

May 2, 2000
OPINION NUMBER 00-123

Mr. Darryl W. Bubrig, Sr.
District Attorney
29th Judicial District
Plaquemines Parish
104 Ave. G
Belle Chasse, LA 70037

Dear Mr. Bubrig:

We received your request for an opinion. Specifically, you inquire if the Plaquemines Parish Comprehensive Care Center, a public health care facility, may pay one of its employees two months severance pay upon her termination.

Article 7, Section 14(A) of the Louisiana Constitution prohibits the state or any political subdivision of the state from loaning, pledging, or donating funds, property, or things of value of the state or any political subdivision thereof to or for any person. The Louisiana Supreme Court ruled that Article 7, Section 14(A) is violated whenever the state or one of its political subdivisions seeks to give up something of value when it is under no obligation to do so. ***City of Port Allen v. La. Municipal Risk Agency***, 439 So.2d 399 (La. 1983). We previously opined that “obligation”, as referred to by the court, means that the particular expenditure of public funds is in the discharge of a legal duty. Atty. Gen. Ops. 99-307 and 98-432. The issue then becomes whether or not the Plaquemines Parish Comprehensive Care Center is obligated to pay its employee two months severance pay upon her termination.

Our office has consistently opined that the payment of a bonus or any other gratuitous, unearned payment to public employees is prohibited by Article 7, Sec. 14(A). Atty. Gen. Ops. 99-307 and 95-323. More specifically, our office has consistently opined that the payment of severance pay upon termination is a violation of Article 7, Sec. 14(A). Atty. Gen. Ops. 99-258 and 99-52. Certainly, a public employee is entitled to be paid for all labor or services provided in his or her course of employment as well as all related benefits, including annual leave, sick leave, and retirement. Please note, however, that all benefits must be earned prior to termination. That is, a public employee may only be paid for such leave or other benefits which he or she has accrued or earned prior to termination.

Based upon the facts presented in the opinion request, the two months severance pay is

not an earned benefit and there is no legal obligation to pay it. Therefore, it is our opinion that the Plaquemines Parish Comprehensive Care Center may not pay its employee two months severance pay upon termination; such a payment would be tantamount to a donation of public funds which is expressly prohibited by the Constitution.

If you have any comments or questions, please contact our office. With kindest regards,

Yours very truly,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:

TINA VICARI GRANT
Assistant Attorney General

RPI:TVG:jv

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90-A-2 PUBLIC FUNDS-LOAN, PLEDGE OR GRANTS

Art. 7, Sec. 14(A)

The Plaquemines Parish Comprehensive Care Center may not pay its employee two months severance pay upon termination; such a payment would be tantamount to a donation of public funds which is expressly prohibited by the Constitution.

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29th Judicial District
Plaquemines Parish
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TINA VICARI GRANT, ASSISTANT ATTORNEY
GENERAL