

May 31, 2000

OPINION NUMBER 00-189

Ms. Carolyn A. McNabb
Parish Attorney
McNabb & Wallis, APLC
Bank One Tower
8026 Main Street
Suite 520
Houma, LA 70360

84 Parishes

R.S. 16:2
Article V, §6 of Louisiana Constitution
Article VI, §5 of Louisiana Constitution

Parish can amend provisions of home rule charter to authorize the Council to have a full time attorney to handle Council matters.

Dear Ms. McNabb:

You requested the opinion of this office concerning the Terrebonne Parish Council's authority to retain a "council attorney". Your specific question is whether the Council can amend the Charter and the Code of Ordinances to provide for the Council's hiring of an attorney outside of the Legal Department, on a full-time basis, to handle all matters involving the Council. Would such amendments constitute a violation of the provisions of R.S. 16:2(D) which refer to a "regular attorney" for the "governing authority"?

La. R.S. 16:2(A) designates district attorneys as the regular attorneys and counsel for the police juries, parish school boards, and city school boards within their respective districts; however, La. R.S. 16:2(D) provides with respect to a home rule charter parish, which would include Terrebonne Parish, as follows:

"Where a parish has adopted a charter for local self-government or other home rule charter and such charter provides for the employment of a parish attorney or a special attorney or counsel, the district attorney shall not be the regular attorney or counsel for such governing authority. Notwithstanding the provisions of R.S. 42:261(C) and R.S. 42:263, in a parish which has adopted a charter for local self-government or other home rule charter, if the charter so provides, the parish governing authority may retain or employ any attorney or counsel to represent it generally or retain or employ any special attorney or counsel to represent it in any special matter without the approval of the attorney general." (Emphasis added)

Any local government may draft, adopt, or amend a home rule charter. La. Const. Art. VI, Sec. 5; La. R.S. 33:1395. Local governments operating under a home rule charter have exclusive control over the operation, management, and internal arrangement of the component parts of its local government. Furthermore, La. Const. Art. VI, Sec. 6 prevents the legislature from affecting a home rule charter government's discretion to deploy its power and function unless that discretion is an abridgement of a reasonable exercise of the police power. **Lafourche Parish Council v. Austin**, 94-0985 (La.12/9/94); 648 So.2d 343.

Terrebonne Parish is governed by a home rule charter, therefore, Terrebonne Parish is authorized to exercise any power and perform any function necessary, requisite, or proper for the management of its local affairs. **King v. Caddo Parish Commission**, 97-1873 (La. 10/20/98); 719 So.2d 410.

Accordingly, it is the opinion of this office that the Terrebonne Parish Home Rule Charter could be amended to provide for an attorney for the Parish Council to work on a full-time basis.

We call your attention to several opinions of this office finding that a city council could retain counsel to represent it, separate and distinct from the city counsel. See Op.Atty.Gen. No. 83-738, a copy of which is attached, wherein the New Orleans City Council was permitted to hire legal counsel on a continuing basis in those situations where the City Attorney's Office would have an actual or perceived conflict of interest or where the City Attorney's Office did not possess the necessary expertise to handle certain matters.

We refer you also to Op.Atty.Gen. No. 78-1273, where this office found it was permissible for the City Council to hire an attorney separate from the City Attorney to represent the City Council in an intra-governmental controversy. We also direct your attention to **Roy v. Humphries**, 445 So.2d 130 (La. App. 3d Cir. 1984) wherein the Alexandria City Attorney filed a quo warranto action against special counsel retained by the Alexandria City Council.

The court found that the City Council was authorized to retain special counsel both statutorily and under its home rule charter vesting all powers of the City in the Council and mandating that the Council shall provide for the exercise thereof and for the performance of all of the duties and obligations imposed upon the City by law.

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Trusting that this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY:

MARTHA S. HESS
Assistant Attorney General

RPI/MSH
enclosures

Opinion Number 00-189
Syllabus

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Date Received:

Date Released: May 31, 2000

Martha S. Hess
Assistant Attorney General