

DISTRICT ATTORNEY FOR THE
TWENTY-SIXTH JUDICIAL DISTRICT
BOSSIER PARISH POLICE JURY
WEBSTER PARISH POLICE JURY



ADVISORY SERVICES REPORT
ISSUED OCTOBER 26, 2011

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

August 31, 2011

The Honorable John “Schuyler” Marvin,
District Attorney for the Twenty-Sixth Judicial District
The Honorable Rickey L. Avery, President,
Bossier Parish Police Jury
The Honorable Charles R. Walker, President,
Webster Parish Police Jury

Gentlemen:

My advisory staff completed its assessment of certain relationships and arrangements for the delivery and payment of legal services provided by the district attorney for the Twenty-Sixth Judicial District (district attorney) to the Bossier Parish Police Jury (Bossier) and the Webster Parish Police Jury (Webster). Our assessment was substantially less in scope than an audit.

Our objective was to determine if those arrangements comply with applicable state law, are subject to adequate management and accounting oversight controls, and to recommend any changes needed.

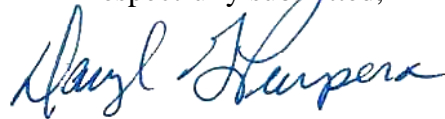
In summary, our findings are as follows:

1. The arrangements for the delivery and payment of legal services between the district attorney and Bossier and Webster parishes do not provide adequate oversight controls and may be contrary to state law.
2. The employment arrangement in which Mr. Patrick Jackson appears to be an employee of both the district attorney and Bossier needs to be revised and clarified. By law, Bossier Parish cannot hire its own regular legal counsel and must use the district attorney (and his authorized assistants).
3. Webster Parish’s arrangement with Mr. Patrick Jackson’s private law firm to provide the parish with regular legal counsel may be contrary to state law.

The Honorable John "Schuyler" Marvin,
District Attorney for the Twenty-Sixth Judicial District
The Honorable Rickey L. Avery, President,
Bossier Parish Police Jury
The Honorable Charles R. Walker, President,
Webster Parish Police Jury
August 31, 2011
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The details of our findings including recommendations are attached. The joint responses of the District Attorney, Bossier Parish Police Jury, and Webster Parish Police Jury are provided in italics throughout the report. Also, we have included their joint letter in Appendix A. We appreciate your cooperation and anticipate that corrective action will be taken to clarify and resolve these matters. If you have any questions, please contact Eric Sloan or Mike Cragin at (225) 339-3800.

Respectfully submitted,



Daryl G. Purpera, CPA, CFE
Legislative Auditor

MDC:ESS:JSI:dl

Findings and Recommendations

District Attorney and Parish Arrangements for Legal Counsel

The arrangements for the delivery and payment of legal services between the district attorney and Bossier and Webster parishes do not provide adequate oversight controls and may be contrary to state law.

State Law Requirements for Legal Counsel

Louisiana Revised Statute (R.S.) 42:261(D)(1) limits the parish's authority to hire legal counsel. It states in part, "Except as otherwise permitted by this Section it shall be unlawful for any parish governing authority...to retain or employ for any compensation whatever any attorney or counsel to represent it generally, or except as provided in R.S. 42:263, to retain or employ any special attorney or counsel for any compensation whatever to represent it in any special matter, or pay any compensation for any legal services whatever..."

Under Louisiana law, parishes generally obtain legal counsel/services in the following three ways:

1. The district attorney is required to act as the parish's regular attorney and legal counsel.¹
2. Parishes that meet certain criteria may hire their own regular attorney in lieu of the district attorney.²
3. Parishes may hire "special counsel" beyond the regular counsel of the district attorney (such as a bond attorney) through a resolution of their governing board and with the approval of the Attorney General.³

Therefore, unless exempted by law, Bossier and Webster must use the district attorney and cannot secure their own counsel for general legal matters. The parishes can opt to secure "special counsel" under R.S. 42:263; however, we understand that neither Parish has sought to use this option for its legal services.

Our assessment revealed that the district attorney is required to act as the regular attorney and legal counsel, without extra compensation, for both Bossier and Webster parishes. Neither parish meets the criteria to hire/pay its own attorney in lieu of the district attorney.

However, it appears that both parishes have hired Mr. Patrick Jackson, either as an employee (Bossier) or his law firm (Webster), to provide regular legal counsel despite their lack of legal capacity to do so. Bossier and Webster pay Mr. Jackson (or his law firm) for the legal work

¹ R.S. 16:2 (A); R.S.42:261(A)

² These include:

- Parishes specifically excluded by statute such as R.S. 16:2(B) which states "...nothing shall prevent the governing authorities of the parishes of St. Charles, St. John the Baptist, Ouachita, Morehouse, Calcasieu, and Vermilion...from retaining its own attorney to represent it generally."
- Parishes governed by a home-rule charter that provides for the employment of a parish attorney or special attorney or counsel R.S. 16:2(D).
- Any parish listed in the 1970 decennial federal census as having a total population between 70,000 and 80,000 R.S. 42:261(C).

³ R.S. 42:263

performed under these arrangements. We also understand that Bossier and Webster may seek legal advice from the district attorney and/or another assistant district attorney.

We were informed that the prior district attorney was instrumental in establishing these arrangements which have continued under the current district attorney. However, we find no legal authority for the district attorney to authorize these parishes to hire their own regular legal counsel.

Oversight Controls

Because state law requires that the district attorney provide legal services to Bossier and Webster, the primary responsibility for management and accounting controls rests with the district attorney.

Good controls require the district attorney to evaluate all ongoing legal matters and services needed by the parishes to ensure that only his office is providing their regular legal counsel as required by state law. The district attorney should be in control of assigning, directing, and monitoring his assistant district attorneys (employees), including evaluating and approving their work and compensation.

Our assessment revealed the following:

- There is no written agreement between the district attorney and the parishes as to what regular legal services will be provided by the district attorney (his office), the assistant(s) who are assigned to provide the services, how the assistant(s) will be monitored and evaluated, and how the assistant(s) will be funded and paid.
- The extent to which Mr. Jackson's activities in Bossier are being directed, monitored, and approved by the district attorney was not clear.

Mr. Jackson does not submit to Bossier or the district attorney a detailed account of the services he performs for Bossier. In 2010, Mr. Jackson received a salary of \$108,000 from Bossier Parish and a salary of \$18,000 from the district attorney [amounts are rounded].

- The extent to which Mr. Jackson and his law firm associates' activities in Webster are being directed, monitored, and approved by the district attorney was not clear.

Mr. Jackson's law firm submits monthly bills to Webster detailing services performed and hours worked, but there is no requirement that he submit that documentation to the district attorney. In 2010, Mr. Jackson received contractor payments of \$50,000 from Webster.

Recommendations

1. The district attorney should prepare and maintain the following in writing:

- A list of entities in the Twenty-Sixth Judicial District that the district attorney serves as regular attorney and legal counsel

Response: *The District Attorney serves as regular attorney and legal counsel for all entities that he is legally obligated to represent.*

- The names of the assistant district attorney(s) assigned to assist the district attorney in providing legal counsel to each entity, and the legal services they are authorized to provide as “regular counsel”

Response: *The District Attorney currently maintains a list of Assistants. Those assistants provide legal services at his direction.*

- A policy that sets forth the responsibility of the district attorney to establish and pay the salaries of all assistant district attorney(s). The payroll documents and process should clearly indicate the employment relationship and funding arrangement for each employee paid.

Response: *The District Attorney has established a pay schedule for each ADA. The personnel records for each ADA are maintained by the District Attorney and the Bossier Parish Police Jury.*

- Budgeted and actual total compensation paid to the district attorney’s office for the services of each assistant district attorney, by entity and other sources (e.g., state, district attorney)

Response: *The budgeted compensation paid to the District Attorney’s staff is published annually by the District Attorney and/or the Bossier Parish and Webster Parish Police Juries. Each of these budgets is submitted for public inspection on an annual basis.*

- Instructions clearly stating the circumstances in which assistant district attorneys have the general authority to act on behalf of the district attorney and when the district attorney’s specific approval is required

Response: *The Assistant District Attorneys are assigned broad responsibilities and expectations by the District Attorney. The Assistant District Attorneys carry out those assignments without specific approval from the District Attorney on a day to day basis.*

2. The district attorney should prepare and maintain written agreements signed by officials of each entity establishing:

- What “regular legal counsel” will be provided by his office
- How specific legal services will be authorized (generally or specifically), monitored, evaluated, funded, and paid
- Responsibilities of the parish (entity) and the district attorney/assistant district attorney
- Conditions under which each entity can request and be allowed to hire “special counsel” not provided by the district attorney

Response: Pursuant the State law the Office of the District Attorney is General Counsel to the respective Police Juries in the 26th Judicial District. The District Attorney shall assign himself or any ADA to provide legal counsel to the Police Juries. The District Attorney shall determine the compensation due to each ADA that provides said services.

In the event it should become necessary to provide “special counsel” to either Police Jury, then that employment shall be governed by the provisions of Louisiana Revised Statute 42:262.

District Attorney and Bossier Employment Arrangements with Patrick Jackson

The employment arrangement in which Mr. Patrick Jackson appears to be an employee of both the district attorney and Bossier needs to be revised and clarified. By law, Bossier cannot hire its own regular legal counsel and must use the district attorney (and his authorized assistants).

Under state law (R.S. 16:2 and R.S. 42:261), district attorneys generally are required to act as “regular attorneys and counsel” for police juries/parishes. Only certain parishes are allowed to hire their own parish counsel in lieu of the district attorney, and Bossier does not qualify under any of the exemptions allowed.⁴

Mr. Jackson’s employment in regard to Bossier and the district attorney appears to be a *hybrid* employment arrangement in which both parties share substantive, but different, employer responsibilities with the district attorney having the ultimate ability to retain or terminate him.

District Attorney Employment Arrangement

The district attorney confirmed to us that Mr. Jackson is an assistant district attorney and an employee of his office. As we understand, in 1999, Mr. Jackson was appointed/hired as an assistant district attorney and has continued serving in that capacity through the present. The district attorney also told us that Mr. Jackson can only be terminated by him.

Our assessment of the district attorney’s employment arrangement with Mr. Jackson also revealed the following information:

- The district attorney did not maintain a personnel file on Mr. Jackson and did not have a copy of his *Oath of Office* on file.

***Response:** There is a personnel file for ALL employees of the District Attorney’s office maintained in the offices of the Bossier Parish Police Jury. However, maintenance of copies is not necessary as all Oaths are filed in the Public Records in the Clerk of Courts Office.*

- Mr. Jackson was not submitting time sheet/work attendance reports to the district attorney.

***Response:** Salaried professionals are not required to complete timesheets. They are assigned duties by the District Attorney and are paid a salary to carry out those duties.*

⁴ Exemptions include:

- Parishes specifically excluded by statute such as R.S. 16:2(B) which states “...nothing shall prevent the governing authorities of the parishes of St. Charles, St. John the Baptist, Ouachita, Morehouse, Calcasieu, and Vermilion...from retaining its own attorney to represent it generally.”
- Parishes governed by a home-rule charter that provides for the employment of a parish attorney or special attorney or counsel R.S. 16:2(D).
- Any parish listed in the 1970 decennial federal census as having a total population between 70,000 and 80,000 R.S. 42:261(C).

- There was no evidence that Mr. Jackson’s salary and increases were set or approved by the district attorney, nor was there evidence that the district attorney performed periodic performance evaluations on Mr. Jackson.

***Response:** Mr. Jackson’s performance evaluations and related salary increases are performed verbally by the District Attorney and the Police Jury Administrator. Documentation of these evaluations and salary increases will be summarized and signed by the District Attorney at the time of evaluation and kept on file at the District Attorney’s office and the offices of the respective Police Juries.*

- Assistant District Attorney Patrick Jackson was not enrolled as a member of the District Attorneys’ Retirement System.

***Response:** Mr. Jackson is “vested” in the Parochial Retirement System and therefore, has a property right in that system. We have requested actuaries from both retirement systems calculate the transfer and contribution necessary to the DA retirement system to make Mr. Jackson whole. Before these transfers are completed we would like approval from your office that these transactions and accurate and appropriate.*

Therefore, the office of the District Attorney has requested the services of your office to calculate an equitable transfer of Mr. Jackson retirement account from the Parochial Retirement System to the District Attorney’s Retirement System.

Bossier Employment Arrangement

Although the Bossier Parish administrator told us that Mr. Jackson is an employee of the district attorney (and confirmed that he can only be terminated by the district attorney), our assessment revealed the following information which indicates Bossier has been treating Mr. Jackson as its employee despite not having the legal capacity to hire him.

- On February 21, 2001, Bossier voted “to employ Mr. Patrick Jackson as legal counsel for the Bossier Parish Police Jury.”
- Mr. Jackson submits biweekly time sheets to Bossier. From 2001 through the present date, Mr. Jackson, unlike other assistant district attorneys in the Twenty-Sixth Judicial District, has received his annual salary and benefits paid directly from the general fund of Bossier Parish.
- Mr. Jackson, again unlike other assistant district attorneys, is a member of the Parochial Employees’ Retirement System (the retirement system for police jury employees).
- The Bossier Parish administrator has performed periodic performance evaluations of Mr. Jackson and has approved his annual salary increases since 2001.

- Mr. Jackson is listed on the Parish Web site as the Parish attorney and works directly with police jurors, management, and staff on legal matters.
- Bossier maintains a personnel file on Mr. Jackson which includes all changes to the payroll system for which authorization is evidenced solely by the parish.

The foregoing mix of employer responsibilities--some exercised by Bossier, some by the district attorney--raise questions about the respective roles of the district attorney and Bossier in how legal services are requested, authorized, assigned, delivered, evaluated, and controlled.

One result has been that Mr. Jackson has been placed improperly in the Parochial Employees' Retirement System. Another is that a written description of legal work performed by Mr. Jackson is not submitted to either Bossier or the district attorney (which could be used in the evaluation of his overall performance). Furthermore, absent a written agreement, the employment status of Mr. Jackson and the management responsibilities of the district attorney toward Mr. Jackson and Bossier are unclear.

Recommendations

1. The district attorney and Bossier should:

- Clarify that Mr. Jackson is an employee of the district attorney, not of Bossier, and derives his authority to provide regular legal counsel to Bossier only through his position as an assistant district attorney

***Response:** As stated above, Mr. Jackson is an ADA for the 26th Judicial District. This fact is evident by his oath of office dated, August 4, 1999, that was provided to your office.*

- Require that Mr. Jackson provide appropriate written detail to the district attorney and Bossier of all legal work performed

***Response:** We do not consider this necessary as the District Attorney and the Police Jury Administrator communicate daily with Mr. Jackson and all work performed on behalf of the Parish is summarized, discussed, and documented in the monthly Police Jury meetings, unless protected by the attorney client privilege.*

- Develop a written agreement signed by both parties as to how legal services will be requested by Bossier, assigned by the district attorney, monitored by both parties, evaluated, funded, and paid

***Response:** We are not aware of any statutory or "best practice" requirements that written agreements are necessary. As we are sure you are aware, Louisiana Revised Statute 42:261 mandates the representation of the District Attorney as general counsel.*

- Work with the Parochial Employees' Retirement System and the District Attorneys' Retirement System to determine options available to transfer Mr. Jackson's retirement funds to the District Attorneys' Retirement System, consistent with the practice for other assistant district attorneys

Response: Please see discussion of this issue on page 6.

- Clarify the process by which Bossier can opt to secure and pay "special counsel" under R.S. 42:263

Response: The Juries and the District Attorney rely on the specific provisions of Louisiana Revised Statute 42:263 if the need arises for "special counsel."

2. The district attorney should maintain a personnel file on Mr. Jackson and ensure that all future personnel and payroll actions are authorized by the district attorney and placed/recorded in that file.

Response: As stated above, a personnel file is, in fact, maintained for ALL employees of the District Attorney's office.

3. As part of the process of assessing the total cost required to provide legal services within the judicial district, the district attorney should annually compute and review total compensation paid, by source, to each assistant district attorney providing legal counsel to Bossier, including compensation paid to legal assistants and total cost to Bossier for legal counsel provided by his office.

Response: This budget to actual analysis is currently performed. The analysis remains current and is monitored on a regular basis.

Webster's Arrangement with Patrick Jackson

Webster Parish's arrangement with Mr. Patrick Jackson's private law firm to provide the parish with regular legal counsel may be contrary to state law.

Under state law (R.S. 16:2 and R.S. 42:261), district attorneys generally are required to act as "regular attorneys and counsel" for police juries/parishes. Only certain parishes are allowed to hire their own parish counsel in lieu of the district attorney, and Webster does not qualify under any of the exemptions allowed.⁵ [Note: As previously stated, Webster can opt to secure "special counsel" under R.S. 42:263; however, we understand that it has not sought to use this option for its legal services.]

However, in addition to being provided legal counsel by the district attorney's Assistant District Attorney Graydon Kitchens, Webster also hires Mr. Jackson's private law firm for legal matters.

In 2000, Webster initially contracted with the law firm of Mr. Jackson to represent it in a legal matter and has continued hiring his law firm to provide legal counsel to the parish.

We are not aware of any state law allowing Webster to contract with a law firm for regular legal counsel/services, nor is there legal authority for an assistant district attorney to assign work to an associate of his private law firm. We maintain that only the district attorney can act as Webster's regular legal counsel and assign his assistants to provide counsel.

According to the Webster secretary-treasurer, the police jury has continued through its public meetings to authorize legal services to be provided through Mr. Jackson's private law firm. We understand from Mr. Jackson that he periodically updated his firm's billing rates by letter agreements; however, Webster was not able to provide us with copies of these letters.

We were informed that this arrangement was made with the knowledge of the previous district attorney and has continued under the current district attorney. Mr. Jackson has billed Webster monthly for legal services provided by him and associates in his law firm. For 2010, Webster issued Mr. Jackson's firm an IRS Form-1099 showing \$50,003 in earnings.

⁵ Exemptions include:

- Parishes specifically excluded by statute such as R.S. 16:2(B) which states "...nothing shall prevent the governing authorities of the parishes of St. Charles, St. John the Baptist, Ouachita, Morehouse, Calcasieu, and Vermilion...from retaining its own attorney to represent it generally."
- Parishes governed by a home-rule charter that provides for the employment of a parish attorney or special attorney or counsel R.S. 16:2(D).
- Any parish listed in the 1970 decennial federal census as having a total population between 70,000 and 80,000 R.S. 42:261(C).

Recommendations:

1. The district attorney and Webster should:

- Clarify that the district attorney is responsible for providing all regular legal counsel to the Parish

***Response:** The office of the District Attorney is responsible for providing all regular legal counsel to the Parish, pursuant to Louisiana Revised Statute 42:261.*

- Develop a written agreement signed by both parties as to how legal services will be requested by Webster, assigned by the district attorney, monitored by both parties, evaluated, funded, and paid

***Response:** We are not aware of any statutory or “best practice” requirements that written agreements are necessary. As we are sure you are aware, Louisiana Revised Statute 42:261 mandates the representation of the District Attorney as general counsel.*

- Clarify the process by which Webster can opt to secure and pay “special counsel” under R.S. 42:263

***Response:** The Juries and the District Attorney rely on the specific provisions of Louisiana Revised Statute 42:263 if the need arises for “special counsel.”*

2. The district attorney should request an Ethics opinion regarding the relationship between Mr. Jackson's law firm and Webster Parish.

***Response:** The relationship between Mr. Jackson’s law firm and Webster Parish no longer exists; therefore, an ethic opinion is not warranted.*

3. As part of the process of assessing the total cost required to provide legal services within the judicial district, the district attorney should annually compute and review total compensation paid, by source, to each assistant district attorney providing legal counsel to Webster and total cost to Webster for legal counsel provided by his office.

***Response:** The analysis of this cost for the entire 26th Judicial District Attorney is currently performed. The analysis has been updated and will be monitored on a regular basis.*

Management's Response

J. SCHUYLER MARVIN
DISTRICT ATTORNEY



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September 21, 2011

Joy S. Irwin, CPA
Assistant Legislative Auditor and
Director of Advisory Services

Ms. Irwin,

Thank you for the opportunity to respond to the findings and recommendations resulting from your completion the assessment of certain relationships and arrangements for the delivery and payment of legal services provided by the District Attorney for the Twenty-Sixth Judicial District (DA) to the Bossier Parish Police Jury (Bossier) and the Webster Parish Police Jury (Webster). Also, thank you for incorporating our responses to those findings and recommendations into your report.

In our opinion, the findings and recommendations discussed in your report are not contrary to state law. However, you made us aware of several accounting and documentation issues that should be addressed and resolved. We have addressed those issues and are taking steps to document our operations and relationships as you suggested.

This letter and our responses to your report are respectfully submitted on behalf of

The Honorable John "Schuyler" Marvin
District Attorney for the Twenty-Sixth Judicial District
The Honorable Rickey L. Avery, President
Bossier Parish Police Jury
The Honorable Charles R. Walker, President
Webster Parish Police Jury

Sincerely,

Angela L. Lawrence, CPA
Financial Officer
26th Judicial District Attorney

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