Investments by Political Subdivisions and Municipalities

R.S. 33:2955

Overview:

The following summary provides general principles and guidelines concerning Investments by Political Subdivisions and Municipalities. This document is presented in a “frequently asked questions” (FAQ) format. While the document is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

To facilitate your use of this document, links within the document will direct your attention to document text and to related documents posted on the Louisiana Legislative Auditor’s website and on external websites. For example, by clicking a question under the index section, you may go directly to any text of the FAQ. Within the FAQ, several links will direct you to other text within the FAQ and to relevant external documents. Clicking on an individual question number within the text will return you to the index to allow selection of another question.
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I. Investments by Political Subdivisions & Municipalities

Q.1. By what authority do political subdivisions make investments of public funds?

R.S. 33:2955

A.1. Louisiana Revised Statute 33:2955 is the exclusive statute governing what investments local political subdivisions in Louisiana are allowed to make.

Q.2. What is the purpose of R.S. 33:2955?

A.2. R.S. 33:2955 authorizes and directs all municipalities, parishes, school boards, and any other local political subdivisions of the state to invest available public funds in any general or special fund of the political subdivision, and any other funds under the control of the political subdivision which they, in their discretion, determine to be available for investment. The statute enumerates the allowable and exclusive investment vehicles that local political subdivisions may invest in, and the investment policy and procedure they must follow.

Q.3. To which entities does R.S. 33:2955 apply?

A.3. According to the terms of the statute itself, R.S. 33:2955 applies to:

- Municipalities;
- Parishes;
- School boards; and
- Any other political subdivisions of the state as defined in LA Const. Art. VI, Section 44.

La. Const. art. VI, § 44(2) defines “Political subdivision” as a “parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.”

Whether certain entities are defined as political subdivisions or “other unit of local government...authorized by law to perform governmental functions” can present challenges. For instance, in the case of City Courts, no authority states that they are specifically subject to R.S. 33:2955.

City Courts in existence at the time the 1974 La. Constitution was adopted were retained from the 1921 La. Constitution by Article V, Section 15. Thus, City Courts are clearly part of the judicial branch.
Yet, City Courts are specifically defined as political subdivisions subject to the Local Government Budget Act pursuant to R.S. 39:1302(e). The Audit Law at R.S. 24:513(A)(3) includes City Courts as local auditees. Further, the Louisiana Governmental Audit Guide provides that given the fiscal dependence of a city court on the municipality, City Courts are often considered a part of the municipal reporting entity.

Although whether City Courts are subject to R.S. 33:2955 may be unclear, audit reports submitted to the LLA indicate that many subject themselves to the statute as part of their investment policy.

Good business practice dictates that following R.S. 33:2955 is the safest way to invest public funds. Until the Courts, the Legislature or the Attorney General provide some authoritative guidance for those public entities whose status under R.S. 33:2955 remains unclear, the LLA will continue to recommend following R.S. 33:2955 as a sound investment policy for these entities.

Q.4. Are political subdivisions required to develop and adopt an investment policy?

A.4. Yes. In fact, it is mandatory that all political subdivisions develop an investment policy. All political subdivisions of the state must develop and adopt an investment policy that details and clarifies investment objectives and the procedures and constraints necessary to reach those objectives. All investment policies should:

- Reflect the mandate to manage public funds prudently.

- Place appropriate emphasis on the goals of safety of principal first, liquidity second, and yield third.

- Establish internal controls for any derivatives in use to ensure that the risks inherent in derivatives are adequately managed. The term derivative as used here is defined to mean any financial instrument created from or whose value depends on the value of one or more underlying assets or indexes of asset value.

- It would be [the Attorney General’s] suggestion that prior to investing in commercial paper or any other security, the municipality, parish, school board, and other political subdivision review its investment policy and determine that the contemplated investment is in accordance with the political subdivision's investment policy. AG Op. No. 03-0378
Q.5. When are public funds considered available for investment?  **R.S. 33:2955(A)(2)**

A.5. When the treasurer or chief financial officer of the political subdivision determines that public funds exceed the immediate cash requirements of the fund to which the monies are credited. The criteria used in making this determination are:

- any amount of money exceeding $10,000 that is on demand deposit to the credit of a subdivision, or to the credit of any fund and that is not required to meet an obligation for at least forty-five days; or
- any amount of money exceeding $100,000 that is on demand to the credit of a subdivision or to the credit of any fund and that is not required to meet an obligation for at least fifteen days shall be construed available for investment.

Q.6. Which obligations does R.S. 33:2955 allow a political subdivision to invest in?

A.6. A political subdivision may invest in:

- Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United States;  **R.S. 33:2955(A)(1)(a)**

- Bonds, debentures, notes, or other evidence of indebtedness issued or guaranteed by federal agencies, provided such obligations are backed by the full faith and credit of the United States of America, which obligations include but are not limited to:  **R.S. 33:2955(A)(1)(b)(i)**
  - U.S. Export-Import Bank.
  - Farmers Home Administration.
  - Federal Financing Bank.
  - Federal Housing Administration Debentures.
  - General Services Administration.
  - U.S. Maritime Administration—guaranteed Title XI financing.
  - U.S. Department of Housing and Urban Development.

- Bonds, debentures, notes, or other evidence of indebtedness issued or guaranteed by U.S. government instrumentalities, which are federally sponsored; such obligations include but are not limited to:  **R.S. 33:2955(A)(1)(b)(ii)**
  - Federal Home Loan Bank System.
Federal Home Loan Mortgage Corporation.
Student Loan Marketing Association.
Resolution Funding Corporation.

- A political subdivision may not invest in any obligation described above that are collateralized mortgage obligations (CMO) that have been stripped into interest only or principal only obligations, inverse floaters, or structured notes. "Structured notes" means securities of U.S. government agencies, instrumentalities, or government-sponsored enterprises that have been restructured, modified, and/or reissued by private entities. R.S. 33:2955(A)(1)(b)(iii)

- Direct security repurchase agreements of any federal book-entry-only securities (United States Treasury obligations and bonds, debentures, notes, or other evidence of indebtedness issued or guaranteed by federal agencies). "Direct security repurchase agreement" means an agreement under which the political subdivision buys, holds for a specified time, and then sells back those securities and obligations. R.S.33:2955(A)(1)(c)

- Time certificates of deposit of any bank domiciled or having a branch office in the state of Louisiana, savings accounts or shares of savings and loan associations and savings banks, as defined by R.S. 6:703(16) or (17), or share accounts and share certificate accounts of federally or state-chartered credit unions issuing time certificates of deposit. For those funds made available for investment in time certificates of deposit, the rate of interest paid by the banks shall be established by contract between the bank and the political subdivision; however, the interest rate at the time of investment shall be a rate not less than fifty basis points below the prevailing market interest rate on direct obligations of the United States Treasury with a similar length of maturity. R.S. 33:2955(A)(1)(d)(i)

- Political subdivisions may not invest funds from the purchase of certificates of deposits through a financial investment firm/broker, as indirect purchase of CDs through investment firms are not contemplated or intended by R.S. 33:2955. The political subdivision may however contract separately with an investment firm or broker to receive investment advice under a professional services contract. AG Op. No. 15-0102
Mutual or trust fund institutions that are registered with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C.A. § 77a, et seq.] and the Investment Act of 1940, [15 U.S.C.A. § 80a-1, et seq.] and that have underlying investments consisting solely of and limited to securities of the United States government or its agencies.

R.S. 33:2955(A)(1)(e)

Funds invested in accordance with the provisions of R.S. 33:2955(A)(1)(d) shall not exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any one banking institution, or in any one savings and loan association, or National Credit Union Administration, unless the uninsured portion is collateralized by the pledge of securities in the manner provided in R.S. 39:1221.

R.S. 33:2955(A)(1)(f)

Guaranteed investment contracts issued by a bank, financial institution, insurance company, or other entity having one of the two highest short-term rating categories of either Standard & Poor's Corporation or Moody's Investors Service, provided:

(1) that no investment may be made except in connection with a financing program for political subdivisions approved by the State Bond Commission and offered by a public trust having the state as its beneficiary;

(2) that no investment shall be for a term longer than eighteen months, and

(3) that any guaranteed investment contract shall contain a provision providing that in the event the issuer of the guaranteed investment contract is at any time no longer rated in either of the two highest short-term rating categories of Standard & Poor's Corporation or Moody's Investors Service, the investing unit of local government may either be released from the guaranteed investment contract without penalty, or be entitled to require that the guaranteed investment provider collateralize the guaranteed investment contract with any bonds or other obligations, which as to principal and interest constitute direct general obligations of, or are unconditionally guaranteed by, the United States of America, including obligations set forth in Subparagraphs (a) and (b) to the extent unconditionally guaranteed by the United States of America.

R.S. 33:2955(A)(1)(g)
Investment grade commercial paper issued in the United States, traded in the United States markets, denominated in United States dollars, with a short-term rating of at least A–1 by Standard & Poor's Financial Services LLC or P–1 by Moody's Investor Service, Inc. or the equivalent rating by a Nationally Recognized Statistical Rating Organization (NRSRO).

\[ \text{R.S. 33:2955(A)(1)(h)} \]

In a BIDCO, as authorized by \[ \text{R.S. 51:2395.1.} \]

\[ \text{R.S. 33:2955(A)(1)(i)} \]

Bonds, debentures, notes, or other evidence of indebtedness issued by the state of Louisiana or any of its political subdivisions, provided that all of the following conditions are met:

\[ \text{R.S. 33:2955(A)(1)(j)} \]

(i) No political subdivision may purchase its own indebtedness.

(ii) The indebtedness shall have a long term rating of Baa3 or higher by Moody's Investors Service, a long term rating of BBB- or higher by Standard & Poor’s or a long term rating of BBB- or higher by Fitch, Inc. or a short-term rating of M1G1 or VM1G1 by Moody's Investors Service, a short-term rating of A-1 or A-1+ by Standard & Poor's, or a short-term rating of F1 or F1+ by Fitch, Inc.

(iii) The indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than five years, except that such five-year limitation shall not apply to either (aa) funds held by a trustee, escrow agent, paying agent, or other third party custodian in connection with a bond issue or (bb) investment of funds held by either a hospital service district, a governmental 501(c)(3), or a public trust authority.

Bonds, debentures, notes, or other indebtedness issued by a state of the United States of America other than Louisiana or any of another state's political subdivisions provided that all of the following conditions are met:

\[ \text{R.S. 33:2955(A)(1)(k)} \]

(i) The indebtedness shall have a long-term rating of A3 or higher by Moody's Investors Service, a long-term rating of A- or higher by Standard & Poor's or a long-term rating of A- or higher by Fitch, Inc., or a short-term rating of M1G1 or VM1G1 by Moody's Investors Service, a short-term rating of A-1 or A-1+ by Standard & Poor's, or a short-term rating of F1 or F1+ by Fitch, Inc.

(ii) The indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than five years, except that such five-year limitation shall not apply to funds held by a trustee, escrow
agent, paying agent, or other third-party custodian in connection with a bond issue nor to investment of funds held by either a hospital service district, a governmental 501(c)(3) organization, or a public trust authority.

(iii) Prior to purchase of any such indebtedness and at all times during which the indebtedness is owned, the purchasing Louisiana political subdivision retains the services of an investment advisor registered with the United States Securities and Exchange Commission or a trust company that has offices in Louisiana, that is regulated by the Office of Financial Institutions or the applicable federal agency, and that owes a fiduciary duty to act solely in the best interest of the political subdivision.

- In [the Attorney General’s] opinion, LSA-R.S. 33:2955A(1)(h) authorizes investment in commercial paper that has been given minimum investment ratings of A-1/P-1. As such, investment by political subdivisions in commercial paper that is rated at investment grades superior to A-1/P-1 is allowed.
  AG Op. No. 03-0378

- A school board may invest in flexible repurchase agreements provided the underlying securities subject to the agreement consist of the federal book-entry-only securities enumerated in Subparagraphs (a) and (b) of Section 2955(A)(1).
  AG Op. No. 97-0533

- Bonds, debentures, notes, or other indebtedness issued by domestic United States corporations provided that all of the following conditions are met:
  R.S. 33:2955(A)(1)(l)

  (i) The indebtedness shall have a long-term rating of Aa3 or higher by Moody's Investors Service, a long-term rating of AA- or higher by Standard & Poor's, or a long-term rating of AA- or higher by Fitch Ratings, Inc.

  (ii) The indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than five years.

  (iii) Prior to purchase of any such indebtedness and at all times during which such indebtedness is owned, the purchasing Louisiana political subdivision retains the services of an investment advisor registered with the United States Securities and Exchange Commission.
II. General

Q.7. What limits are imposed on investments of funds listed in R.S. 33:2955?

R.S. 33:2955(A)(2)

A.7. Investment of funds in mutual or trust fund institutions are limited to twenty-five percent of the monies considered available for investment. See Q.5.

Q.8. May a political subdivision combine monies from more than one fund to invest them?

R.S. 33:2955(A)(3)

A.8. Yes, a political subdivision may combine monies from different funds in order to invest them. A political subdivision may combine monies from several funds in order to invest the monies at a better rate of return.

Q.9. May multiple municipalities combine monies in a cooperative effort for investment purposes?

A.9. Yes, this investment is permissible under the Local Services Law, R.S. 33:1321-1360, which authorizes political subdivisions to engage jointly in the exercise of any power, provided that one of the political subdivisions is authorized to exercise that power. Further, Art. VII, Sec. 14(C) of the Louisiana Constitution authorizes the State and its political subdivisions, for a public purpose, to engage in cooperative endeavors with each other. Of course, the pooled monies may only be invested in those types of securities that are allowable investments for political subdivisions. However, the pool would have to be structured so that one political subdivision could not assume the losses of another political subdivision, as that assumption would violate the Art. VII, Sec. 14(A) prohibition of the donation, loan or pledge of public funds.

AG Op. No. 95-442
AG Op. No. 92-0192

◆ Political subdivisions may enter into cooperative endeavors to establish a local government investment pool to be administered by the LAMP, Inc.

AG Op. No. 94-0186

◆ ...political subdivisions of this state may enter into cooperative endeavors with each other, under authority of La. R.S. 33:1321[ – 1360], to contract for investment services and invest in investment pools to be administered by the Office of the State Treasurer.

AG Op. No. 95-0442
AG Op. No. 94-0186
AG Op. No. 92-0192
AG Op. No. 02-0404
Q.10. What are the subdivisions allowed to do with the interest earned from these investments?  

R.S. 33:2955(B)

A.10. The interest earned on bonds, notes or certificates, time certificates of deposit, or mutual or trust fund investments must be credited to the fund from which the monies were acquired; or it may be applied to the payment of the principal and interest of the outstanding bonded indebtedness.

� Interest earned on investment of public funds belongs to the owners of the funds and not to the public official who handles or distributes the funds.  

*Amiss v. State*, App. 1 Cir. 1976, 340 So. 2d 1085.

Q.11. When may an investment authorized by R.S. 33:2955 be liquidated?  

R.S. 33:2955(C)

A.11. At any time deemed advisable the subdivision may cash and liquidate any of the investments authorized by R.S. 33:2955. The proceeds of any liquidation are credited to the fund from which the authorized investments were originally purchased.

Q.12. Are there penalties for investing in a manner not authorized by this Statute?  

R.S. 33:2955(E)

A.12. Yes. The investment of monies by a municipality, parish, school board, or other political subdivision of the state in violation of R.S. 33:2955 constitutes an intentional performance of a duty in an unlawful manner and may be prosecuted pursuant to R.S. 14:134 (Malfeasance in office).

Q.13. Has the Legislature given guidance as to what type of instrument a political subdivision should not invest in?

A.13. Though not binding as a matter of law, Senate Concurrent Resolution No. 198 of the 1995 Regular Session provides guidance on derivative investments:

WHEREAS, municipalities, parishes, school boards, and other political subdivisions of the state are authorized to invest in certain investments in accordance with R.S. 33:2955; and

WHEREAS, derivative instruments, including but not limited to collateralized mortgage obligations (CMOs), which are not fully guaranteed by the government of the United States are not enumerated in R.S. 33:2955; and

WHEREAS, municipalities, parishes, school boards, and other political subdivisions of the state have no authority to invest in obligations other than those obligations enumerated in R.S. 33:2955; and
WHEREAS, several political subdivisions are investing in obligations not enumerated in R.S. 33:2955.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby direct all municipalities, parishes, school boards, and other political subdivisions of the state to cease investing monies in derivative instruments, including but not limited to collateralized mortgage obligations, the principal and interest of which are not fully guaranteed by the government of the United States.

BE IT FURTHER RESOLVED that the legislature does hereby direct all political subdivisions which invest in mutual funds to immediately determine if any derivative investments are included in the mutual funds held by the political subdivision.

BE IT FURTHER RESOLVED that the legislature does hereby direct all political subdivisions which invest in derivative investments, either directly or through a mutual fund, to develop a plan to comply with R.S. 33:2955.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Legislative Auditor, the Louisiana Municipal Association, the Louisiana Police Jury Association, and the Louisiana School Boards Association.

Q.14. Which Attorney General’s opinions provide guidance on investments by political subdivisions?

A.14.

◆ R.S. 33:2955(A)(1)(d)(i) contemplates the direct purchase of a CD from a financial institution; however our reading of R.S. 33:2955(A)(1)(d)(i) does not reveal any authority for a political subdivision to purchase a CD indirectly through a broker or brokerage firm. Thus, it appears that R.S. 33:2955(A)(1)(d)(i) does not authorize political subdivisions to purchase brokered CDs from a broker or brokerage firm. AG Op No. 15-0102 and AG Op. No. 13-0199

◆ We are of the opinion that the funds belonging to LSERS, as well as any assets resulting from the investment of these funds, are neither public or state funds nor are they public or state property. As such, we believe the management of such property is not controlled by the provisions of R.S. 39:321 [-1360] and it is our opinion that LSERS does not fall under the jurisdiction of the DOA through the LPAA for purposes of R.S. 39:321 – [1360]. AG Op No. 09-0070
AG Op. No. 09-0073A

Public bodies may independently establish and employ irrevocable trusts that hold monies for future payment of post-employment benefits other than pensions, provided those monies are invested in funds permitted by law.  
AG Op. No. 07-0066
AG Op. No. 15-0012

Water district must invest surplus funds in obligations enumerated in LSA-R.S. 33:2955.  
AG Op. No. 93-0172

Utilities may make commercial paper investments that meet specific statutory requirements.  
AG Op. No. 03-0378

A school board may invest flexible repurchase agreements provided the underlying securities subject to the agreement consists of the federal book-entry-only securities enumerated in Subparagraphs (a) and (b) of Section 2955(A)(1).  
AG Op. No. 97-0533

Hospital service district hospitals may enter into cooperative endeavor agreements with other public and private hospitals for pooled investment services.  
AG Op. No. 02-0404

Political subdivision can invest in a mutual fund that invests in repurchase agreements involving U.S. Treasury obligations if mutual fund is organized as Massachusetts business trust.  
AG Op. No. 97-0057

It is the opinion of this office that investing in Massachusetts business trust mutual funds is tantamount to investing in direct United States government securities. Opinion No. 88-546 is hereby modified to provide that the above described investment does not violate Article VII, Section 14(A) of the Constitution.  
AG Op. No. 88-0546-A

The prohibited types of obligations found in Section 2955(A)(b)(iii) are those securities which may have been permissible under the provisions of Section 2955(A)(b)(i) and (ii), except that the security is either a collateralized mortgage obligation (“CMO”), an inverse floater or a structured note. The authority to invest in a direct United States Treasury obligation is found in Section 2955(A)(1)(a), which was not amended in the 1995 session, and which provides that political subdivisions may invest in “direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United

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States”. Thus the prohibition in Section 2955(A)(1)(b)(iii) only applies to those obligations described in (i) and (ii) of Subsection (b), not the obligations described in Subsection (a). Accordingly, local governments may invest in STRIPS or zero coupon securities issued directly by the U.S. Treasury. AG Op. No. 95-0442

As long as the investment is a bond, debenture, note, or other evidence of indebtedness issued or guaranteed by “federal agencies and ... are backed by the full faith and credit of the United States of America...” [LSA-R.S. 33: 2955(A)(1)(b)(i)] or is a bond, debenture, note, or other evidence of indebtedness issued or guaranteed by “U. S. government instrumentalities, which are federally sponsored ...” [LSA-R.S. 33:2955(A)(1)(b)(ii)], and the investment is not a collateralized mortgage obligation which has been stripped into interest only or principal only obligations, an inverse floater or a structured note, it is a permissible investment under the Act 1126. AG Op. No. 95-0442

Neither in the law nor in the marketplace is the United States Treasury considered to be a government agency, instrumentality or government-sponsored enterprise; therefore, the prohibition in Section 2955(A)(1)(b)(iii) would not apply. However, in order for the security to be a permissible investment under Section 2955(A)(1)(a) it must be a direct United States Treasury obligation, the principal and interest of which are fully guaranteed by the government of the United States. If after restructuring, the security is no longer a direct U.S. Treasury obligation, it is not a permissible investment under Section 2955(A)(1)(a). AG Op. No. 95-0442

Section 2955 is silent as to whether the securities must be held by the government unit; however, because most securities are now issued “book-entry-only” rather than certificated, the book-entry-only securities must be held by a third-party custodian under a fiduciary relationship. AG Op. No. 95-0442

Section 2955(A)(1)(e) authorizes investments in “mutual or trust fund institutions which are registered with the Securities and Exchange Commission under the Securities Act of 1933 and the Investment Act of 1940, and which have underlying investments consisting solely of and limited to securities of the United States government or its agencies.” Furthermore, this office has opined that only mutual funds created as a Massachusetts business trust, are acceptable investments under Article VII, Section 14 of the Louisiana Constitution. See AG Op. No. 88-546, as modified by AG Op. No. 88-546(A). Thus in order to be a permissible investment, the money market fund must meet the criteria of Section
2955(A)(1)(e) and be created as set forth in AG Op. No. 88-546(A).

AG Op. No. 95-0442

Louisiana Asset Management Pool (LAMP) was created pursuant to Art. VII, Sec. 14(C) of the Louisiana Constitution and the Local Services Law, LSA-R.S. 33:1321 [1360]- as a pooled investment program, not as an investment, itself. Each political subdivision enters into a cooperative agreement for the purpose of operating a pooled investment program. LAMP receives deposits from each political subdivision and essentially functions as a professional financial advisor to those political subdivisions which elect to participate and become depositing members within the pool. The political subdivisions which deposit money in LAMP retain a separate ownership interest in the investments purchased. See AG Op. No. 94-186. AG Op. No. 95-0442 (also discusses other securities.)

Q.15. May a municipality or parish subscribe to the stock of a corporation? R.S. 33:2951

A.15. Municipalities and parishes may subscribe to the stock of corporations undertaking works of internal improvement. What “works of internal improvement” means is not defined. No public entity may otherwise subscribe to the stock of a private corporation (La. Const. art. VII, § 14(A)).

Where a municipality subscribed to the stock of an internal improvement company as authorized by Act March 12, 1852, No. 175, the corporation was entitled to recover payment of such subscriptions from the municipality in the same manner as from a private stockholder. Boutte v. Bryant, 1855, 10 La.Ann. 659.

Q.16. How does a municipality or parish subscribe to corporate stock? R.S. 33:2952

A.16. By ordinance. All ordinances passed for such subscriptions must contain the following provisions:

■ A statement of the number and amount of shares proposed to be subscribed.

■ The levy of a tax on the immovables situated in the parish or municipal corporation, sufficient to pay the amount of the subscription, and specifying the rate of taxation, and the time when it shall be payable.
Q.17. Is an election required to ratify the ordinance?  

A.17. Yes. No ordinance provided for in R.S. 33:2951 and R.S. 33:2952 can take effect until it has been approved by a majority of the voters on whose property the tax is proposed to be levied, at an election to be held specially for that purpose. The police jury or municipal corporation prescribes the manner of holding the election, and shall furnish to the commissioners a certified list of the authorized voters. The election shall be preceded by a notice for thirty days, published in one or more newspapers in the parish or municipal corporation. If the ordinance is rejected by a majority of the voters, it may be resubmitted for reapproval at any subsequent period, at intervals of not less than six months.

Q.18. Who owns the stock so purchased?  

A.18. Stock so purchased belongs to the taxpayers. The stock subscribed does not belong to, nor is it administered by the parish or municipal corporation by which the subscription is made, but shall belong to the taxpayers. The tax receipt of each taxpayer shall entitle the taxpayer to a certificate, transferable by delivery, from the corporation to which subscription has been made, for an amount equal to the amount of his tax paid.

Q.19. What investments with public funds are allowed by the Louisiana Constitution?  

A.19. LSA-Const. Art. 7, § 14(B)(10) allows for the investment in stocks of a portion of the Rockefeller Wildlife Refuge Trust and Protection Fund, created under the provisions of R.S. 56:797, and the Russell Sage or Marsh Island Refuge Fund, created under the provisions of R.S. 56:798, not to exceed thirty-five percent of each fund.

LSA-Const. Art. 7, § 14 (11) allows for the investment in stocks of a portion of the state-funded permanently endowed funds of a public or private college or university, not to exceed thirty-five percent of the public funds endowed.

LSA-Const. Art. 7, § 14 (12) allows for the investment in equities of a portion of the Medicaid Trust Fund for the Elderly created under the provisions of R.S. 46:2691 - 2692, not to exceed thirty-five percent of the fund.

Q.20. What is LAMP?  

A.20. The Louisiana Asset Management Pool (LAMP) was created pursuant to Art. VII, § 14(C) of the Louisiana Constitution and the Local Services Law, LSA-R.S. 33:1321–1360 as a pooled investment program, not as an investment,
itself. Each political subdivision enters into a cooperative agreement for the purpose of operating a pooled investment program. LAMP receives deposits from each political subdivision and essentially functions as a professional financial advisor to those political subdivisions that elect to participate and become depositing members within the pool. The political subdivisions that deposit money in LAMP retain a separate ownership interest in the investments purchased.


A.21. "Certificate of Deposit Account Registry Service" (CDARS) is a deposit-placement service promoted by Promontory Interfinancial Network (a private network of banks) designed to allow FDIC-insured depository institutions to accept deposits of more than $250,000* and obtain full coverage for the depositor by spreading the funds among as many separate FDIC insured institutions as necessary so that no institution holds more money than the FDIC limit (principal plus interest) for each depositor. *(On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law, which, in part, permanently raises the current standard maximum deposit insurance amount [SMDIA] to $250,000. The FDIC insurance coverage limit applies per depositor, per insured depository institution for each account ownership category.) Under CDARS, deposits are held by an agent for its principals at FDIC-insured institutions, and deposit insurance is said to "pass-through" the holder of the account (the agent) to the owners of the funds (the principals). An examination of the FDIC rules reveals stringent documentary requirements to trigger the "pass-through coverage" provided by FDIC to the investing entity.

Two methods of investing in CDARS exist. The first is the so-called One-Way Transaction, in which the entity pays a fee and the agent bank distributes the funds to the network of banks. The other is a Reciprocal Transaction, in which the other banks actually buy CDs from the agent bank domiciled in La. in the same amount as invested in the program.

The Attorney General recently issued Opinion No. 09-0073 that addresses the legality of CDARS since the enactment of R.S. 6:319, which provides:

Notwithstanding any other law to the contrary, including, but not limited to R.S. 33:2955 and R.S. 49:327, any bank, savings bank, or savings and loan association, domiciled or having a branch in Louisiana, that receives public funds deposits may utilize, and public bodies may accept, any recognized system or program to provide FDIC insurance coverage and such funds shall
be deemed and considered fully collateralized, provided that the recognized system or program satisfies the FDIC’s requirements for agency pass-through deposit insurance coverage. The total dollar amount of state funds received pursuant to the provisions of this Section by a bank, savings bank, or savings and loan association, domiciled or having a branch in Louisiana, must be maintained by that financial institution.

The Attorney General stated that in light of the enactment of R.S. 6:319 and its specification that its provisions apply notwithstanding any other law to the contrary, the office now opines that public bodies may use any recognized system or program to provide FDIC insurance coverage, including CDARS, as long as such system or program satisfies the FDIC’s requirements for agency pass-through deposit insurance coverage.

However, the Attorney General also interpreted the last sentence of La. R.S. 6:319 to require that, with regard to state funds only, the total dollar amount of public funds deposited pursuant to that statute must remain in the financial institution domiciled or having a branch in Louisiana. As applied to CDARS, this means that public bodies depositing state funds for investment in CDs would be required to participate in a CDARS Reciprocal Transaction rather than a CDARS One-Way Transaction. That way, the financial institution domiciled or having a branch in Louisiana would be required to receive an equal amount of funds from other banks in the network.


AG Op. No. 13-0199

Q.22. What is the Dodd-Frank Bill?

A.22. The Dodd-Frank Bill was signed into law on July 21, 2010. The Bill is styled as “an Act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail’, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.” Among the many provisions are the requirements to create several hundred new rules to regulate the banking industry. The Bill created several new oversight agencies including the Financial Stability Oversight Council, the Office of Financial Research, and the Bureau of Consumer Financial Protection.
The Bill also permanently increased deposit insurance for banks, thrifts and credit unions to $250,000, retroactive to January 1, 2008.

**Q.23.** What was TLGP? Is it an authorized insurance program for deposits?

**A.23.** The Temporary Liquidity Guarantee Program (TLGP) was an FDIC program enacted in November 2008 and expired on December 31, 2010. TLGP was a temporary measure to promote financial stability by preserving confidence in the banking system and encouraging liquidity. It was also part of the overall bailout program for lending institutions. The program had two separate components:

- The Debt Guarantee Program, by which the FDIC guaranteed the payment of certain newly issued senior unsecured debt; and
- The Transaction Account Guarantee Program, by which the FDIC guaranteed certain noninterest-bearing transaction accounts.

There is an “opt out” feature which provides that all eligible entities were covered under both programs of TLGP until December 5, 2008. If the institution did not opt out of either or both programs by this date, it was covered under TLGP. A list of entities is published on the FDIC website, [http://www.fdic.gov/tlgp](http://www.fdic.gov/tlgp).

**Transaction Account Guarantee Program:**

The FDIC stated that TLGP was guaranteed by the FDIC and backed by the full faith and credit of the United States. R.S. 6:319 requires that banks receiving public funds may utilize and public entities may accept any recognized system (in this case TLGP) that provides FDIC coverage and such funds "...shall be deemed and considered fully collateralized...". Under the Transaction Account Guarantee Program (TAGP), TLGP provided FDIC insurance coverage for all funds in noninterest-bearing transaction deposit accounts. A "noninterest-bearing transaction account" is defined as a transaction account on which interest is neither accrued nor paid and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal. This definition encompasses traditional demand deposit checking accounts (DDA accounts) that allow for an unlimited number of deposits and withdrawals at any time and certain NOW accounts with interest rates no higher than 0.50 percent for which the insured depository institution that holds the account has committed to maintain the interest rate at or below 0.50 percent.

The Dodd-Frank Deposit Insurance Provision is effective from December 31, 2010 through December 31, 2012.

Please note that the FDIC did not extend the Transaction Account Guarantee Program ("TAGP") beyond its sunset date of December 31, 2010. On the same
day that the TAGP expired – December 31, 2010 – the Dodd-Frank Deposit Insurance Provision became effective. There was a one-day overlap of the TAGP and the Dodd-Frank Deposit Insurance Provision.

All funds in noninterest-bearing transaction accounts held at FDIC-insured depository institutions (“IDIs”) were fully insured under the Dodd-Frank Deposit Insurance Provision. A “noninterest-bearing transaction account” is defined as an account (1) with respect to which interest is neither accrued nor paid; (2) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and (3) on which the IDI does not reserve the right to require advance notice of an intended withdrawal. The definition of “noninterest-bearing transaction accounts” also includes Interest on Lawyer Trust Accounts (“IOLTAs”) and functionally equivalent accounts. (See http://www.fdic.gov for more information.

The Attorney General also addressed TAGP in Opinion No. 09-0073, in which he opined as follows:

As we concluded above with regards to CDARS, under La. R.S. 6:319, public bodies may utilize any recognized system or program to provide FDIC insurance coverage, including CDARS, as long as such system or program satisfies the FDIC’s requirements for agency pass-through deposit insurance coverage. Because the TLGP, via the TAGP, provides FDIC insurance coverage for all funds in non-interest-bearing transaction deposit accounts, it could not satisfy the FDIC's requirements for agency pass-through deposit insurance coverage. Nor would it need to, because the entire amount on deposit in a non-interest-bearing transaction deposit account would be fully insured. Thus, there would be no need to spread deposits among multiple institutions.

Considering the foregoing, we believe that the TAGP does not meet the requirements of La. R.S. 6:319. Accordingly, banks may not rely on the TAGP to release collateral otherwise required by law.

Also see AG Op. No. 09-0073A, which provides further guidance on TAGP. Whether these opinions apply to Dodd-Frank is not known.
Debt Guarantee Program:

Under the Debt Guarantee Program of TLGP, the FDIC guaranteed certain unsecured debt issued between October 14, 2008, and June 30, 2009, beyond the current $250,000 limit. The FDIC fully guaranteed certain newly issued senior unsecured debt in the event the issuing institution failed. According to FDIC documents, the guarantee will have been triggered by a payment default.

The Debt Guarantee Program of TLGP provided the statutory requirement that the debt was guaranteed by the FDIC and backed by the full faith and credit of the United States. The program expired on December 31, 2012.

The AG again opines in Opinion No. 09-0073 that because the TLGP Debt Guarantee Program provides that the debt is guaranteed by the FDIC and is backed by the full faith and credit of the United States, political subdivisions are permitted to invest public funds in debt instruments issued by private lending institutions under the Debt Guarantee Program.

With regard to state investments, the AG opined that the debt instruments under TLGP Debt Guarantee Program would be considered a direct obligation of a “United States government-sponsored enterprise” within the meaning of La. R.S. 49:327(B)(1)(a). Thus, the state treasurer may invest public funds in such debt instruments provided they are contained in a list promulgated by the state treasurer in accordance with the Administrative Procedure Act.

Q.24. What statute authorizes Hospital Service Districts to invest their funds?

A.24. R.S. 46:1073.1, allows hospital service districts as defined in R.S. 46:1072, other than a hospital owned by the state, to invest their funds in the same manner as provided by law for investment of funds of the Louisiana State Employees Retirement System, including but not limited to R.S. 11:263; however, any such investment may be made only in compliance with rules and regulations established by the hospital service district commission and in compliance with the provisions of R.S. 11:263 and any other law that provides for investments in which funds of the Louisiana State Employees Retirement System may be invested.

R.S. 11:263, relative to LASERS' and other retirement systems' investments, makes the prudent-person rule applicable to retirement systems. The statute, which also provides for other restrictions, should be consulted prior to making such investments.
Under La. Const. art. VII, § 14(A), Hospital Service District No. 1 of the Parish of Terrebonne, may not purchase, either directly or through mutual funds, stocks with public funds. To the extent La. R.S. 46:1073.1 purports to allow public funds to be invested in stocks, the statute is unconstitutional.  

**Q.25.** By what authority do political subdivisions make investments of post-employment benefit funds held in trust?

**A.25.** In addition to the securities enumerated in R.S. 33:2955, post-employment benefit funds held in a trust established pursuant to R.S. 33:5161 may be invested in any of the securities enumerated in R.S. 33:5162.

Post-Employment benefits under R.S. 33:5161 are defined as health care, life insurance, or any other benefit, not including pension benefits, provided by the political subdivision to a person who is no longer employed by such political subdivision.

Post-Employment benefit funds held in a trust established under any other state or federal law, may only be invested in the securities enumerated in R.S. 33:2955.  

**AG Op. No. 13-0138**

(A) Table of Authorized Entities for Investments and Security for Public Deposits

Sample of statutes that authorize investment in the bonds issued by the entities created therein.

- R.S. 3:278 Louisiana Agricultural Finance Act
- R.S. 33:4548.12 Louisiana Local Government Environmental Facilities and Community Development Authority
- R.S. 33:4625 K. Parish Redevelopment Law
- R.S. 33:4720.51 New Orleans Community Improvement Act
- R.S. 33:4720.91 St. Bernard Parish Redevelopment Law
- R.S. 33:4720.101 Opelousas Community Improvement Act
- R.S. 33:4720.131 Jefferson Parish Redevelopment Authority
- R.S. 33:4720.151 N. East Baton Rouge Redevelopment Authority
- R.S. 33:4720.161 N. Parish Redevelopment Authority
- R.S. 33:4720.171 M. North Lafayette Redevelopment Authority
- R.S. 33:4720.181(N) New Iberia Redevelopment Authority
- R.S. 33:4720.191(N) Lake Charles North Redevelopment Authority
INVESTMENTS
REVISED 08/2017

R.S. 33:7619  New Community Development Corporations
R.S. 33:9037 J.  Cooperative Economic Development
R.S. 33:9038.38 L  Cooperative Economic Development - Tax Increment Financing--Local Governmental Subdivisions
R.S. 33:9039.28  Community Development District Act
R.S. 33:9039.75  Greater New Orleans Biosciences Economic Development District Act

R.S. 33:9039.111(B)(7)  Local and Regional Economic Development Districts
Repealed  Louisiana Housing Finance Act
R.S. 47:8019  Tax Increment Development Corporations
R.S. 51:2395.1  Louisiana Business and Industrial Development Company