



GREG CROMER
MAYOR

The City of Slidell

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THOMAS S. SCHNEIDAU
CITY ATTORNEY

September 30, 2020

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

RE: Request for an Advisory Opinion

Dear Louisiana Ethics Administration Program:

I serve as the City Attorney for the City of Slidell, Louisiana. The City is considering entering into a contractual agreement with a private entity with respect to the management, operations, and general maintenance of the City's water and wastewater systems and facilities. The goals of such a "privatization" arrangement include (i) ensuring the continued appropriate and competent staffing of such facilities and systems; (ii) realizing improvements in efficiencies and technology for such systems and facilities; and (iii) recognizing a cost savings over historical expenditures.

The contemplated contractual arrangement would involve a ten (10) year initial term with opportunities for renewal. The private entity would be responsible for providing all necessary personnel to fulfill the contract, generally, though not necessarily exclusively, through direct employment of such persons. To this end, the private entity would agree to hire current employees of the City's office of public utilities and office of wastewater treatment who wished to work for the new entity under the contract. The private entity would supplement its staffing, as necessary, with additional personnel in order to fulfill its contractual obligations.

For its part, the City would retain only a limited number of employees in the subject service areas to provide managerial oversight of its contractual relationship with the private entity (and not to conduct day to day operations of the City's water and wastewater systems and facilities, such systems and facilities to remain property of the City, but to otherwise be managed, operated, and maintained by the private entity under the contract). Notwithstanding the foregoing, for a period of no more than three (3) years from the commencement of the contract, the City would also hope to retain a limited number of employees within its offices of public utilities and wastewater treatment who the City would contractually "lease" to the private entity to perform services under the contract on behalf of the private entity during that period. After the lease period ends, those certain employees may become employed directly by the private entity, but they would not otherwise work in the areas of water or wastewater arena as employees of the City.

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The City is aware of the prohibitions of La. R.S. 42:1121.B and La. 42:1114.B(4) that may be relevant to this proposed arrangement. However, the City also is aware that the Board has found that, based on the unique circumstances of the privatization of governmental services, the Ethics Code does not prohibit former public employees from contracting back with their former agency to provide the same or similar services when their former agency no longer provides such services as long as the employees did not participate in the decision to privatize. *See e.g.*, Ops. 2018-1021; 2014-945; 2010-080; 2004-759. The City represents that none of its employees who may agree to go to work for the private entity under the proposed arrangement (whether through direct employment by that private entity or through a time limited "lease" period from the City) participated in the City's decision to privatize (other than by way of the City keeping such persons advised of the potential change and fielding and answering questions from them in conjunction therewith).

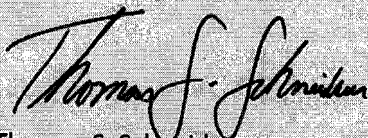
The City respectfully requests an opinion as to whether or not its proposed privatization arrangement for its water and wastewater systems and facilities is acceptable, in whole or in part, under the Louisiana Code of Governmental Ethics.

Additionally, the City respectfully requests an opinion as to whether the private entity with whom it would contract (and by extension, the private entity's personnel performing under the contract with the City) would be considered a "public employee" under the Code and be subject to the requirements of the Code.

Should you have any questions with respect to the above requests, please do not hesitate to contact me.

Thanking you for your consideration of the above, I remain

Sincerely,



Thomas S. Schreidau
City Attorney, City of Slidell, Louisiana

Tracy Barker (Ethics)

From: Thomas Schneidau <tschneidau@cityofslidell.org>
Sent: Wednesday, September 30, 2020 11:30 AM
To: Tracy Barker (Ethics)
Cc: Amye Martin
Subject: Request for Ethics Opinion
Attachments: COS 9.30.2020 Request (1121).pdf

Importance: High

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Tracy,

The attached is also being mailed to the Ethics Administration Program at its Baton Rouge PO Box, but I wanted to email you as well to put on your radar.

Can you advise how quickly the Board may be able to consider this? We are trying to determine as soon as possible if the contemplated arrangement can move forward.

If you have any questions, please do not hesitate to ask.

Thank you!

Best regards,
Thomas

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