STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

LIZ MURRILL
ATTORNEY GENERAL

November 20, 2024
OPINION 24-0086

Mr. Thomas R. Hightower, III
Legal Counsel to Lafayette Parish
Waterworks District South
P.O. Drawer 51288
Lafayette, LA 70505-1288

172-A – WATER DISTRICTS – *See* Political Subdivisions – 90-A

La. Const. art. VII, § 14 La. R.S. 33:3815
La. R.S. 33:3818

The Lafayette Parish Waterworks District South has the authority to authorize improvements and may assess the cost of such improvements upon developers when such improvements would not be necessary if not for new development.

Dear Mr. Hightower:

Our office received an opinion request from you regarding the scope of authority the Lafayette Parish Waterworks District South (LPWDS) has with respect to infrastructure improvements. You state in your request that five developers have applied for "will serve" water service approval from LPWDS. You further state that, after consultation with an engineer, LPWDS's current infrastructure would not be able to accommodate the new subdivisions contemplated by the developers and that, to serve the new subdivisions, significant improvements would be needed to extend service to the subdivisions. You note that the engineering firm believes that these improvements would not be needed without the demand created by these new developments.

Question: Does the LPWDS have the authority to authorize improvements by a simple majority vote of its Board of Commissioners?

Conclusion: The LPWDS has the authority to authorize improvements by a simple majority vote of its Board of Commissioners.

The LPWDS is empowered by Lafayette Parish municipal ordinance JO-036-2020, Section 7, which states: "This Board shall have the function, powers and duties as outlined and established in La. R.S. 33:3811 *et seq.*, as well as any and all other functions, powers and duties outlined and established by any other relevant and applicable statutes or ordinances." Therefore, we rely on those statutes in our analysis of LPWDS's authority.

Louisiana Revised Statute 33:3818(A) grants the board of commissioners of a waterworks district the authority to adopt by-laws, rules, and regulations for the proper conduct and operation of a waterworks system in their district. Louisiana Revised Statute 33:3818(B) provides that the board of commissioners "may effect improvement in the water system and for this purpose enter into contracts for the performance of work or the purchase of machinery." Louisiana Revised Statute 33:3815(A) states that a waterworks district "may dig and excavate the roads, streets, sidewalks, and alleys in the district for the purpose of laying pipeline or water mains." Therefore, the LPWDS Board of Commissioners has the authority to authorize and undertake the contemplated improvements.

Louisiana Revised Statute 33:3819 establishes the parameters of how a board of commissioners of a waterworks district is to conduct itself regarding meetings. The statute does not contain any requirement that any vote of a board of commissioners be by more than a simple majority. Further, La. R.S. 33:3815 and 33:3818 do not express any additional voting requirements regarding authorizing improvements. Therefore, the LPWDS Board of Commissioners may authorize the contemplated improvements by a majority vote.[1]

Question: Does the LPWDS have the authority to impose "impact fees" upon developers for improvements that would not be necessary if not for the new development?

Conclusion: The LPWDS has the authority to impose "impact fees" upon developers for improvements that would not be necessary if not for the new development.

Louisiana Constitution article VII, § 14(A) provides that funds, property, or things of value of a political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. You note in your request that, if not for the new subdivisions by the developers, the contemplated improvements would not be necessary. Therefore, the contemplated improvements are in the economic interest of, and of value to, the developers. *See also* La. Atty. Gen. Op. No. 03-0345, in which this office opined that a waterworks district could not utilize its funds for the construction of a waterline intended to serve private interests. As a result, the LPWDS *cannot* undertake the otherwise unnecessary improvements without seeking payment from the developers.

You indicate in your opinion request that the LPWDS would like to assess the cost of the improvements upon the developers by utilizing "impact fees." When analyzing a cost imposed by a government entity, it is necessary to assess whether the cost is properly classified as a fee or a tax.

In making the distinction between a fee and a tax, the Louisiana Supreme Court has said: "The nature of a charge is determined not by its title, but by its incidents, attributes and operational effect. Thus, the nature of a charge must be determined by its substance and realities, not its form." *Safety Net for Abused Persons v. Segura*, 96-1978, p. 4 (La. 4/8/97), 692 So.2d 1038, 1041 (*citing Gallaspy v. Washington Parish Police Jury*, 94–1434, p. 3 (La. 11/30/94), 645 So.2d 1139, 1141; *Reed v. City of New Orleans*, 593 So.2d 368, 371 (La. 1992)). The Louisiana Supreme Court went on to state that a tax has a

[1] Although your opinion request does not inquire as to the process of undertaking the improvements once they have been authorized, we note that, pursuant to La. R.S. 38:2212, any improvement costing in excess of $250,000.00 must be undertaken in accordance with public bid law. *See* La. R.S. 38:2211 *et seq.*

primary purpose of raising revenue and that is unrelated to or materially exceeds the special benefits conferred upon those assessed. *Id.*, (*citing Audubon Insurance Co. v. Bernard*, 434 So.2d 1072, 1074 (La. 1983)).

Our office has previously used the above Louisiana Supreme Court analysis when assessing a "water impact fee" proposed by the Ascension Parish Planning Commission. *See* La. Atty. Gen. Op. no. 15-0039. There, the Ascension Parish Planning Commission wished to assess a one-time impact fee upon developers to fund the infrastructure necessary to support a new development. Our office opined that the contemplated charge was a fee because it was commensurate with the service being rendered, was being used to provide a benefit only for those assessed with the cost, and was defraying the cost of the infrastructure improvements rather than raising revenue. La. Atty. Gen. Op. No. 15-0039.

As stated in your opinion request, the charge being contemplated by the LPWDS is only going to be assessed against the developers, and the charge will be used to pay for the improvements. The contemplated charge does not have a primary purpose of raising revenue beyond what is necessary to make the improvements, does not exceed the benefit that that is being conferred, is only assessed against those using the subject benefit, and is related to the subject benefit. As such, the contemplated charge is properly assessed as a permissible fee. The result would likely be different if the costs were imposed on all rate payers (i.e., a tax).

Your final question, as stated, was regarding what the LPWDS may do if they do not have the authority to impose the contemplated impact fee. As the LPWDS does have the authority to impose the contemplated impact fee, we consider the question moot and will not address it further.

We trust that this opinion of the Attorney General adequately responds to your inquiry. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

LIZ MURRILL
ATTORNEY GENERAL

BY: Olivia G. Boudreaux
Olivia G. Boudreaux
Assistant Attorney General

LM:OGB