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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

October 14, 2021

### OPINION 21-0100

Ms. Kristine Scherer  
Council Clerk  
Mandeville City Council  
3101 East Causeway Approach  
Mandeville, LA 70448

71-1-B MUNICIPALITIES - Home Rule Charter

La. R.S. 39:1301 *et seq.*

The City of Mandeville's fiscal year 2021 budget, specifically Exhibits "B" and "D", do not make clear whether the Council appropriated each employee's salary by classification or whether the Council appropriated \$1,318,049 for general government salaries. In light of the ambiguity, the Council should clarify the actual appropriation of funds and the specific budgetary authority of the Mayor in future budgets.

Dear Ms. Scherer:

We received the request for an opinion that you submitted on behalf of the Mandeville City Council ("Council"), regarding the pay raise of a certain City of Mandeville ("City") employee. Specifically, you ask whether the Mayor of Mandeville ("Mayor") may give an employee a pay raise greater than the amount that was approved in Exhibit "B" of the City's adopted operating budget. Per your request, you stated that the Mayor granted a pay raise of over \$10,000 to a particular City employee with the title of "Executive Secretary." This raise was given without Council approval. You ask whether this pay raise comports with both the Louisiana Local Government Budget Act<sup>1</sup> and the City of Mandeville's Home Rule Charter.

As background, the City operates under a home rule charter plan of government. The Louisiana Local Government Budget Act ("LGBA") provides that its provisions "shall apply to political subdivisions operating under a home rule charter . . . only if and when it does not conflict with the terms of the home rule charter or plan of government."<sup>2</sup> In terms of the City's operating budget, its home rule charter provides that the City's operating budget "shall be prepared and implemented in accordance with general state law and guidelines as may be established by the council."<sup>3</sup> It further provides that "[n]o payment shall be made or obligation incurred against any allotment or appropriation except in accordance with the approved operating and capital budgets and appropriations duly made."<sup>4</sup>

The Council adopted the City's operating budget via budget ordinance on September 10, 2020.<sup>5</sup> That budget ordinance included the adoption of Exhibits "B," "C," and "D." In addition, the budget ordinance states that "[t]here shall be no transfer of funds in an

<sup>1</sup> La. R.S. 39:1301 *et seq.*

<sup>2</sup> La. R.S. 39:1303(C).

<sup>3</sup> City of Mandeville Home Rule Charter, Article V, Section 5-02.

<sup>4</sup> City of Mandeville Home Rule Charter, Article V, Section 5-04.

<sup>5</sup> See City of Mandeville Ord. No. 20-13.

amount of \$10,000 or more made between line items as shown on Exhibit D, the budget analyses of this budget. No transfers may be made that would increase a line item appropriation by \$10,000 or more than the amount originally appropriated”<sup>6</sup>

The exhibits that are the subject of this opinion request are Exhibit “B” (entitled “Job Class Detail”) and Exhibit “D” (entitled “Next Year/Current Year Budget Analysis”). We must note that these two exhibits appear in different sections of the City’s budget.<sup>7</sup> Exhibit “B” appears under the section for “City-Wide Governmental Operations.”<sup>8</sup> On the other hand, Exhibit “D” appears under the section entitled “Governmental Operations Budget.”<sup>9</sup> In looking at both exhibits in detail, the table in Exhibit “B” appears to list the job classification and corresponding salary for City employees. The employee that is the subject of this opinion request is the “Executive Secretary,” which is listed at a salary of \$71,782.65. The table in Exhibit “D” contains a line item for “Salaries” under the heading of “General Government.”<sup>10</sup> According to this table, the 2021 “Salaries” line item is \$1,318,049.<sup>11</sup>

Here, the Mayor gave the Executive Secretary position a raise in excess of \$10,000 without obtaining a budget amendment from the Council. Since the adopted budget and any duly authorized amendments constitute the authority of the chief executive to incur liabilities and authorize expenditures<sup>12</sup>, the inquiry is whether Exhibit “B” or Exhibit “D” is controlling. Specifically, the question is whether the appropriation is the \$71,782.65 in Exhibit “B” or the \$1,318,049 in Exhibit “D.”

If Exhibit “B” is controlling, there is little question that the Mayor has exceeded his budgetary authority. The \$71,782.65 is the appropriation, and by giving a raise in excess of this budgeted amount without first obtaining a budget amendment, the Mayor has violated the City’s home rule charter and the LGBA by making a payment contrary to the City’s adopted budget.

If Exhibit “D” is controlling, however, the Mayor may not have exceeded his authority. Under Exhibit “D,” the Mayor is given budgetary authority over salaries in the amount of \$1,318,049 and no specific employee salaries are in the exhibit. If Exhibit “D” is the appropriation, then the Mayor had authority to authorize expenditures within the \$1,318,049 salary appropriation. For example, were there a vacancy in another position, perhaps the Mayor could use that portion of the overall \$1,318,049 “Salaries” appropriation to provide the Executive Secretary a raise.

The answer to which exhibit, “B” or “D” is considered the appropriation is ultimately a question as to what the Council believed it was doing when it adopted the budget

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<sup>6</sup> *Id.*

<sup>7</sup> Table of Contents at <https://www.cityofmandeville.com/wp-content/uploads/2021/02/FY-2021-Budget.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> City of Mandeville Ord. No. 20-13, Exhibit “D.”

<sup>11</sup> *Id.*

<sup>12</sup> La. R.S. 39:1311(C); City of Mandeville Home Rule Charter, Article V, Section 5-04.

ordinance. This type of inquiry (to determine the intent of a municipal governing authority) is not one that this office can answer. Black's Law Dictionary defines "appropriation" as "a legislative body's or business's act of setting aside a sum of money for a specific purpose. If the sum is earmarked for a precise or limited purpose, it is sometimes called a *specific appropriation*."<sup>13</sup> Whether the Council meant to "appropriate" each line item in Exhibit "B" for each job classification or whether it meant to "appropriate" one lump sum for salaries in Exhibit "D" (subject to the transfer between line items of up to \$10,000), is a question that the Council should consider when adopting its fiscal year 2022 budget ordinance. We note that the Council ultimately has the authority to make any changes or provide more or less restrictions on the Mayor's authority over the budgeted funds prior to adopting the final budget ordinance.<sup>14</sup> Nonetheless, as to the fiscal year 2021 budget, we are unable to opine as to which Exhibit the Council believed was the "appropriation."

Finally, in light of the Council's future budgetary considerations, this office has previously addressed somewhat similar budgetary concerns between a governing authority and the chief executive. In La. Atty. Gen. Op. No. 14-0079, we opined that a governing authority "may place a specific employee salary, identified by position, in a single line item with a limit on the salary budgeted therein," and that such would constitute an appropriation under that particular governing authority's charter. As highlighted in our analysis above, the Council may wish to clarify the actual appropriation of funds as it pertains to Exhibit "B" and Exhibit "D" of its budget ordinance. For instance, if it is the will of the Council, it may wish to clarify that those salaries/classifications in Exhibit "B" constitute the solely appropriated funds for purposes of employee salaries and that any change to any salary/classification requires a budget amendment. As we stated in that opinion, "[n]othing in the LGBA prohibits the [governing authority] from specifying the format of the budget."<sup>15</sup> Accordingly, the Council may wish to review its budgetary format to ensure there is no ambiguity as to which sums of money contained in the budget exhibits actually constitute appropriations.

Considering the foregoing, it is the opinion of this office that the City of Mandeville's fiscal year 2021 budget, specifically Exhibits "B" and "D," do not make clear whether the Council appropriated each employee's salary by classification or whether the Council appropriated \$1,318,049 for general government salaries. In light of the ambiguity, it is the opinion of this office that the Council should clarify the actual appropriation of funds and the specific budgetary authority of the Mayor in future budgets.

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<sup>13</sup> *Appropriation*, BLACK'S LAW DICTIONARY (11 ed. 2019).

<sup>14</sup> See La. R.S. 39:1305(F)(1).

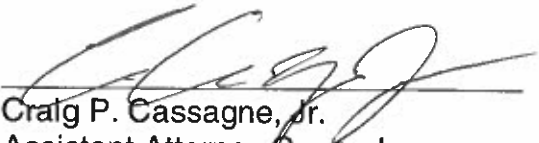
<sup>15</sup> *Id.*

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With Best Regards,

JEFF LANDRY  
ATTORNEY GENERAL

BY:

  
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JL/CPC