

September 1, 2000
OPINION NUMBER 00-277

90 POLICE JURIES - POWERS AND FUNCTIONS

Representative Vic Stelly
House of Representatives
Post Office Box 12725
Lake Charles, Louisiana 70612

Gernine Mailhes
Assistant District Attorney
Fourteenth Judicial District
Parish of Calcasieu
Post Office Box 3206
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Calcasieu Parish Police Jury may enter into a cooperative endeavor with individual property owners for the installation of culverts to improve the parish's drainage system. The police jury should contact the Louisiana Department of Revenue and Taxation for advice and guidance regarding the collection of sales tax.

Dear Representative Stelly and Ms. Mailhes :

We received your requests for our opinion regarding the purchase of culverts by the Calcasieu Parish Police Jury for resale to private citizens. As we appreciate the facts, the culverts may be installed on public and private property.

The powers of police juries are defined by the legislature in La. R.S. 33:1236. Our jurisprudence establishes that police juries have no other powers than those specifically delegated to them. La. R. S. 33:621 empowers the police jury to regulate and control its streets and to provide for the general welfare of its citizens. The Calcasieu Parish Police Jury is authorized to use public funds to install culverts on public property and may install culverts on private property for a public purpose, i.e., to improve the drainage system of the parish. Atty. Gen. Op. 97-428.

The police jury is charging the private property owner for the culvert and labor involved in installing the culvert. The owner may choose to purchase the materials and do the work himself subject to the police jury's inspection. Thus, there does not appear to be any violation of Article 7, Section 14 of the Louisiana Constitution, which prohibits the donation, pledge, or loan of public property or funds, since the culverts are not being donated to anyone. Rather, the culverts are being furnished and installed by the police jury and paid for by the property owner.

The request of the Calcasieu Parish Police Jury mentions Article 7, Section 14 (C) of the Louisiana Constitution. This constitutional provision specifically allows the state or a political subdivision thereof to enter into a cooperative endeavor with a private individual for a public purpose. In order for the Calcasieu Parish Police Jury to avail itself of this provision, it must meet a three-prong test. First, the police jury must have a legal obligation to install the culverts. Second, the expenditure must be for a public purpose. Third, the expenditure must create a public benefit that is proportionate to its cost.

The police jury is authorized by statute to regulate and control its streets and to provide for the general welfare of its citizens. The expenditure clearly serves a public purpose. The benefit, a better and more uniform drainage system, is proportionate to the cost for such, assuming of course that the police jury is charging the private property owner for its costs alone. Thus, this arrangement appears to be a valid cooperative endeavor.

You also question if the police jury must pay and/or collect sales tax. La. R. S. 47:301 defines "person", with respect to sales tax, as an individual, corporation, or political subdivision of the state. However, political subdivisions of the state are specifically excluded from payment of state and local sales tax when purchasing materials and supplies. Therefore, the Calcasieu Parish Police Jury does not have to pay any sales tax on the purchase of the culverts. When selling the culverts to property owners, the police jury may not have to collect sales tax if the agreement is considered to be a lump sum contract rather than a sale. The property owner is not buying tangible, personal property. Rather, he is buying the completed project: the installation of a culvert by the police jury. However, we recommend that the police jury contact the Louisiana Department of Revenue and Taxation for further advice and guidance on this issue.

In sum, it is our opinion that the Calcasieu Parish Police Jury may enter into a cooperative endeavor with individual property owners to install culverts so as to improve the overall drainage system of the parish. We recommend that the police jury contact the Louisiana Department of Revenue and Taxation for advice and guidance regarding the sales tax issue.

We trust this adequately responds to your request. If you need additional information or have any questions whatsoever, please do not hesitate to contact our office.

With kindest regards,

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: _____
TINA VICARI GRANT
ASSISTANT ATTORNEY GENERAL

RPI/TVG/crt

**OPINION NUMBER 00-277
SYLLABUS**

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La. R.S. 33:1236
La. R.S. 49:125
La. R.S. 33:4711

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Representative Vic Stelly
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