

August 29, 2013
OPINION 13-0094

10 CLERKS OF COURT- Compensation & Fees, Powers &
Duties, General
90-A-2 PUBLIC FUNDS - Loan, Pledge or Grant

La.Const. art. VII, § 14

La. R.S. 13:783

Mr. Doug Welborn
Clerk of Court
Nineteenth Judicial District Court
Post Office Box 1991
Baton Rouge, Louisiana 70801

The East Baton Rouge Parish Clerk of Court's Office may pay one hundred percent of the insurance premium costs for certain, already retired, clerks and employees.

Dear Mr. Welborn:

Our office received your request for an opinion on whether it is legally permissible for the East Baton Rouge Parish Clerk of Court's Office to pay one hundred percent of the insurance premium costs for certain retired clerks and employees who have retired from the East Baton Rouge Parish Clerk of Court's Office.

Louisiana Revised Statute 13:783 provides for the expenses of the clerk's office and states in part F, section (3):

The clerk or any clerk's employee that retires under the clerks of court retirement program may elect to continue insurance coverage obtained under this subsection and the cost may be paid in the same manner as if he were still employed provided that the clerk or clerk's employee was a member of the Louisiana Clerks' of Court Retirement and Relief Fund for at least twelve years prior to retirement.

Act Number 344 of the 2013 Louisiana Legislative Session ("Act 344") added section (8) to 13:783 (F) and states:

The clerk of court of East Baton Rouge Parish shall pay from the clerk's salary fund one hundred percent of the premium costs of the group life and accidental death and dismemberment, group health, accident, dental, hospital, surgical, or other medical expense insurance for any clerk or employee that retires from the East Baton Rouge Parish clerk of court's office who is entitled to receive monthly benefits from the Louisiana Clerks' of Court Retirement and Relief Fund, who has at least twelve years of full-time service with the clerk of court's office in East Baton

Rouge Parish, and who is at least fifty-five years of age. The provisions of this Paragraph shall not apply to any other insurance, such as supplemental insurance, that any clerk or employee may elect to purchase.

In light of this legislation, you would like to know whether it is legally permissible for your office to pay one hundred percent of the insurance premium costs for clerks and employees of the East Baton Rouge Parish Clerk of Court's Office who retired prior to the effective date of Act 344, but otherwise meet the qualifications set forth in La.R.S. 13:783 (F). You indicate in your opinion request that this benefit would extend to approximately forty individuals and that you have enough money in your budget to offer this benefit to currently retired employees.

Louisiana Constitution Article VII, § 14 (A) contains a general prohibition on the use of public property and states:

Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Except as otherwise provided in this Section, neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

Louisiana Constitution Article VII, § 14 (B) sets forth exceptions to the general prohibition in La.Const. art VII, § 14 (A) and authorizes "contributions of public funds to pension and insurance programs for the benefit of public employees." Our office has previously found that this authorization permits public funds to be used to pay insurance premiums of retired employees.¹ The term "employee" in La.Const. art. VII, § 14 (B) includes a former employee, now retired, for purposes of using public funds to pay insurance premiums.² However, past insurance premium payments may not be reimbursed, and an insurance contract must be in existence for the payments to be authorized.³ Our office has also found that the exception for insurance programs in La.Const. art. VII, § 14 (B) is not limited to hospitalization insurance.⁴

¹ La. Atty. Gen. Op. Nos. 10-0164, 07-0086, 02-0094, 95-152, 90-430, and 90-131.

² *Id.*

³ La. Atty. Gen. Op. Nos. 10-0164, 07-0086, 02-0094, 95-152, and 91-219.

⁴ La. Atty. Gen. Op. No. 90-131.

In conclusion, it is legally permissible for the East Baton Rouge Parish Clerk of Court's Office to pay one hundred percent of the insurance premium costs for certain employees who retired prior to the effective date of Act 344. We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: _____
Emily Andrews
Assistant Attorney General

JDC: EGA

SYLLABUS

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DATE ASSIGNED:

DATE RELEASED: August 29, 2013

Emily Andrews
Assistant Attorney General