

December 1, 2015
OPINION 15-0102

90-A-1 – PUBLIC FUNDS & CONTRACTS
La. R.S. 33:2955

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The Assumption Parish Clerk of Court is prohibited from investing funds for the purchase of certificates of deposit ("CDs") through a financial investment firm, as the indirect purchase of CDs through an investment firm is not contemplated or intended by La. R.S. 33:2955.

Dear Mr. Calabro:

On behalf of the Assumption Parish Clerk of Court ("Clerk of Court"), you have requested an opinion from this office concerning whether the Clerk of Court may invest funds through a financial investment firm or broker. Specifically, you have indicated that the Clerk of Court would deposit certain funds into an account with a financial investment firm or broker, such as Edward Jones, Charles Schwab, or Fidelity, who would then invest the funds on behalf of the Clerk of Court. In a telephone conversation, you indicated to this office that the investment firm would be investing in certificates of deposits ("CDs"). You have asked whether such an investment would be legally permissible. Additionally, you have asked that, if such an investment is legally permissible, would the Clerk of Court need to bid the position out as required under the procedure for fiscal agents.

In answering your first question, it must be determined whether the Clerk of Court's proposed investment is legally authorized. La. R.S. 33:2955 governs investments by local political subdivisions¹ and provides, in pertinent part, the following:

A. (1) All municipalities, parishes, school boards, and any other political subdivisions of the state are hereby authorized and directed to invest such monies in any general fund or special fund of the political subdivision, and any other funds under the control of the political subdivision which they, in

¹ Although the La. R.S. 33:2955 does not specifically include the clerks of court in its list nor define the term "political subdivision" for the purposes of the statute, clerks of court are considered to be political subdivisions in other areas of Louisiana law, such as the Local Government Budget Act at La. R.S. 39:1302(1)(k) and dual office-holding law at La. R.S. 42:62(9). Clerks of court appear to fit within La. R.S. 33:2955, as there do not appear to be any separate statutes authorizing the clerks of court to otherwise invest surplus funds.

their discretion, may determine to be available for investment in any of the following obligations:

(a) Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United States.

(b)(i) Bonds, debentures, notes, or other evidence of indebtedness issued or guaranteed by federal agencies and provided such obligations are backed by the full faith and credit of the United States of America, which obligations include but are not limited to:

(ii) Bonds, debentures, notes, or other evidence of indebtedness issued or guaranteed by U.S. government instrumentalities, which are federally sponsored, and such obligations include but are not limited to:

(iii) Notwithstanding the foregoing list of investments, in no instance shall a political subdivision invest in obligations described in Items (i) and (ii) of this Subparagraph which are collateralized mortgage obligations that have been stripped into interest only or principal only obligations, inverse floaters, or structured notes. For the purposes of this Item "structured notes" shall mean securities of U.S. government agencies, instrumentalities, or government-sponsored enterprises which have been restructured, modified, and/or reissued by private entities.

(c) Direct security repurchase agreements of any federal book entry only securities enumerated in Subparagraphs (a) and (b). "Direct security repurchase agreement" means an agreement under which the political subdivision buys, holds for a specified time, and then sells back those securities and obligations enumerated in Subparagraphs (a) and (b).

(d)(i) Time certificates of deposit of any bank domiciled or having a branch office in the state of Louisiana, savings accounts or shares of savings and loan associations and savings banks, as defined by R.S. 6:703(16) or (17), or share accounts and share certificate accounts of federally or state-chartered credit unions issuing time certificates of deposit. For those funds made available for investment in time certificates of deposit, the rate of interest paid by the banks shall be established by contract between the bank and the political subdivision; however, the interest rate at the time of investment shall be a rate not less than fifty basis points below the prevailing market interest rate on direct obligations of the United States Treasury with a similar length of maturity.

(e) Mutual or trust fund institutions which are registered with the Securities and Exchange Commission under the Securities Act of 1933 and the Investment Act of 1940, and which have underlying investments consisting solely of and limited to securities of the United States government or its agencies.

(f) Funds invested in accordance with the provisions of R.S. 33:2955(A)(1)(d) shall not exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any one banking institution, or in any one savings and loan association, or National Credit Union Administration, unless the uninsured portion is collateralized by the pledge of securities in the manner provided in R.S. 39:1221.

(h) Investment grade (A-1/P-1) commercial paper of domestic United States corporations.

(j) Bonds, debentures, notes, or other evidence of indebtedness issued by the state of Louisiana or any of its political subdivisions provided that all of the following conditions are met:

(i) No political subdivision may purchase its own indebtedness.

(ii) The indebtedness shall have a long-term rating of Baa3 or higher by Moody's Investors Service, a long-term rating of BBB- or higher by Standard & Poor's or a long-term rating of BBB- or higher by Fitch, Inc. or a short-term rating of M1G1 or VM1G1 by Moody's Investors Service, a short-term rating of A-1 or A-1+ by Standard & Poor's, or a short-term rating of F1 or F1+ by Fitch, Inc.

(iii) The indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than five years, except that such five-year limitation shall not apply to either of the following:

(aa) Funds held by a trustee, escrow agent, paying agent, or other third party custodian in connection with a bond issue.

(bb) Investment of funds held by either a hospital service district, a governmental 501(c)(3), or a public trust authority.

(k) Bonds, debentures, notes, or other indebtedness issued by a state of the United States of America other than Louisiana or any such state's political subdivisions provided that all of the following conditions are met:

(i) The indebtedness shall have a long-term rating of A3 or higher by Moody's Investors Service, a long-term rating of A- or higher by Standard & Poor's or a long-term rating of A- or higher by Fitch, Inc., or a short-term rating of M1G1 or VM1G1 by Moody's Investors Service, a short-term rating of A-1 or A-1+ by Standard & Poor's, or a short-term rating of F1 or F1+ by Fitch, Inc.

(ii) The indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than five years, except that such five-year limitation shall not apply to funds held by a trustee, escrow agent, paying agent, or other third-party custodian in connection with a bond issue nor to investment of funds held by either a hospital service district, a governmental 501(c)(3) organization, or a public trust authority.

(iii) Prior to purchase of any such indebtedness and at all times during which such indebtedness is owned, the purchasing Louisiana political subdivision retains the services of an investment advisor registered with the United States Securities and Exchange Commission.

(l) Bonds, debentures, notes, or other indebtedness issued by domestic United States corporations provided that all of the following conditions are met:

(i) The indebtedness shall have a long-term rating of Aa3 or higher by Moody's Investors Service, a long-term rating of AA- or higher by Standard & Poor's, or a long-term rating of AA- or higher by Fitch Ratings, Inc.

(ii) The indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than five years.

(iii) Prior to purchase of any such indebtedness and at all times during which such indebtedness is owned, the purchasing Louisiana political subdivision retains the services of an investment advisor registered with the United States Securities and Exchange Commission.

Our office has previously recognized that political subdivisions must invest according to the provisions of La. R.S. 33:2955. La. Atty. Gen. Op. Nos. 91-666 and 13-0199. Further, our office has recognized that, pursuant to the plain language of La. R.S. 33:2955(A)(1)(d)(i), political subdivisions may invest monies in "time certificates of

deposit in any bank domiciled or having a branch office in the State of Louisiana.” See La. Atty. Gen. Op. Nos. 04-0252 and 09-0073.

In La. Atty. Gen. Op. No. 13-0199, this office answered a question very similar to the question you presented. In that opinion, the governing authority of a school board asked whether it was permitted to invest in a CD through a broker, rather than through a direct investment in a CD by the school board. In the opinion, this office recognized that La. R.S. 33:2955(A)(1)(d)(i) contemplated the direct purchase of a CD from a financial institution; however, our office concluded that nothing in La. R.S. 33:2955 authorized a political subdivision to purchase a CD indirectly through a broker or brokerage firm. We concluded that the school board was not authorized to purchase brokered CDs from a broker or brokerage firm.

It appears that the Clerk of Court is seeking to enter into a transaction very similar to the one contemplated in La. Atty. Gen. Op. No. 13-0199, as the Clerk of Court is seeking to indirectly purchase CDs through an investment firm/broker. It does not appear as though La. R.S. 33:2955 authorizes the Clerk of Court to purchase CDs indirectly through investment firms, as La. R.S. 33:2955(A)(1)(d)(i) contemplates only the direct purchase of a CD by the Clerk of Court. However, nothing appears to prevent the Clerk of Court from engaging an investment firm as an investment advisor to advise the Clerk of Court on the best investments to make in accordance with La. R.S. 33:2955. Such a contract would be one for professional services, and therefore would not require the Clerk of Court to follow public bid law or the bidding procedures found in La. R.S. 39:1214 related to fiscal agents.

Accordingly, it is the opinion of this office that the Clerk of Court may not invest funds for the purchase of CDs through a financial investment firm, as the indirect purchase of CDs through an investment firm is not contemplated by La. R.S. 33:2955.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. “BUDDY” CALDWELL
ATTORNEY GENERAL

BY:

John C. Morris IV
Assistant Attorney General

JDC/JCMIV