

*Following are summaries of recent Attorney General Opinions. For complete text or more information, contact the Office of the Attorney General, (225) 342-7013, write Office of the Attorney General, File Room  
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**#09-0107**

The Livingston Parish President is not bound to implement the operating budget amendments purportedly adopted in Sections 1, 2, 6, 7 and 8 of Livingston Parish Ordinance 09-06 or the transfer of appropriations within the OEP fund related to the OEP Director's Salary contained in Section 4 of that ordinance. However, given the conflicting rulings between the First and Fourth Circuit Courts of Appeal regarding the interpretation of La. R.S. 39:1310, we are unable to provide a definitive answer as to whether the president is bound to implement the reduction of appropriations contained in Section 3 of Livingston Parish Ordinance 09-06 or the elimination of transfers of appropriations between funds as set forth in Sections 4 and 5 of that ordinance.  
Date Released: 09/17/2009

**#09-0133**

Pursuant to La. R.S. 46:1077, Hospital Service District is authorized to enter into a Cooperative Endeavor with a private developer to construct and operate an Assisted Living facility and which include the formation of a limited liability company.  
Date Released: 09/17/2009

**#09-0073**

Addresses whether public bodies may utilize the Certificate of Deposit Account Registry Service and the Temporary Liquidity Guarantee Program. Recalls Atty. Gen. Op. No. 04-0252 in full and Atty. Gen. Op. No. 83-9 in part.  
Date Released: 09/22/2009

**#09-0214**

Avoyelles Parish police juror is not prohibited by either the Louisiana Gaming Control Law, La. R.S. 27:1, et seq., or the Louisiana Dual Officeholding and Employment Law, La. R.S. 42:61, et seq., from holding full-time employment as Director of Information Systems Paragon Casino, a tribal casino owned by the Tunica-Biloxi Tribe, operating in the City of Marksville, Avoyelles Parish.  
Date Released: 09/22/2009

**#09-0126**

The state dual officeholding provisions do not prohibit a local elected official from holding employment in a separate political subdivision; thus, the elected Mayor of the Town of Gueydan is not prohibited from holding employment with the Vermilion Parish Hospital Service District No. 3, d/b/a Gueydan Memorial Guest Home, as the municipality and the hospital service district are separate political subdivisions.  
Date Released: 09/29/2009

**#09-0195**

In the Village of Collinston, the Sunday sales of alcoholic beverages is prohibited, because at a parish-wide local option election, the electorate of Morehouse Parish (including the voters of the Village) voted to approve this Sunday closing law. The electorate of the Village may "opt out" of the parish prohibition against Sunday sales at a local option election called for that purpose, pursuant to La. R.S. 51:191. However, all acts of the Village Council which purport to revive the Sunday sales of alcoholic beverages in the absence of a local option election are invalid. Other than Sunday sales, the sale of alcoholic beverages by businesses holding local and state alcoholic beverage permits is currently allowed in the Village of Collinston. A prohibition against all sales of alcoholic beverages within the Village may only be accomplished by referendum vote, pursuant to La. R.S. 26:493.  
Date Released: 09/29/2009

**#09-0210**

An elected councilman serving the City of Westwego is prohibited from holding any position of employment falling within the classified service of Jefferson Parish.  
Date Released: 09/29/2009

**#09-0087**

Contracts for collection and disposal of solid waste, unless structured as an exclusive franchise, may be negotiated rather than awarded by public bid.  
Date Released: 10/05/2009

**#09-0121**

If the unexpired term exceeds one year, then the governing authority shall issue a proclamation calling for a special election to fill the vacancy within ten days of a letter of retirement being received by the Secretary of State and the retirement becoming irrevocable. The election to fill the vacancy may be held prior to the effective date of retirement; however, the successor may not take office until after the effective date of retirement.  
Date Released: 10/05/2009

**#09-0144**

When a pauper dies within the City's legal geographic limits, the City must bear the costs of the burial of those remains. In

order to reduce the costs of the burial of paupers to the public, the provision of cemetery spaces within City-owned cemeteries without cost is appropriate. Determining whether someone qualifies as a pauper is based upon the inclusion of the deceased on the parish list of paupers or those receiving assistance.

Date Released: 10/05/2009

**#09-0055**

Money donated to the Winnfield Police Department by Walmart on the condition that the money be used to purchase bicycles to be donated to underprivileged children at Christmas should be refunded to Walmart due to the inability of the police department to fulfill the condition without violating La. Const. art. VII, Sec. 14(A).

Date Released: 10/12/2009

**#09-0245**

The Tensas Parish Police Jury and the Town of Waterproof may enter into a cooperative endeavor agreement, whereby the Tensas Parish Police Jury would serve as an applicant for funding assistance under the American Recovery and Reinvestment Act of 2009 and utilize the funding assistance to perform much needed renovations at the Town of Waterproof's wastewater treatment plant.

Date Released: 10/12/2009

**#07-0157**

La. Const. Art. I § 4(A)(1) expressly states that economic development shall not be considered in deciding whether a taking or damaging of property is done for a public purpose. La. Const. Art. I § 4 (B)(1) further states that "property shall not be taken or damaged by the state or its political subdivisions: (a) for predominant use by any private person or entity; or (b) for transfer of ownership to any private person or entity." The taking of property by the City of Monroe, for predominant use by a private developer, and a primary public purpose of economic development, is not a valid exercise of eminent domain authority by a municipality. However, since only a court of law may make such a lawful determination, this Office recommends that the City of Monroe file a declaratory judgment action, including a detailed description of the proposed project, in a court of competent jurisdiction for a binding judgment on this matter.

Op to James Mayo, City of Monroe, Mayor, Monroe, LA

Date Released: 10/20/2009

**#08-0057**

St. Bernard Parish may allocate Parish funds and property as it deems necessary, but may only do so subject to Louisiana law, which provides that the proceeds of any special

# Attorney General's Opinions

# 2009

tax shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied. Absent a voter-approved rededication of the funding or property derived from the special library tax and bonds which was approved by the voters in St. Bernard Parish on May 2, 1962, St. Bernard Parish must only use these assets in a manner consistent with the intent of the approved propositions.  
Date Released: 10/20/2009

## #08-0287

The tax proceeds levied by the Livingston Parish Fire Protection District No. 1 must be used exclusively for the purposes set forth in the tax proposition. The proceeds of an ad valorem tax approved by the electorate on April 2, 2005 must be used exclusively for the operation and maintenance of the fire protection facilities and equipment of the Livingston Parish Fire Protection District No. 1. Because the tax proposition is silent with regard to emergency medical service facilities or equipment, the tax proceeds may not be used to pay for training personnel to provide those emergency medical response services authorized by La. R.S. 40:1501(A)(2), or to pay for emergency medical response equipment and supplies. However, the property tax may be used by the governing authority of the District to train firemen to provide emergency, medical, life-saving services necessitated by, and incidental to, a fire or fire prevention, pursuant to La. R.S. 40:1500(B).  
Date Released: 10/20/2009

## #09-0062

Pursuant to La. R.S. 15:708(A)(1), inmate labor may be used to demolish or maintain public property or property owned by an organization which has qualified for tax-exempt status under 26 USC 501(c)(3), 501(c)(19), or 501(c)(23). If inmate labor is used, the sheriff's and parish's liability is limited by La. R.S. 15:708(H). In the event that the parish uses its own personnel to tear down condemned buildings, its liability would be limited by La. R.S. 33:4765(B) and (E). Inmate labor may not be used by police jury to demolish or maintain private property condemned by the police jury pursuant to La. R.S. 33:3761 when the condemnation proceeding does not result in the political subdivision becoming owner of the property. Volunteers may be allowed to participate in the demolition process on private property if parish receives a release from the property owner.  
Date Released: 10/19/2009

## #09-0128

If the St. Bernard Home Rule Charter is less stringent than state law, state law will govern. The St. Bernard Home Rule Charter may be more stringent than state law in

areas concerning the structure and organization, powers, and functions of St. Bernard Parish, when such is not denied by general law or inconsistent with the Louisiana constitution. If the St. Bernard Home Rule Charter is more stringent than state law in one of the areas described above, then the home rule charter will govern.  
Date Released: 10/20/2009

## #09-0130

When a local public official has been sued for civil damages or has been the subject of a prosecution of criminal charges arising out of the performance of the official functions of his office, and the prosecution results in an acquittal or dismissal, the public official's legal fees may be paid or reimbursed from public funds, provided the legal fees and expenses are reasonable and necessary.  
Date Released: 10/20/2009

## #09-0184

The exemption of home-rule charter municipalities from the mandates of Louisiana Revised Statutes 32:266 does not violate the guarantees of equal protection afforded by the United States Constitution or the Louisiana Constitution, because a municipality, as a political subdivision of the State, is not entitled to equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution or Article I, Section 3 of the Louisiana Constitution.  
Date Released: 10/22/2009

## #08-0232

No political subdivision gains ownership in the property of a roadbed under La. R.S. 48:491. A political subdivision cannot obtain an ownership interest in a road via acquisitive prescription. If more than one political subdivisions do have actual ownership interests, the prorata share of necessary maintenance and repairs undertaken by one co-owner must be taxed against the other co-owner. If the interest in a roadbed is merely a right of public use, in the absence of an express agreement between the two political subdivisions, there is likely no basis for or need for reimbursement and the maintenance and repair costs must be borne by the maintaining party.  
Date Released: 10/27/2009

## #09-0112

The Livingston Parish Council may not use tax proceeds dedicated "to construct, acquire, extend, expand, improve, maintain, and operate roads, bridges, and related road drainage throughout the Parish" in order to pay for the removal of debris from major drainage canals and ditches located within the Parish, but which are not adjacent to roads.  
Date Released: 10/27/2009

## #00-0036

The Public Records Act's applicability to trade secrets and confidential information. Op to J. Marvin Montgomery, Counsel - Department of Agriculture,  
Date Released: 11/05/2009

## #00-0338

Police Jury is not prohibited from issuing occupational license where applicant has filed a lawsuit against hospital under the control of the police jury.  
Op to ROBBIE SHIRLEY, CONCORDIA POLICE JURY,  
Date Released: 11/05/2009

## #00-0353

Terrebonne Parish charter provision and the Election Code must be interpreted in reference to each other so that the 15% requirement of all registered voters would not include those voters on the inactive list.  
Op to Clayton Lovell, Attorney,  
Date Released: 11/05/2009

## #00-0475

The sale of pollution control devices or systems do not constitute a "sale at retail" for purposes of state sales and use taxes. However, they do constitute a "sale at retail" for purposes of parish sales and use taxes. Consequently, there is no exemption from parish sales and use taxes for the sale of pollution control devices or systems.  
Op to Douglas Stokes, Jackson, Asst. D.A.,  
Date Released: 11/05/2009

## #00-0477

The legislature has authority, and is not prohibited by any provision of the Constitution, to enact legislation authorizing a parish or a municipality within a parish, in which on November 5, 1996 a majority of the voters in the respective parish voted to discontinue the operation of video draw poker devices, to conduct a referendum election to permit video poker device operation in the municipality or parish.  
Op to Charlie DeWitt, House of Representatives, Speaker,  
Date Released: 11/05/2009

## #00-0484

Public housing authorities created pursuant to Louisiana law are not state agencies but rather are political subdivisions of the state or of local government bodies. Housing authorities are not subject to the Louisiana Procurement Code but are subject to the Louisiana Public Bid Law, R.S. 38:2211-2296.  
Op to Lorraine Butler, U.S. Department of Housing & Urban Development,  
Date Released: 11/05/2009