

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

December 9, 2015

Michelle D. Craig, Chairwoman
Civil Service Commission
1340 Poydras Street, Suite 900
New Orleans, LA 70112

Re: Rule IV Section 12.1 Incentive Pay

Dear Ms. Craig and Commissioners of the Civil Service Commission:

The Office of Inspector General (OIG) conducted a performance audit of the Sewerage & Water Board (S&WB) expense reimbursements and advances to employees and members of the S&WB Board of Directors for the period January 1, 2013 – June 30, 2014.

In the course of the audit, we obtained evidence that the S&WB awarded \$12,000 in annual incentive pay to its employees based on Civil Service Rule IV, Sec. 12.1, which states:

...special monetary compensation in the form of incentive pay shall be awarded to [S&WB] employees on a quarterly basis for meeting specified goals and objectives, which have been quantified and applied in a fair, objective and uniform fashion to all employees involved.¹

S&WB managers believed the \$12,000 paid to employees was in compliance with Civil Service requirements, but the auditors noted the S&WB did not quantify employees' objectives and goals for these incentive payments. Therefore, the S&WB appeared to violate the Civil Service requirements.

Regardless of the S&WB's potential Civil Service violation, Civil Service Rule IV, Sec. 12.1 may violate Louisiana Constitution Article VII, §14 which prohibits gratuitous donations. The constitution states, "funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or

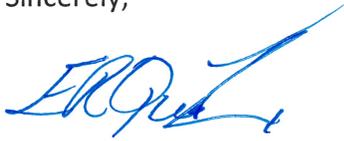
¹ Rules of the Civil Service Commission: Rule IV, Section 12: Incentive Pay (amended September 21, 2000, adopted by Council October 5, 2000). See Attachment 1.

corporation, public or private.” The Louisiana Attorney General also, “consistently opined that the payment of a bonus or any other gratuitous, unearned payment to public employees is prohibited by ... the Louisiana Constitution... ”²

Because the Civil Service rule may violate the Louisiana Constitution, I recommend that you seek legal advice about Civil Service Rule IV, Sec. 12.1.

If you have any questions please contact Erica Smith, Chief of Audit and Review, at (504) 681-3200 or esmith@nolaog.org.

Sincerely,



E.R. Quatrevaux
Inspector General

cc: Joseph S. Clark, Commissioner
Ronald P. McClain, Commissioner
Tania Tetlow, Commissioner
Cordelia D. Tullous, Commissioner
Andrew D. Kopplin, First Deputy Mayor & Chief Administrative Officer
Cedric S. Grant, Sewerage and Water Board Executive Director
Robert K. Miller, Sewerage and Water Board Deputy Director
Lisa M. Hudson, Personnel Director

² La. AG Opinion Number 03-0254. See Attachment 2.

(RULE IV)

Section 10. MAXIMUM TOTAL COMPENSATION

- 10.1 At no time shall an employee's total compensation exceed that which is authorized under the provisions of Rule IV of the City Civil Service Commission Rules. (amended April 27, 1977, effective February 26, 1979.)

Section 11. EMERGENCY RATE OF PAY

- 11.1 If it becomes necessary for an employee (exempt and non-exempt) to work on any day when the Mayor of New Orleans has declared an official emergency and has requested that only essential employees report to work, the appointing authority should adjust the employee's work schedule to allow another day(s) off during that work period as a substitution. If such a substitution is not possible, then, for working at such time, the employees shall be paid the following:
- (a) All non-exempt employees shall be paid at a rate of one and one-half (1½) times their normal rate for all hours worked.
 - (b) All exempt employees shall be paid at a rate of one and one-half (1½) times their normal rate of pay. Normal rate of pay for exempt employees is defined as the weekly salary.
 - (c) In situations where the emergency lasts for less than a normal seven day work week, then exempt employees shall be paid at a rate of one and one-half (1½) times their normal hourly rate for all hours worked subject to the maximum allowed for a regular scheduled work day in keeping with Rule I, Number 40. Under not circumstances shall an exempt employee receive pay from this section that exceeds more than one and one-half times his normal weekly salary for an emergency event.

In all cases, this pay is to remain in effect until the Mayor announces the state of emergency has ended or an announcement is made that City offices are open for business and employees are to report to work, whichever comes first.

(Section 11.1 adopted March 28, 1996, ratified by the Council April 18, 1996, amended May 15, 2006, adopted by the Council May 25, 2006, effective June 1, 2006, amended April 28, 2014, adopted by the Council June 2014, effective April 28, 2014)

Section 12. INCENTIVE PAY

- 12.1 As an integral part of a pilot program in the Sewerage and Water Board to increase productivity and enhance work performance, special monetary compensation in the form of incentive pay shall be awarded to employees on a quarterly basis for meeting specified goals and objectives, which have been quantified and applied in a fair, objective and uniform fashion to all employees involved.(amended September 21, 2000, adopted by Council October 5, 2000)

July 2, 2003
Opinion Number 03-0254

Honorable Elcie J. Guillory
State Representative, District No. 34
2320 Dewey Street
Lake Charles, LA 70601

90-A-2 Public Funds – Loan, Pledge or Grants
Article 7, Section 14 (A)

City/employer and union are bound by contract
that provides for severance pay.

Dear Representative Guillory:

An employment contract between a city/employer and the union provides that the employer pay an employee who leaves his job for reasons other than disciplinary severance pay at termination. You question if the parties are legally bound to do so.

In short, we believe that the contract creates a legal obligation and therefore the parties are bound by it. An expenditure of public funds must be addressed in light of Article 7, Section 14 (A) of the Louisiana Constitution. This article prohibits the state or any of its political subdivisions from loaning, pledging or donating its funds or things of value to or for any person and 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.¹ Our office has interpreted legal obligation to mean that the expenditure of funds be sanctioned, authorized by law, or in the discharge of a legal duty.²

Although we have consistently opined that the payment of a bonus or any other gratuitous, unearned payment to public employees is prohibited by Article 7, Section 14 (A) of the Louisiana Constitution, that is not to say that a public employee is not entitled to be paid for all labor provided during his course of employment as well as all earned benefits, including annual leave, sick leave, retirement, etc.

It is our opinion that the severance pay outlined in the contract is not a bonus or gratuitous, unearned payment. Rather, it is an earned benefit contemplated at the time of employment. The provision for severance pay in the contract is a legal obligation of the city/employer and accordingly the payment of such is in the discharge of a legal duty. It is not a prohibited donation. We distinguish this opinion from our prior opinion regarding severance pay to a public employee upon her termination.³ In that opinion, there was no contract and severance pay was not an earned benefit. Here, we have a contract that creates the obligation to pay it.

¹ *City of Port Allen v. Louisiana Municipal Risk Agency*, 439 So.2d 399 (La. 1983)

² Attorney General Opinion Nos. 02-0162 and 00-14

³ Attorney General Opinion No. 00-123

We trust that this opinion adequately responds to your request. If you have any questions or comments, please contact our office.

Yours very truly,

RICHARD P. IEYOUB
Attorney General

BY: _____
TINA VICARI GRANT
Assistant Attorney General

RPI/TVG/dam

Opinion Number 03-0254
Syllabus

90-A-2 Public Funds – Loan, Pledge or Grants
Article 7, Section 14 (A)

City/employer and union are bound by contract that provides for severance pay.

Honorable Elcie J. Guillory
State Representative, District No. 34
2320 Dewey Street
Lake Charles, LA 70601

Date Received:

Date Released: July 2, 2003

Tina Vicari Grant
Assistant Attorney General