



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

November 18, 2020

The Honorable Jeffrey Taylor
Livingston Parish Assessor
20400 Government Boulevard
Livingston, Louisiana 70754

Dear Assessor Taylor:

As you know, my Investigative Audit staff visited the Livingston Parish Assessor's Office (LPA) to examine certain records. This letter briefly summarizes the results of our work. We stress the importance of addressing these issues and encourage you to consider our recommendations as you work to resolve the issues identified below.

Email Records Were Deleted

During the course of our audit, we discussed the retention of LPA emails with you. You said you personally receive very few business emails and told us you generally delete emails after reading them. LPA's information technology contractor told us deleted emails are kept for 30 days before their deletion becomes permanent. We do not know the content of the deleted emails, but if they were public records, your actions may have violated state law,¹ as public records must be preserved and maintained for at least three years from the date on which the public record was made.

Your response to this letter report suggests that your office retains all emails meeting the definition of "public records" and states that you produced emails as requested by us. Although you provided us with emails we requested for specific days, you had no policy regarding email retention and no way of demonstrating that you retained all business emails received during the audit period. Your response further states that you retained all emails for 60 days preceding your response and determined that less than 10% of emails were related to your office's operations. While you are not required to retain emails that are not public records, it is imperative that you retain the roughly 10% that are.

¹ **Louisiana Revised Statute (La. R.S.) 44:36(A)** states, in part, "All persons and public bodies having custody or control of any public record...shall be preserved and maintained for a period of at least three years from the date on which the public record was made."

Assessor's Personal Use of a Public Vehicle Not Recorded or Reported

LPA owns nine vehicles, eight of which are assigned to specific employees for business use only. LPA allows its employees to commute to and from work in LPA vehicles and imputes income to those employees on their W-2 forms as required by Internal Revenue Service regulation.

The ninth vehicle is assigned to you. You told us you commute to and from work in this vehicle and use it for business and personal purposes. You also told us that you did not record your personal use of the vehicle and had no income imputed to you on your W-2 form for your personal use. Attorney General *Opinion No. 97-25* suggests that receiving compensation above your maximum salary may violate Article VII, Section 14(A) of the Louisiana Constitution.²

Your response states that, as an elected official, you are a public servant 24 hours a day, seven days a week, suggesting this allows you to use a public vehicle for all purposes – public and personal – at no cost to you. Although elected officials are elected officials throughout their terms in office, it is difficult imagining anyone, elected or not, working 24 hours a day, seven days a week. Thus, some portion of your day would be your personal time, and some of your activities would be personal in nature. Your response includes three Attorney General opinions you claim support your contention.

In the first, Attorney General *Opinion No. 07-0180*, the Attorney General considered a full-time municipal employee who was on call for emergencies 24 hours a day and responsible for a number of duties, including water and sewage operation. He was the only employee who performed such duties and used the municipal truck solely for commuting and performing such duties. The opinion expressly states that the municipal employee had a personal vehicle and never used the public vehicle for personal use. In your case, you told us that you used your public vehicle for both public and private purposes, distinguishing your situation from his.

The second, Attorney General *Opinion No. 10-0250*, addressed a village police chief who was the primary backup officer and “must be on ‘ready to go’ status at all times.” He, too, was on call for emergency purposes 24 hours a day and, in the Attorney General’s view, his use of the vehicle did not violate Article VII, Section 14(A) of the Louisiana Constitution. This is consistent with Internal Revenue *Bulletin: 2010-23*, which provides, in part: “A clearly marked public safety officer vehicle is a vehicle owned or leased by a governmental unit or any agency or instrumentality thereof, that is required to be used for commuting by a public safety officer as defined in section 402(1)(4)(C) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the public safety officer’s obligation to respond to an emergency is prohibited by such governmental unit.” In such cases, as long as there is no personal use, it does not violate the constitutional prohibition

² **Louisiana Constitution Article VII, Section 14(A)** states that, “Prohibited Uses. Except as otherwise provided by this constitution, the 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 corporation, public or private....”

against donations and does not require the imputation of income. However, since you are not a law enforcement officer on call for emergency services 24 hours a day, the facts of this opinion is also distinguishable from yours.

The third, Attorney General *Opinion No. 13-0117*, asked whether a non-POST certified deputy marshal can drive a marshal's office vehicle to and from work on a daily basis. Therein, the Attorney General opined: "Allowing these non-POST certified deputy marshals to use these vehicles would be tantamount to a prohibited public donation if the deputy marshals are given a benefit at a cost to the Marshal's Office without an equal benefit in value returned. In order for such a benefit to not be in violation of Article VII, § 14 of the Louisiana Constitution, it would require the Marshal's Office to show that the use of the public vehicle is for a public purpose and that the Office has a reasonable expectation of getting at least the equivalent value in exchange for this benefit. Without such a showing, allowing the non-POST certified deputy marshals to travel to and from work in the Marshal's Office vehicles would be a violation of the Louisiana Constitution." We agree. However, because you did not maintain records showing your personal use of the vehicle, we could not value that personal use or ensure the public received at least the equivalent value for your personal use.

Recommendations

We recommend LPA:

- (1) consult with its attorney regarding record retention and confirm that LPA's practices meet all legal requirements;
- (2) contact the Secretary of State to establish a formal record retention schedule to ensure the preservation of all public records;
- (3) document and report income to you for personal use of your LPA vehicle as required by the Internal Revenue Service; and
- (4) seek an Attorney General's opinion to determine if the income related to the Assessor's personal use of an LPA vehicle should be counted when determining your maximum salary.

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This correspondence represents our findings and recommendations, as well as management's response. This correspondence is intended primarily for the information and use of management of the LPA. I trust this information will assist you in the efficient and effective operations of the LPA. If you have any questions, please contact Kevin Kelley or Sandra Whitehead at (225) 339-3800.

Sincerely,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

LIVINGSTONPARISHASSESSOR

APPENDIX A

Management's Response



SHERI M. MORRIS

PLEASE REPLY TO:

8480 BLUEBONNET BLVD., SUITE F
BATON ROUGE, LA 70810
225.421.1800 office
225.229.0803 mobile
225.421.1792 fax

smorris@daiglefisse.com

October 20, 2020

VIA EMAIL ONLY: RHarris@LLA.La.gov

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9397

Re: Response to Report and Recommendations

Dear Mr. Purpera:

On behalf of the Livingston Parish Assessor's Office I would like to thank you for the opportunity to provide a formal response to your report and recommendations. It is my understanding that members of your staff have spent almost a year conducting an investigative audit in which approximately 10 years of assessment records, accounting records and procedures of the Livingston Parish Assessor's Office were reviewed.

The following additional information is provided to address your proposed findings and recommendations.

I. Retention of emails which are not "public records" as defined by La. R.S. 44:1

During your investigative audit, your staff requested emails received on specific dates. The emails related to the operation of the Livingston Parish Assessor's Office for each date were produced for review. As previously explained, the Livingston Parish Assessor's Office retains emails used "in the conduct, transaction, or performance of any business, transaction, work, duty, or function ... conducted, transacted, or performed by" the Livingston Parish Assessor's Office. Emails which are spam or junk mail do not fall within the definition of "public records" in La. R.S. 44:1(A)(2)(a) and are therefore, not subject to the three-year retention period in La. R.S. 44:36(A).

While spam and junk emails unrelated to the business of the Livingston Parish Assessor's Office are not required to be retained for three years, the Livingston Parish Assessor's Office increased the retention period for junk and spam emails deleted from in boxes, prior to receipt of your report.

Additionally, for the 60 day period preceding this correspondence, Assessor Taylor retained every email received at his assigned email address. A review of all emails received during the 60-day period demonstrates that less than 10% of the emails received by that email address relate to operation of the Livingston Parish Assessor's Office. The Livingston Parish Assessor's Office plans to consult with the

Louisiana Secretary of State regarding appropriate policies for deleting emails which are clearly junk and not "public records" as defined by La. R.S. 44:1.

II. Use of Public Vehicle

As you are aware assessors, as elected officials, are public servants 24 hours a day and seven days a week and their offices receive value for the services performed outside of the office hours. La. A.G. Opinion No. 07-0180 held the use of a public vehicle by a town employee to commute to work did not violate Article VII, Section 14 of the Louisiana Constitution. Further, La. A.G. Opinion No. 10-0250 regarding a chief of police of a village and La. A.G. Opinion No. 13-0117 regarding a deputy marshal confirm that personal use of a public vehicle by a public servant to drive home on a daily basis does not violate La. Const. Art. VII, Section 14 when the agency receives an equivalent value for any personal use.

The Livingston Parish Assessors' Office plans to obtain clarification of the laws applicable to the use of public vehicles to determine whether any adjustments to its reporting practices should be implemented.

If you need any additional information regarding this matter, please contact me.

Very truly yours,



Sheri M. Morris