec. C; and “Legislative Auditor” was changed to “legislative auditor” in subsec. D.

Another R.S. 17:3390, relating to the Research Park Corporation, was enacted by Acts 1992, No. 882, § 1, and

was redesignated as R.S. 17:3396 pursuant to the statutory revision authority of the Louisiana State Law Institute.

LIBRARY REFERENCES

2001 Main Volume

Colleges and Universities  6(2).
Westlaw Topic No. 81.
C.J.S. Colleges and Universities § 12.

NOTES OF DECISIONS

Cooperative endeavors 1
Public or private nature 2

1. Cooperative endeavors

Universities may enter into transactions with their support organizations provided the goals and objectives of the support organization, as evidenced by its charter and/or Articles of Incorporation, are consistent with those of the university, the funds so transferred are expended in accordance with these goals and objectives, and the funds provided by the university are not appropriated, dedicated, or restricted to use for another purpose.

The LSU Board of Supervisors may enter into a cooperative endeavor agreement with the Tiger Athletic Foundation for the installation and/or upgrading of scoreboards to be located in the various athletic facilities located on the Baton Rouge Campus. Op.Atty.Gen., No. 99-105, April 5, 1999.

2. Public or private nature

Louisiana Cancer Research Center is a private entity. Bonds for the Center may be issued either under the authority of the Capital Outlay Act or the HEAL Act. Op.Atty.Gen., No. 03-0427, December 16, 2003.

The public or private nature of entities created under LSA-R.S. 17:3390 should be determined by application of the relevant criteria contained in that statute. Op.Atty.Gen. No. 00-116, August 1, 2000.

LSA-R.S. 17:3390, LA R.S. 17:3390

Current through the 2009 Regular Session.

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END OF DOCUMENT

Regular Session, 2007

ACT No. 391

ENROLLED

SENATE BILL NO. 337

BY SENATORS ADLEY, NEVERS, N. GAUTREUX, AMEDEE, BARHAM, BOASSO, CAIN, CHAISSON, CHEEK, CRAVINS, DUPLESSIS, DUPRE, ELLINGTON, B. GAUTREUX, HINES, KOSTELKA, MCPHERSON, MICHOT, MOUNT, MURRAY, ROMERO, SCHEDLER AND SMITH AND REPRESENTATIVES DOERGE, ALARIO, ALEXANDER, ANDERS, BALDONE, BARROW, BAUDOIN, BAYLOR, BOWLER, BRUCE, BURRELL, K. CARTER, R. CARTER, CAZAYOUX, CHANDLER, CROWE, CURTIS, DAMICO, DANIEL, DARTEZ, DEWITT, DORSEY, DOVE, DOWNS, DURAND, ERDEY, FANNIN, FAUCHEUX, FRITH, GALLOT, GRAY, ELBERT GUILLORY, ELCIE GUILLORY, MICKEY GUILLORY, HEATON, HEBERT, HILL, HUNTER, HUTTER, JACKSON, JEFFERSON, JOHNS, KATZ, KENNEY, LAFLEUR, LAFONTA, LAMBERT, LANCASTER, LORUSSO, MARCHAND, MARTINY, MCDONALD, MCVEA, MONTGOMERY, MORRELL, MORRIS, MORRISH, ODINET, PIERRE, PINAC, PITRE, M. POWELL, QUEZAIRE, RICHMOND, RITCHIE, ROMERO, SALTER, SCALISE, SMILEY, GARY SMITH, JACK SMITH, JANE SMITH, JOHN SMITH, ST. GERMAIN, STRAIN, TOWNSEND, TRAHAN, TRICHE, WADDELL, WALSWORTH, WHITE, WILLIAMS AND WOOTON

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AN ACT

To enact Part IX-A of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3394.1 through 3394.3, relative to the financing of capital improvements and enhancements to certain facilities and properties of colleges within the Louisiana Community and Technical Colleges System; to provide for definitions; to provide with respect to the use of a nonprofit corporation to accomplish such financing; to provide for agreements related to financing; to provide for the issuance of bonds; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part IX-A of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3394.1 through 3394.3, is hereby enacted to read as follows:

SB NO. 337

ENROLLED**PART IX-A. COMMUNITY AND TECHNICAL COLLEGES FACILITIES****IMPROVEMENT AND ENHANCEMENT****§3394.1. Community and technical colleges facilities improvement and enhancement; intent**

It is the intent of the legislature to ensure that the institutions of the Louisiana Community and Technical Colleges System are responsive to the workforce needs of this state. This Act enumerates specific facilities within that system which have been determined to be extraordinarily vital to the state's response to the need for a competent and skilled workforce and which are in need of capital improvement or enhancement. The authorities granted to the Board of Supervisors of Community and Technical Colleges pursuant to this Part are intended to facilitate the finance of capital improvements and enhancements for the projects enumerated herein, and to ensure their completion in an expeditious manner.

§3394.2. Definitions

As used in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Public facilities" means buildings, equipment, and other permanent property or immovable property of the colleges within the Louisiana Community and Technical Colleges System, as specifically identified in R.S. 17:3394.3.

(2) "Project" means the acquisition, purchase, construction, renovation, improvement, or expansion of a public facility, to be financed as authorized and provided in this Part and R.S. 17:3361, et seq., to be limited to those public facilities and purposes identified in R.S. 17:3394.3.

(3) "Division of administration" means the division of administration created within the office of the governor by Title 39 of the Louisiana Revised Statutes of 1950.

(4) "Annual appropriation dependency clause" shall mean a clause which shall be included in any financing arrangement which provides that if,

SB NO. 337

ENROLLED

1 after a diligent and good faith effort by the state to appropriate funds for the
 2 payment of sums due under a financing agreement, such funds are not
 3 appropriated, such agreement shall be terminated, and the state shall not be
 4 liable for the payment of further sums due thereunder.

5 (5) "Board" means the Board of Supervisors of Community and
 6 Technical Colleges.

7 (6) "Corporation" means the nonprofit corporation which may be
 8 utilized to accomplish the purposes of this Part.

9 §3394.3. Authority of board to execute agreements related to the finance of
 10 capital improvements and enhancements

11 A. The board shall exercise its authority granted pursuant to R.S.
 12 17:3361, et seq., as may be necessary to provide for the completion of the
 13 projects enumerated in this Section. The board may grant leases of property
 14 under its supervision to a nonprofit corporation for the purpose of financing
 15 such projects, and the sum total amount to be financed therefor shall equal no
 16 more than the total value of all projects listed herein, plus an amount equal to
 17 fifteen percent of such total. Notwithstanding any provision of R.S. 17:3361, et
 18 seq., to the contrary, the term of any lease agreement made for purposes of this
 19 Part shall not exceed thirty years. No monies shall be appropriated for these
 20 purposes until July 1, 2008.

21 B. For the purposes of this Part, the following projects shall comprise
 22 the entirety of public facilities and projects to be financed under the authorities
 23 of this Part and R.S. 17:3361, et seq., with respect to these projects. The dollar
 24 value listed for each project, plus an amount equal to fifteen percent, is the
 25 maximum amount that may be financed for each respective project.

26 (1) LOUISIANA TECHNICAL COLLEGE

27 (a) Evangeline Campus, St. Martin Region 4 \$8,000,000
 28 Replacement of campus buildings on campus-owned land across the
 29 street from existing location.

30 (b) Huey P. Long Campus, Winnfield Region 6 \$10,000,000

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1	<u>Replace and relocate facilities at more accessible location on college-</u>		
2	<u>owned land.</u>		
3	<u>(c) Northwest Louisiana Campus,</u>		
4	<u>Minden</u>	<u>Region 7</u>	<u>\$14,000,000</u>
5	<u>Expand campus in location on college-owned land.</u>		
6	<u>(d) Young Memorial Campus,</u>		
7	<u>Morgan City</u>	<u>Region 3</u>	<u>\$5,200,000</u>
8	<u>Construct buildings needed for non-marine programs.</u>		
9	<u>(e) Florida Parishes Campus,</u>		
10	<u>Greensburg</u>	<u>Region 9</u>	<u>\$8,000,000</u>
11	<u>Acquisition of eight-acre site and construction of facilities.</u>		
12	<u>(f) Westside Campus, Plaquemine</u>	<u>Region 2</u>	<u>\$3,000,000</u>
13	<u>Replacement of buildings and relocation of campus.</u>		
14	<u>(g) Gulf Area Campus, Abbeville</u>	<u>Region 4</u>	<u>\$6,000,000</u>
15	<u>Restoration of current facilities.</u>		
16	<u>(h) Shelby M. Jackson Campus,</u>		
17	<u>Ferriday</u>	<u>Region 6</u>	<u>\$4,500,000</u>
18	<u>Repair and replacement of facilities on college-owned land.</u>		
19	<u>(i) Sidney N. Collier Campus,</u>		
20	<u>New Orleans</u>	<u>Region 1</u>	<u>\$11,900,000</u>
21	<u>Relocation of campus, acquire land and buildings.</u>		
22	<u>(2) COMMUNITY COLLEGES</u>		
23	<u>(a) L.E. Fletcher Technical Community College,</u>		
24	<u>Houma</u>		<u>\$21,300,000</u>
25	<u>Construction of classroom lab and office building; water survival</u>		
26	<u>training facility at LAMPI and construction of marine/welding transportation</u>		
27	<u>building.</u>		
28	<u>(b) SOWELA Technical Community College,</u>		
29	<u>Lake Charles</u>		<u>\$13,000,000</u>
30	<u>Acquire adjacent land and construction of classroom and student</u>		

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1	<u>facilities.</u>	
2	<u>(c) River Parishes Community College, Sorrento</u>	<u>\$17,000,000</u>
3	<u>Acquire land and facilities and construction of additional facilities.</u>	
4	<u>(d) Delgado Community College, New Orleans</u>	
5	<u>Issac Delgado Hall</u>	<u>\$786,800</u>
6	<u>Restore existing building.</u>	
7	<u>Student Services</u>	<u>\$2,618,350</u>
8	<u>Restore existing building.</u>	
9	<u>Maritime and Industrial Training Center</u>	<u>\$6,425,000</u>
10	<u>Relocate from City Park to New Orleans East.</u>	
11	<u>Learning Resources Center</u>	<u>\$4,114,165</u>
12	<u>Demolition and construction.</u>	
13	<u>(e) Elaine P. Nunez Community College, Chalmette</u>	
14	<u>Arts and Sciences Building</u>	<u>\$97,187</u>
15	<u>Restore existing building.</u>	
16	<u>Allied Health Building</u>	<u>\$707,362</u>
17	<u>Restore existing building.</u>	
18	<u>Physical Activity Center</u>	<u>\$737,225</u>
19	<u>Restore existing building.</u>	
20	<u>Shop Building-B</u>	<u>\$971,757</u>
21	<u>Restore existing building.</u>	
22	<u>Stewart Administration Building</u>	<u>\$1,716,914</u>
23	<u>Add second floor to existing building.</u>	
24	<u>Classroom Building A</u>	<u>\$981,671</u>
25	<u>Restore existing building.</u>	
26	<u>(3) Statewide Student and Financial Information</u>	
27	<u>System</u>	<u>\$10,000,000</u>
28	<u>(4) The amounts set forth in this Subsection are estimates and the</u>	
29	<u>funding for any project may be increased to meet any contingencies by an</u>	
30	<u>amount not to exceed fifteen percent of the amounts set forth in the Subsection.</u>	

SB NO. 337

ENROLLED

1 Section 2. This Act shall become effective on June 30, 2007; if vetoed by the
2 governor and subsequently approved by the legislature, this Act shall become effective on
3 June 30, 2007, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

General Item

Ethics Board Docket No. BD 2010-322 04/16/2010

RE: Consideration of a request for an advisory opinion regarding whether the Board of Directors for Property Insurance Association of Louisiana are required to file annual personal financial disclosure statements pursuant to Section 1124.2.1.

Relevant Statutory Provisions, Advisory Opinions: 1124.2.1

Comments:

FACTS:

In May 2009, the Board issued BD No. 2008-677 in response to a request by the Department of Insurance as to whether certain Boards and Commissions under the Department of Insurance were required to file annual personal financial disclosure statements. As part of that opinion, the Board determined that the Property Insurance Association of Louisiana (PIAL) was a public board and were required to file annual personal financial disclosure statements.

Since the issuance of that opinion, PIAL has been involved in a law suit with the Legislative Auditor's office regarding whether PIAL is a public or private entity subject to the laws like other state boards and commissions. On March 16, 2010, the Louisiana Supreme Court issued an opinion, which analyzed the four factors as set forth in *State v. Smith*, 357 So.2d 505, 507 (La. 1978), which are to be considered when determining whether an entity is a state agency or public agency or in finding an individual to be a state or public officer. The four factors are as follows: (1) the entity was created by the legislature; (2) the powers were specifically defined by the legislature; (3) the property of the entity belonged to the public; and (4) the entity's functions were exclusively of a public character and performed solely for the public benefit. In the present case, the Louisiana Supreme Court stated that all four factors must be present for an entity to be considered public. In this case, the Louisiana Supreme Court found that PIAL was not created by the legislature and therefore, not all factors were met. Thus, PIAL is a private entity, not public. As such, PIAL does not meet the definition of "board/commission" as defined in Section 1124.2.1 of the Code.

LAW:

Section 1124.2.1 of the Code requires each member and any designee of a member of a board or commission that has the authority to expend, disburse or invest ten thousand dollars or more of funds in a fiscal year.

Section 1124.2.1D(1)(a) of the Code defines "board or commission" as (i) each board, commission, and like entity created by law or executive order that is made a part of the executive branch of state government by the provisions of Title 36 of the Louisiana Revised Statutes of 1950, or that is placed in an executive branch department or in the office of the governor or

lieutenant governor by law or executive order, or that exercises any authority or performs any function of the executive branch of state government; or (ii) each board, commission, and like entity created by the constitution, by law, by a political subdivision, except as provided in Subparagraph (b) of this Paragraph, or jointly by two or more political subdivisions as a governing authority of a political subdivision of the state or of a local government.

ANALYSIS:

Since PIAL was not created by the legislature and has been deemed a private entity, members of PIAL's Board of Directors are not required to file annual financial disclosure statements. (TKM)

Recommendations: Adopt proposed advisory opinion.

Date

Mr. A.J. Hebert, III
Middleberg Riddle & Gianna
Suite 1101
Laurel Street
Baton Rouge, Louisiana 70801

Re: Ethics Board Docket No. 2010-322

Dear Mr. Hebert:

The Louisiana Board of Ethics, at its April 16, 2010 meeting, considered your request for an advisory opinion as to whether the members of the Board of Directors for the Property Insurance Association of Louisiana are required to file annual personal financial disclosure statements pursuant to Section 1124.2.1 of the Code of Governmental Ethics. You stated that on March 16, 2010, the Louisiana Supreme Court rendered an opinion that PIAL is not a public entity, but a private entity. The Louisiana Supreme Court issued an opinion analyzing the four factors set forth in *State v. Smith*, 357 So.2d 505, 507 (La. 1978), which are to be considered when determining whether an entity is a state agency or public agency or in finding an individual to be a state or public officer. The four factors are as follows: (1) the entity was created by the legislature; (2) the powers were specifically defined by the legislature; (3) the property of the entity belonged to the public; and (4) the entity's functions were exclusively of a public character and performed solely for the public benefit. In the opinion recently issued by the Louisiana Supreme Court regarding PIAL, the Court stated that all four factors must be present for an entity to be considered public. In this case, the Louisiana Supreme Court found that PIAL was not created by the legislature and therefore, not all factors were met, and therefore, was not a public entity.

The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics does not require the members of the Board of Directors for the Property Insurance Association of Louisiana to file annual personal financial disclosure statements pursuant to Section 1124.2.1 of the Code. Section 1124.2.1 of the Code requires each member and any designee of a member of a board or commission that has the authority to expend, disburse or invest ten thousand dollars or more of funds in a fiscal year.

Section 1124.2.1D(1)(a) of the Code defines "board or commission" as (i) each board, commission, and like entity created by law or executive order that is made a part of the executive branch of state government by the provisions of Title 36 of the Louisiana Revised Statutes of 1950, or that is placed in an executive branch department or in the office of the

Mr. A.J. Hebert, III

Date

Ethics Board Docket No. 2010-322

Page 2

governor or lieutenant governor by law or executive order, or that exercises any authority or performs any function of the executive branch of state government; or (ii) each board, commission, and like entity created by the constitution, by law, by a political subdivision, except as provided in Subparagraph (b) of this Paragraph, or jointly by two or more political subdivisions as a governing authority of a political subdivision of the state or of a local government. Since PIAL was not created by the legislature or by the constitution, PIAL is not subject to the financial disclosure laws under Section 1124.2.1 of the Code.

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

Middleberg Riddle & Gianna

A.J. Herbert III

Attorneys and Counselors

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April 6, 2010

VIA HAND DELIVERY

Frank Simoneaux
Chairman, Louisiana Board of Ethics
617 North Third Street
LaSalle Building, 10th Floor
Baton Rouge, LA 70802

HAND DELIVERED

JUL APR -6 PM '10
RECEIVED
STATE OF LOUISIANA
OFFICE OF THE ATTORNEY GENERAL

Re: Financial Disclosure Reporting Requirements for the Property Insurance Association of Louisiana's Board of Directors
Our File No. 5298-0001

Dear Mr. Simoneaux:

The Property Insurance Association of Louisiana ("PIAL") requests an expedited advisory opinion from the Louisiana Board of Ethics ("Board") on the applicability of the financial disclosure requirements in the Louisiana Code of Governmental Ethics to its board members, in light of the recent Louisiana Supreme Court's decision in *Property Insurance Association of Louisiana v. Theriot*, No. 09-CC-1152 (La. 3/16/2010) (La., 2010).

On April 29, 2009, this Board considered an opinion request from the Louisiana Department of Insurance ("DOI") as to whether the multitude of boards and commissions inquired about were state boards pursuant to La. R.S. 42:1124.2G(4) and, additionally, whether members of each of those boards were required to file financial disclosure statements with this Board's office. PIAL was included among the list of boards for which an opinion was requested.

On May 4, 2009, this Board issued Opinion 2008-677 relative to the DOI's request and concluded that PIAL's Board of Directors was a board created by La. R.S. 22:1460, with an annual budget over \$10,000, and was therefore required to file annual personal financial disclosure statements pursuant to Section 1124.2.1 of the Code of

Frank Simoneaux

April 6, 2010

Page 2 of 2

Governmental Ethics. At the April 29, 2009 meeting, this Board's staff indicated that if the court were to rule that PIAL is private then PIAL was encouraged to return to the Board to seek a revised opinion.

I am pleased to inform you that, in the matter *Property Insurance Association of Louisiana v. Theriot, No. 09-CC-1152 (La. 3/16/2010) (La., 2010)*, the Louisiana Supreme Court held that "the legislature did not create the Property Insurance Association of Louisiana" and rendered a judgment declaring that "Property Insurance Association of Louisiana is a private association."

PIAL does not fall within the definition of "boards and commissions" as set forth in Section 1124.2.1D(1)(a) of the Code of Governmental Ethics. Instead, PIAL falls squarely within the exemption from reporting provided for in Section 1124.2.1D(1)(b). Section 1124.2.1D(1)(b) provides that "'board or commission' shall not mean:...(v) a board of directors of a private nonprofit corporation that is not specifically created by law." The Supreme Court's decision therefore, places PIAL's Board of Directors outside of the scope of the definition of "board or commission" subject to financial disclosure reporting. Attached for your review and consideration is a copy of the Supreme Court's opinion.

PIAL asks this Board to render a new opinion in context with the Supreme Court's ruling. Further, PIAL requests the opportunity to appear before the Board at a meeting convenient to the Board in order to present its position and address any questions that the Board might have before issuing another opinion on the subject, should the Board so choose. Because financial disclosure reporting is due by May 15, PIAL respectfully requests that this Board consider this request on an expedited basis and take the matter up for hearing during its April, 2010 meeting.

We appreciate the Board's consideration of this request.

Sincerely,



A.J. Herbert III

AJH/sm

Enclosure

SUPREME COURT OF LOUISIANA

No. 09-CC-1152

**PROPERTY INSURANCE ASSOCIATION
OF LOUISIANA**

v.

MAR 16 2010

**STEVE THERIOT, IN HIS OFFICIAL
CAPACITY AS THE LEGISLATIVE AUDITOR FOR
THE STATE OF LOUISIANA**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

Clark, Justice¹

MRC
ZW
gm
poo
91)
Cll

We granted this writ application in order to determine whether the courts below erred, first, in denying the motion for summary judgment filed by Property Insurance Association of Louisiana, and, then, in granting the motion for summary judgment filed by the Legislative Auditor for the State of Louisiana and finding that Property Insurance Association of Louisiana is a public entity. For the reasons which follow, we reverse the ruling of the court of appeal, render summary judgment in favor of Property Insurance Association of Louisiana, and find that Property Insurance Association of Louisiana is a private association.

FACTS and PROCEDURAL HISTORY

Property Insurance Association of Louisiana (“PIAL”) is an industry trade group and the primary rating organization for fire insurance in the state. In 2001, PIAL entered into a contract to manage and conduct the business of the Louisiana Auto Insurance Plan (“LAIP”), the state’s auto insurer of last resort. Likewise, in 2003, PIAL contracted with Louisiana Citizens Property Insurance Corporation (“Citizens”), the state’s property insurer of last resort, for Citizens’ operation and administration.

¹ Kimball, C.J., did not participate in the deliberation of this opinion.

In 2007, Steve Theriot, then the Legislative Auditor for the State of Louisiana (“LLA”), began a compliance audit of Citizens, LAIP, and PIAL for calendar years 2004, 2005, and 2006. In connection with its audit, LLA issued an Information Report dated September 12, 2007. In the Report, LLA delivered its opinion that PIAL was a public entity which was subject to the Ethics Code, Civil Service Laws, Open Meetings Laws, Audit Laws, Public Bid Law, Professional Services Procurement Law, and Procurement Code.

On September 28, 2007, PIAL filed a petition for declaratory judgment in the Nineteenth Judicial District Court, naming LLA as defendant. In its petition, PIAL prayed for a judgment declaring that PIAL is a private association and not a public agency. LLA answered the suit, denying that PIAL was a private association and asking for a judgment declaring PIAL a public entity under the laws of the state. Shortly thereafter, LLA filed a motion for summary judgment, again asking the court to render a judgment declaring that PIAL is a public entity under Louisiana law. PIAL responded with its own motion for summary judgment, praying that the court declare PIAL a private association.

After hearing the competing motions for summary judgment, the trial court denied both motions. Both parties appealed. After denying PIAL’s writ, the court of appeal granted LLA’s writ, reversed the trial court’s denial of LLA’s motion for summary judgment, rendered judgment granting LLA’s motion for summary judgment, and declared that PIAL is a public entity for all purposes.²

This Court granted writs in order to examine the propriety of that

² *Property Ins. Ass. of Louisiana v. Theriot*, 2009-0112 (La.App. 1 Cir. 4/3/2009) (unpublished).

decision.³

DISCUSSION

We apply a de novo standard of review in considering the lower courts' rulings on the parties' summary judgment motions. *Suire v. Lafayette City-Parish Consolidated Government*, 2004-1459, p. 11 (La. 4/12/05), 907 So.2d 37, 48.

Summary judgment should be granted when

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B). A genuine issue exists where reasonable persons, after considering the evidence, could disagree. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony or weigh evidence. A fact is "material" if it is one that would matter at trial on the merits. Any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of trial on the merits.

Suire, 907 So.2d at 48.

The question raised in both motions for summary judgment is whether PIAL is a public or private entity. As argued by the parties and as discussed by the court of appeal, this Court has specified four factors which determine an entity's public or private character. These factors are (1) whether the entity was created by the legislature, (2) whether its powers were specifically defined by the legislature, (3) whether the property of the entity belongs to the public, and (4) whether the entity's functions are exclusively of a public character and performed solely for the public benefit. *State v. Smith*, 357 So.2d 505 (La. 1978). In *Smith*, while not stating explicitly that all four factors must be met in order to find that an entity was public,

³ *Property Ins. Ass. of Louisiana v. Theriot*, 2009-1152 (La. 10/16/09), 19 So.3d 465.

define the safest methods of construction, to supervise the installation of devices involving fire hazards, and to collect statistical information in order to reduce the chance of fire. In 1912, the legislature, through Act 224, again declared that it was unlawful for fire insurance companies, associations, or partnerships to organize for the purpose of governing, controlling, or influencing insurance rates.

The legislature “created” the Insurance Commission by means of Act 302 of 1926. The act also ordered fire insurance companies to “organize” the Louisiana Rating and Fire Prevention Bureau under the supervision of the Insurance Commission. As contemplated by the Act, the Rating and Fire Prevention Bureau was to be organized by the fire insurance companies, to make rates with the approval of the Insurance Commission, to make inspections as to physical care and condition of risks, to define the safest methods of construction, and to supervise the installation of devices involving fire hazards, all in order to reduce the chance of fire. Act 302 also dissolved the fire prevention bureau organized under Act 189 of 1904 and authorized the Insurance Commission to audit the new Bureau’s books.

In Act 125 of 1958, the legislature amended and re-enacted the first and second chapters of the Insurance Code. The Act continued the Louisiana Rating and Fire Prevention Bureau, which was to inspect every risk specifically rated by schedule and make written surveys of such risks, to define the safest methods of construction, to supervise the installation of devices involving fire hazards in order to reduce the chance of fire, and to make rates with approval of the Insurance Commission. The Act also allowed for corporations, unincorporated associations, partnerships and individuals to apply to the Insurance Commission for licensing as “other rating organizations.” The Act continued to authorize the audit of the Louisiana Rating and Fire Prevention Bureau by the Insurance Commission.

Act 311 of 1975 changed the name of the Louisiana Rating and Fire Prevention

we did so by implication.⁴ Today, we hold that all four factors must be present in order for a court to determine that an entity is public. Accordingly, we address each factor.

Was PIAL created by the legislature?

PIAL contends that the organization's predecessor was chartered in 1888 by private fire insurance companies as a private association, and that the legislature on several occasions has only authorized its existence. LLA, however, argues that the legislature created PIAL's predecessor in Act 302 of 1926, which mandated that the fire insurance companies organize a fire prevention bureau, and, in the same act, dissolved any previously organized bureaus.

A review of the history of Louisiana's fire prevention bureaus shows that in 1888, fire insurance companies in the state formed by charter the Property Holders Mutual Aid Fire Indemnity Society, which PIAL claims as its predecessor. The legislature, in Act 110 of 1900, implicitly recognized the association's existence, and made it unlawful for fire insurance companies, associations, or partnerships to organize for the purpose of governing, controlling, or influencing insurance rates. In 1902, Act 183 made it lawful for fire insurance companies to organize a Fire Prevention Bureau to make inspections as to physical care and condition of risks, to define the safest methods of construction, and to supervise the installation of devices involving fire hazards, all in order to reduce the chance of fire.

Act 189 of 1904 again authorized fire insurance companies to organize a Fire Prevention Bureau to make inspections as to physical care and condition of risks, to

⁴ The Court, after first laying out the factors to be considered, analyzed only one-whether the entity had been created by the legislature. After determining that it had not been so created, the court found that the entity was not a public agency. This implication is bolstered by the fact that all post-*Smith* opinions which have examined the *Smith* factors either found the entity to be private after examining only one factor or required all four to be present in finding that the entity was public. See *Bankston v. Board of Ethics for Elected Officials*, 98-0189 (La. 6/22/98), 715 So.2d 1181 (community action program not public entity because not created by legislature); *State v. Duque*, 42,074 (La.App. 2 Cir. 1/18/07), 946 So.2d 760 (community action agency not public entity because not created by legislature); *Louisiana Ins. Guaranty Assn. v. Comm. on Ethics for Public Employees*, 95-0021 (La.App. 1 Cir. 5/5/95), 656 So.2d 670 (public entity because all four factors present).

Bureau to the Property Insurance Association of Louisiana. In 1999, Act 885 transferred the Board of Directors of PIAL to the Department of Insurance. Finally, in 2007, Act 420 authorized LLA to audit PIAL, and Act 459 changed the makeup of PIAL's Board of Directors.

That the legislature has concerned itself with fire prevention, fire safety, and fire insurance rate making is clear—what is less clear is whether the legislature itself created the fire prevention bureau or, instead, arranged for its creation by another body. Assuming that LLA is correct that PIAL's predecessor was formed in 1926 rather than in 1888, we look to the wording of Act 302 of 1926.

Act 302 reads, in pertinent part:

AN ACT

To establish uniform rates for fire, windstorm and hail, and automobile fire and theft insurance in Louisiana, and to prohibit discrimination in insurance rates; to provide for the organization of a "Rating and Fire Prevention Bureau"; to create an Insurance Commission, fix its powers and prescribe its duties; to provide penalties for the violation of this Act; to repeal Act 189 of 1904, and all laws in conflict.

Qualifications, Number, Powers and Salary of Commissioners.

Section 1. Be it enacted by the Legislature of Louisiana, That there is hereby created a Board to be known as the Insurance Commission . . .

Louisiana Rating and Fire Prevention Bureau.

Section 2. Under the supervision of the Insurance Commission the Stock fire insurance companies licensed to do business in this State shall organize a Bureau to be styled "The Louisiana Rating and Fire Prevention Bureau" . . .

1926 La. Acts, No. 302, p. 571, 571-72.

The rules of statutory interpretation mandate that this Court consider the legislature's choice of language as deliberate. *Miller v. LAMMICO*, 2007-1352, p. 15 (La. 1/16/08), 973 So.2d 693, 703-4, citing *Hall v. Brookshire Brothers, Ltd.*, 2002-2404, p. 19 (La. 6/27/2003), 848 So.2d 559, 571. In the Act, the legislature

“created” the Insurance Commission in Section 1, but then in the following section, ordered the “fire insurance companies” to “organize” the Louisiana Rating and Fire Prevention Bureau. Had the legislature intended to “create” the Louisiana Rating and Fire Prevention Bureau, it could have done so, just as it “created” the Insurance Commission in the same act.

An example of the legislative creation of an entity may be found in La. R.S. 22:2056,⁵ by which the legislature created the Louisiana Insurance Guaranty Association. The statute reads in pertinent part:

§ 2056. Creation of the association

A. There is created a private nonprofit unincorporated legal entity to be known as the "Insurance Guaranty Association", [sic] whose domicile for purpose of suit shall be East Baton Rouge Parish, Louisiana. All insurers defined as member insurers in R.S. 22:2055 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under R.S. 22:2059 and shall exercise its powers through a board of directors established under R.S. 22:2057.

La. R.S. 22:2056(A).

We hold that the legislature did not create the Property Insurance Association of Louisiana.

Are PIAL's powers specifically defined by the legislature?

LLA argues that PIAL's powers were specifically defined by the legislature in Act 302 of 1926, and that PIAL's powers are now defined in La. R.S. 22:1460.⁶ PIAL contends that these specified powers are not exclusive, and that it possesses other powers derived from its corporate governance documents or through its board of directors, such as providing services to insurance companies, hiring and firing employees, and entering into contracts.

⁵ La. R.S. 22:2056 was renumbered from La. R.S. 22:1380 by Acts 2008, No. 415, § 1, eff. Jan. 1, 2009.

⁶ La. R.S. 22:1460 was renumbered from La. R.S. 22:1405 by Acts 2008, No. 415, § 1, eff. Jan. 1, 2009.

La. R.S. 22:1460 reads in pertinent part:

* * *

D. The powers and duties of the association shall be:

(1) To inspect or cause to be inspected every risk specifically rated by schedule for property damage insurance and to make a written survey of such risk, which shall be filed as a permanent record in the main office of the association. Present inspections and surveys may be used in lieu of new inspections and surveys. Such survey or schedule shall give in detail the defects either of construction or of occupancy, or both, existing in the risk which effect the property damage rate. The rate at which the risk must be written by the members of the association shall be stated in the survey together with the relative measure which each defect bears to the fire hazard as a whole and to the basic cost of the same and the consequent proportionate value of each improvement suggested to minimize the chances of fire so that each assured may be informed as to the manner in which his rate was determined and the measures which should be taken to effect a reduction in the rate and the sum of each reduction. The records of the association shall be exempt from the application of R.S. 44:1 et seq., except that a copy of such survey shall be furnished, upon request, to the owner of every risk, or to any member company or resident agent, provided said company has a policy in effect on the risk, without expense to said owner.

(2) To make rates on fire and extended coverage insurance as defined in Paragraphs (10) and (11b) of R.S. 22:47 and on such other coverages as are usually written by fire insurers on property other than motor vehicle insurance located in this state, in accordance with the provisions of this Subpart. Provided, however, that by and with the approval of the commissioner of insurance, other rating organizations created for the purpose of making and promulgating rates for special or particular kinds or classes of business written by fire insurance companies may be licensed under the terms or conditions of this Subpart.

(3) To audit, on special call by the association, policies written by member companies in compliance with filings as approved or made in accordance with the provisions of this Subpart.

(4) To survey municipal areas for publication of public fire protection grading.

(5) To file fire insurance rating schedules with the commissioner of insurance.

(6) To review building plans and specifications and fire suppression system plans and specifications when submitted to it for review, and to offer nonbinding recommendations for upgrading the fire insurance rating.

(7) To review fire suppression system plans, when submitted to it, and

to offer nonbinding recommendations to upgrade fire protection gradings of municipal areas.

(8) To promulgate average rates.

(9) To design and file policy forms with the department.

(10) To perform such functions, to engage in such activities, to employ personnel, consultants, and counsel, and to acquire equipment and facilities adequate to exercise the powers and duties authorized by law in order to encourage and promote programs, legislation, and regulations calculated to produce and maintain a healthy and competitive property insurance market in Louisiana for the benefit of the insuring public.

(11) To consider the addendum and other recommendations of the advisory committee of the board of directors of the Property Insurance Association of Louisiana in accordance with Subsection M of this Section and to make public the current addendum as approved by the board of directors of the Property Insurance Association of Louisiana.

The gist of PIAL's argument is that while the legislature did, indeed, specifically define PIAL's powers, it did not specify **all** of PIAL's powers, and, thus, this factor would weigh in PIAL's favor. The legislature, though, is not required to specify all, or even most, of an entity's powers in order for that entity to be found a public body. To find otherwise would be to accord an entity the power to establish its private nature by granting itself just one power which the legislature did not address. We hold, therefore, that the legislature did specifically define PIAL's powers.

Does PIAL's property belong to the public?

La. R.S. 22:1460(E) mandates that all fire insurance companies licensed to operate in Louisiana must belong to PIAL and pay levies to PIAL "equitably in proportion to the services rendered by the association to the individual member." Further, for a period of time ending in 2008, PIAL contractually provided administrative services to Citizens, which receives public funding, on a cost-reimbursement basis. LLA argues that because PIAL's source of revenue is guaranteed by state law through mandatory assessments on its members, and because

PIAL received public money through its contractual relationships with Citizens and LAIP, PIAL's property belongs to the public.

PIAL disagrees, contending that it does not receive any public funding. PIAL asserts that the member assessments are private money paid by private companies to a private association, and that this private money does not become public money simply because the assessments are guaranteed by state law. PIAL further argues that being paid for services by contract with public funds does not make a contracting party public. We agree.

By statute, PIAL's "expenses . . . shall be paid by its members and subscribers through assessments levied upon them by the association . . . [and] [t]he association shall have the right to charge subscribers for services rendered, and to charge members and subscribers reasonable entrance and annual membership and subscription fees." R.S. 22:1460(E)(1). These assessments, charges, and fees are paid by private parties directly to PIAL. The funds are not paid to or from the state general fund, and any excess funds would be returned to the members/subscribers and not paid into the general fund.

In addition, PIAL was reimbursed by Citizens for expenses incurred by PIAL in its contractual administration of Citizens.⁷ According to LLA, 58% of PIAL's revenue flowed through this contract. R. at 49. In *Smith*, this Court stated that the presence of public funds flowing through a private nonprofit corporation by contract was not enough to transform the corporation into a public entity. *Smith*, 357 So.2d at 508. This concept was reiterated in *Bankston*, 715 So.2d at 1185, where we, again, used the four factors to determine that a corporation was a private entity.

LLA argues that several cases have held that property is public under less compelling circumstances: *Louisiana Public Fac. Auth. v. Foster*, 2001-0009 (La.

⁷ Whether or not Citizens is a public entity is an issue that is not before the Court, but for the purpose of this opinion only, we assume that it is.

9/18/01), 795 So.2d 288; *Spain v. Louisiana High School Athl. Assn.*, 398 So.2d 1386 (La. 1981); and *Louisiana Ins. Guaranty Assn. v. Comm. on Ethics for Public Employees*, 95-0021 (La.App. 1 Cir. 5/5/95), 656 So.2d 670.

In *Louisiana Public Fac. Auth. (LPFA)*, this Court held that the Public Facilities Authority (“PFA”), a non-profit public trust and public corporation, was a public entity rather than a private citizen, and, therefore, was not protected by the state constitution and laws respecting impairment of obligations of contract. The Court did not explicitly examine the *Smith* factors (or even mention their existence), but did discuss the issues contained in the factors in a general way. In our discussion regarding property and funding, we said explicitly that the state did not provide funding, as PFA’s funding was primarily derived from application and closing fees from the issuance of bonds and from investments. *LPFA*, 795 So.2d at 294. In addition, we stated that PFA issued special obligation bonds for eligible public and private projects throughout the state, that in most instances the bonds were exempt from income taxes, and that, generally, the bonds were not debts of the state. *LPFA*, 795 So.2d at 294, n.9. Further, the beneficial interest in the trust was owned by the state and the other public bodies designated as beneficiaries and the original funding of the trust came from wills or written trust documents naming the state and/or other public bodies as beneficiaries. *LPFA*, 795 So.2d at 294. Despite the fact that we stated that the PFA received no public funding, we ruled that because the legislature had created the PFA and subjected it to state laws regarding public records, open meetings, public bids, bond validation procedures, ethics, and legislative audit, the legislature intended to regulate its own creation. Here, though, the legislature did not create PIAL, and the legislature has exempted PIAL from the public records law.

In *Spain*, a news director sought an injunction to keep the Louisiana High School Athletic Association (“LHSAA”) from holding closed meetings. We found

that the LHSAA was a public body under the definition contained in the Open Meetings Law:

'Public body' means village, town, and city governing authorities; parish governing authorities; school boards, and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this Paragraph. 'Public body' shall not include the legislature. R.S. 42:4.2(A)(2).

Spain, 398 So.2d at 1387. In noting that the LHSAA had cited "a plethora of cases" in which it had been held to be a private, voluntary association, we stated:

It is important to note, however, that this body of law did not deal with a positive legislative pronouncement which defined the conditions under which an entity must be deemed 'public' for a limited purpose.

Spain, 398 So.2d at 1390-1. There is no such positive legislative announcement in this matter today.

In *Spain*, again, as in *LFPA*, we did not mention *Smith* or the factors it established, as we were solely concerned with whether the LHSAA was a public body as defined by statute. We did, however, discuss the LHSAA's financing, although, again, funding was not a basis for our decision. The money for financing the LHSAA was derived from membership dues (80% of the membership was public schools and 20% private schools), a percentage of gate receipts from sporting events, and entry fees for participation in sports for championship honors. *Spain*, 398 So.2d at 1388. By rule, fees were required to be paid with school check (but the commissioner testified that they would "take any check that was good"). *Spain*, 398 So.2d at 1388-89. Furthermore, the staff of the LHSAA were defined as teachers and were included in the Teachers' Retirement System of Louisiana. *Spain*, 398 So.2d at 1389.

Because the LHSAA performed a major policymaking, advisory and administrative function in an area within the primary control of public bodies listed

in the Open Meetings Law, we held that the LHSAA, and its committees and subcommittees, constituted collective committees or subcommittees of the parish school boards or State Board of Elementary and Secondary Education, and was thus a 'public body' for the purposes of the Open Meetings Law. *Spain*, 398 So.2d at 1390.

Finally, in *Louisiana Ins. Guaranty Assn. (LIGA)*, the court of appeal held that the Louisiana Insurance Guaranty Association was a public entity under the Code of Governmental Ethics. The court of appeal did discuss and apply the four *Smith* factors. With regard to the categorizing of LIGA's property, the court of appeal said:

LIGA obtains its funds from member insurers pursuant to assessments under [statute]. However, these assessments, which are evidenced by a certificate of contribution, are offset against the member insurer's premium tax liability, not to exceed a total offset of 100%. Moreover, any sums acquired by refund under [the statute] from the association, which were written off by the insurer and offset against premium taxes, but which are not needed to effectuate the purposes of the Louisiana Insurance Guaranty Act, are required to be paid by LIGA to the Commissioner of Insurance and deposited with the state treasury for credit to the general fund of the state.

LIGA, 656 So.2d at 675. By use of the word "however" at the beginning of the second sentence of the quote, the court of appeal recognized the difference between obtaining funds from member insurers which are not subject to tax offsets or returnable to the state general fund, as does PIAL, and those which are so subject.

Because assessments levied on private insurance companies do not become public money simply because the assessments are guaranteed by state law, and because the receipt of public funds in payment of contractual fees for services does not make a contracting party public, we hold that PIAL's property does not belong to the public.

Are PIAL's functions exclusively of a public character and performed solely for public benefit?

LLA argues that PIAL's functions are not only public, but also regulatory, in

that PIAL serves as a rate-making body and promulgates rules and regulations. LLA also points out that R.S. 22:1452⁸ emphasizes the public interest in “promot[ing] the public welfare by regulating interest rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory . . .,” and that R.S. 22:1460(D)(10) states that the purpose of PIAL’s duties is “to encourage and promote programs, legislation, and regulations calculated to produce and maintain a healthy and competitive property insurance market in Louisiana for the benefit of the insuring public.” LLA argues that because PIAL carries out its duties solely for the benefit of the insuring public, PIAL satisfies the fourth *Smith* criterion.

PIAL, conversely, argues that it performs its functions for the exclusive benefit of its members, rather than the public, but acknowledges that the public does receive a derivative benefit from its performance of those functions.

La. R.S. 22:1452(A), the section partially quoted by LLA as support for its argument, reads in its entirety:

The purpose of this Subpart is to promote the public welfare by regulating interest rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory and to authorize and regulate cooperative action among insurers in ratemaking and in other matters within the scope of this Subpart. (Emphasis added).

The means by which “cooperative action” is taken by insurers in ratemaking is through PIAL. PIAL represents the best interests of its members in recommending proposed rate increases to the Insurance Commission.

PIAL, in arguing that it performs its functions for the exclusive benefit of its members, overstates its case. Although many of its functions only offer a derivative benefit, some of its mandated functions do directly benefit the public, such as reviewing fire suppression system plans. Because at least some of PIAL’s functions are performed for the benefit of its member insurance companies, and thus their

⁸ La. R.S. 22:1452 was renumbered from La. R.S. 22:1402 by Acts 2008, No. 415, § 1, eff. Jan. 1, 2009.

private stockholders, PIAL's functions are not exclusively of a public character and performed solely for public benefit.

Because Property Insurance Association of Louisiana does not meet all four of the criteria which define a public entity, as established in *State v. Smith*, we find that Property Insurance Association of Louisiana is not a public entity for all purposes.

DECREE

For the foregoing reasons, we reverse the rulings of the courts below to the extent that the motion for summary judgment of Steve J. Theriot, in his capacity as the Legislative Auditor for the State of Louisiana, was granted and the motion for summary judgment of Property Insurance Association of Louisiana was denied, and render judgment granting summary judgment in favor of Property Insurance Association of Louisiana.

REVERSED AND RENDERED.

General Item

**Ethics Board Docket No. BD 2010-333
04/16/2010**

RE:

Notice of Ethics Disclosures received by the Board for March 2010.

Relevant Statutory Provisions, Advisory Opinions:

Comments:

(TKM)

Recommendations:

**"OTHER DISCLOSURES"
RECEIVED DURING MARCH 2010**

LAST NAME	FIRST NAME	DATE FILED	DISCLOSURE TYPE	RPT # AND DESCRIPTION
COMPENSATION RECEIVED BY A PUBLIC SERVANT/ELECTED OFFICIAL FOR REPRESENTATION BEFORE STATE AGENCY [La. R.S. 42:1111E]				
Connick	John	03/05/2010	AD	2010 AD1000013: Disclosure of Paid Assistance
Edmonds	Sandy	03/03/2010	CD	2010 CD1000030: Contract Disclosure
AFFIDAVIT RELATED TO ATTENDANCE AT AN EDUCATION/PROFESSIONAL DEVELOPMENT SEMINAR/CONFERENCE [La. R.S. 42:1123(41)]				
Lundeen	Diane	03/11/2010	ES	2010 ES1000022: Compensation for Attending Educational/Professional Development Seminar/Conference by Public Servant
Stubbs	Karen	03/08/2010	ES	2009 ES1000019: Compensation for Attending Educational/Professional Development Seminar/Conference by Public Servant
Tucker	James	03/12/2010	ES	2010 ES1000018: Compensation for Attending Educational/Professional Development Seminar/Conference by Public Servant
HOSPITAL SERVICE DISTRICT DISCLOSURE STATEMENT [La. R.S. 42:1119B(2)(b)]				
DeVille	Linda	03/05/2010	HD	2010 HD1000024: Hospital Service Districts Disclosure Statement
AFFIDAVIT RELATED TO LEGISLATOR RECEIVING COMPENSATION FOR A SPEECH [La. R.S. 42:1123(16)(a)]				
Ellington	Noble	03/15/2010	PS	2010 PS1000001: Affidavit Regarding Compensation for a Public Speech by a Legislator
PUBLIC SERVANT RECEIVING THING OF ECONOMIC VALUE INVOLVING AGENCY [La. R.S. 42:1114A]				
Glover	Cedric	03/11/2010	PSFD	2009 PSFD1000003: Public Servant's Personal Financial Disclosure Statement

**"OTHER DISCLOSURES"
RECEIVED DURING MARCH 2010**

RETIREMENT SYSTEM DISCLOSURE (FEBRUARY 15, 2010 FILING DEADLINE) [La. R.S. 42:1114.2]			
Horan	Christine	03/03/2010	RSD
SCHOOL BOARD DISCLOSURE [La. R.S. 1119B(2)(a)]			
Arceneaux	Lelija	03/04/2010	SBD
			2009 RSD10000019: Retirement Systems Disclosure Statements February Deadline
			2010 SBD10000005: School Board Disclosure Statement

General Item

**Ethics Board Docket No. BD 2008-718
04/16/2010**

RE:

Consideration of a decision rendered by the Ethics Adjudicatory Board in connection with a public hearing on charges issued against Tangipahoa Parish School Board Member, Danny Ridgel.

Relevant Statutory Provisions, Advisory Opinions:

1121A(2)

Comments:

The Ethics Adjudicatory Board found Danny Ridgel in violation of Section 1121A(2) of the Code and assessed a \$2,500 civil penalty.

Recommendations:



State of Louisiana
Division of Administrative Law

P.O. Box 44033, Baton Rouge, LA 70804-4033

Main Phone (225) 342-1800 www.adminlaw.state.la.us

Administrative Hearings Clerk (225) 342-1811 * Fax (225) 342-1812

Located at 654 Main Street, Baton Rouge, LA 70802

BOBBY JINDAL
Governor

March 31, 2010

ANN WISE
Director

Ms. Shaan Aucoin
Attorney at Law
P. O. Drawer 1509
Hammond, LA 70404

Ms. Tracy K. Meyer
Louisiana Board of Ethics
Attorney at Law
P.O. Box 4368
Baton Rouge, LA 70821

RE: NOTICE OF MAILING OF DECISION
IN THE MATTER OF: **Danny Ridgel**
Docket No. **2009-9387-ETHICS-A**
Enforcement Tracking # **2008-718**

To the parties in the above entitled matter:

Attached is the decision of the Ethics Adjudicatory Board in the above captioned matter.
This decision is being mailed on March 31, 2010.

If you have any questions, you may call Ms. Monika Wright, DAL attorney, at (225)219-9981.

Sincerely,

Susan Cowart
Administrative Hearings Clerk

SC/cle

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2009-9387-ETHICS-A**

IN THE MATTER OF

*

DANNY RIDGEL

*** AGENCY TRACKING NO. 2008-718**

DECISION AND ORDER

The Louisiana Board of Ethics issued charges against Danny Ridgel for accepting an appointment to the Tangipahoa Parish School Board within two years of resigning his elected position on that school board. The Ethics Adjudicatory Board concludes that Mr. Ridgel violated La. R.S. 42:1121(A)(2) and imposes a fine of \$2,500.00.

APPEARANCES

On March 26, 2010, a public hearing was conducted in Baton Rouge, Louisiana, before the Ethics Adjudicatory Board, Panel A, consisting of Administrative Law Judges John O. Kopynec, William H. Cooper, III, and Parris A. Taylor. Appearing at the hearing were:

Danny Ridgel (Respondent) and his counsel, Shaan M. Aucoin; and
Tracy Meyer and Kathleen Allen, counsel for the Board of Ethics.

STATEMENT OF THE CASE

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.* and the Division of Administrative Law Act, La. R.S. 49:991, *et seq.*

Following an investigation, the Board of Ethics issued charges against Respondent alleging he violated section 1121A(2) of the Code of Governmental Ethics. La. R.S. 42:1121(A)(2) provides that no former member of a board shall, for a period of two years

following the termination of his public service on such board, be appointed to any position by that board. Respondent resigned from his elected position as member of the Tangipahoa Parish School Board on June 30, 2008, and eight days later, on July 8, 2008, was appointed by the Tangipahoa Parish School Board to the position of interim school board member. The Board of Ethics recommended that a fine of \$5,000.00 be assessed against Respondent.

Respondent argued that the charges should be dismissed and no penalty should be assessed because he did not violate La. R.S. 42:1121(A)(2). Respondent asserted he was advised by his attorney and the School Board's attorney, that he would not violate any law if he were appointed by the Tangipahoa Parish School Board to the position of interim school board member.

Respondent and the Board of Ethics submitted nine stipulated facts into evidence. The Board of Ethics did not call any witnesses. Respondent, pursuant to La. Code Civ. P. art 1672, requested a dismissal. The Ethics Adjudicatory Board went into executive session and after deliberation declined to dismiss the case. Respondent testified and then called Alton Lewis, his attorney, and Mark Kolwe, Superintendent of Schools for Tangipahoa Parish. The Ethics Adjudicatory Board took the matter under advisement.

FINDINGS OF FACT

1.

Respondent was elected to the Tangipahoa Parish School Board and took office on January 1, 2007.

2.

Respondent learned on June 27, 2008, that as a member of a school board he would be subject to disclosure requirements under the legislative revisions to the Code of Governmental

Ethics, and to avoid making the disclosures he would have to resign his position by the close of business on June 30, 2008.

3.

Respondent's attorney, Alton Lewis, contacted the offices of the Secretary of State to determine the proper procedure to follow in order to resign from the position of school board member.

4.

On June 30, 2008, Respondent filed a letter with the Secretary of State resigning from his position as a Tangipahoa Parish School Board Member, effective immediately.

5.

Respondent was advised by his attorney, Alton Lewis, and the attorney for the Tangipahoa Parish School Board, Chris Moody, that if the Tangipahoa Parish School Board appointed him to his prior position within two years of his resignation, he would not violate the Code of Governmental Ethics.

6.

Neither Respondent nor his attorney contacted the offices of the Board of Ethics to determine whether Respondent could be appointed by the Tangipahoa Parish School Board to the position of interim school board member without violating the Code of Governmental Ethics.

7.

The Tangipahoa Parish School Board appointed Respondent to the position of interim school board member on July 8, 2008.

8.

As an appointed interim school board member from July 2008 to March 2009, Respondent received six months of compensation at \$800.00 per month and three months of compensation at \$900.00 per month.

9.

In an April 2009 election, Respondent was reelected to fill the position he had vacated on the Tangipahoa Parish School Board.

10.

The Board of Ethics submitted seven consent opinions in unrelated matters involving violations of La. R.S. 42:1121(A)(2), where fines of between \$200.00 and \$3,000.00 were imposed.

CONCLUSIONS OF LAW

Prohibited conduct

La. R.S. 42:1121(A)(2) prohibits any former member of a board from being appointed to any position by that board for a period of two years following his termination of public service on that board. Eight days after Respondent terminated his public service on the Tangipahoa Parish School Board, he was appointed to the position of interim school board member by the Tangipahoa Parish School Board. Respondent violated La. R.S. 42:1121(A)(2).

The Fine and Mitigating Circumstances

Pursuant to La. R.S. 42:1153, any person who has violated the Code of Governmental Ethics may be administratively fined an amount of up to ten thousand dollars. Respondent received \$7,500.00 during his tenure as an interim school board member appointed in violation

of La. R.S. 42:1121(A)(2). Although his attorney contacted the Secretary of State's Office to determine the proper procedure to resign his position, there was no evidence that the Board of Ethics was contacted to determine whether he could be appointed to his prior position. In several unrelated matters where there was a violation of La. R.S. 42:1121(A)(2), the Board of Ethics entered into consent opinions with fines ranging from \$200.00 to \$3,000.00.

Respondent did not intentionally violate the Code of Governmental Ethics. The evidence demonstrates that Respondent made an attempt to follow the law. Respondent also sought the advice of not only his own attorney, but also the school board's attorney. Respondent was advised by counsel that he would not violate any laws if the Tangipahoa Parish School Board appointed him to his prior position.


The Board of Ethics recommended that Respondent be fined \$5,000.00 for the violation of La. R.S. 42:1121(A)(2). Based on the mitigating circumstances presented, assess Respondent a fine in the amount of \$ 2,500.00.

ORDER

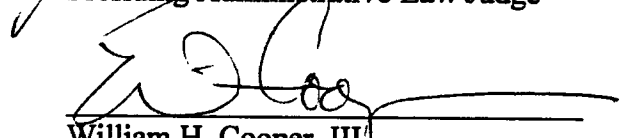
For the foregoing reasons:

IT IS ORDERED that a fine of \$2,500.00 be assessed against Danny Ridgel for his violation of La. R.S. 42:1121(A)(2).

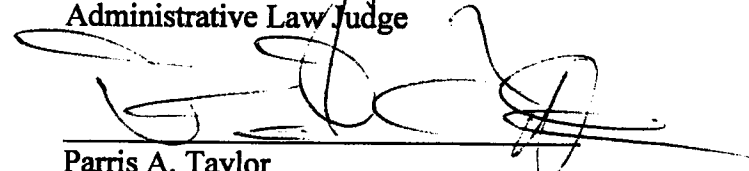
Rendered and signed this 31st day of March 2010, in Baton Rouge, Louisiana.



John O. Kopynee
Presiding Administrative Law Judge



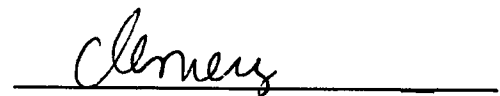
William H. Cooper, III
Administrative Law Judge



Parris A. Taylor
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a copy of this document on all parties to this proceeding or their counsel of record by regular mail, this 31st day of March, 2010.



Administrative Hearings Clerk