



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

PORT OF IBERIA

Report by

Inspector General Bill Lynch

Prepared for

Governor M.J. "Mike" Foster, Jr.

February 18, 1998

File No. 1-97-0098



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

Port of Iberia

January 29, 1998

Report by

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Inspector General Bill Lynch

Approved by

A handwritten signature in black ink, appearing to be "M.J. Foster, Jr.", written over a horizontal line.

Governor M.J. "Mike" Foster, Jr.

File No. 1-97- 0098

Port of Iberia

The Port of Iberia improperly donated \$5,000 to the Iberia Industrial Development Foundation (IDF) for scholarships to the Louisiana Technical College, Teche Area Campus and \$500 to the Jeanerette Chamber of Commerce for a leadership program. The Port also improperly expended \$150 for a membership in the Iberia Industrial Development Foundation.

In addition, the Port has allowed a nonmember to sit on the board with the designation of "ex-officio member". This nonmember attends executive sessions of the board and sits on various committees where he votes on matters addressed by the committees.

Background

The Port of Iberia is an inland port accessed by the New Iberia Canal leading to the Intracoastal Canal and the Gulf of Mexico. The Port is governed by a seven member board of commissioners, one appointed by the mayor and Board of Alderman of Loreauville, one by the mayor and Board of Alderman of Jeanerette, two by the mayor and town council of New Iberia, and three by the Iberia Parish governing authority.

The day to day operations of the Port are handled by an executive director, an administrative assistant, a secretary, and a contract dock manager. An attorney is retained as needed.

The Port leases space and dock facilities to 35 businesses primarily in the offshore oil service and fabrication industry that have approximately 3,500 employees. There are other businesses located on the canal with docking facilities and many more in the same proximity that do not need direct access to the waterway. Collectively they are all known as the Port of Iberia.

Scholarships

The Port donated \$5,000 to the IDF on June 4, 1997, for ten \$500 scholarships to the Louisiana Technical College, Teche Area Campus. The Teche Area Campus is a public institute and one of forty-four vo-tech schools in the La. Technical College system. The IDF organized the scholarship program and solicited the donation from the Port. The recipients of the scholarships will attend the Louisiana Technical College in courses of study such as electronics, mechanics, office occupations, drafting, and practical nursing.

Article 7 Section 14 of the State Constitution prohibits this type of donation and is stated;

“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.”

Contribution to Chamber of Commerce

The Port contributed \$500 to the Jeanerette Chamber of Commerce on Feb. 28, 1997 for a leadership program. The contribution was in response to a letter from the Chamber requesting contributions to sponsor a “Rural Community Leadership and Economic Development Program”. This is an on going program that invites people in from various sectors of the community to form committees and help develop solutions to the growing pains experienced by Jeanerette.

Article 7 Section 14 of the State Constitution as stated previously also prohibits this type of donation. Additionally, Attorney General Opinion 95-439 opines that this type of expenditure by a Port violates the State Constitution if the curriculum at the seminar does not include the functions and duties of the Port, itself, and the role it plays in the socio/economic community.

Port Membership

The Port paid a \$150 membership fee for its executive director, John Oubre, in the Iberia Industrial Development Foundation (IDF) on Aug. 20, 1996. The IDF is a broad coalition of New Iberia businesses with a socio-economic agenda of public activism coupled with promotion of area business.

The IDF does not meet the requirements established in LA. R.S. 51:1201 that state,

“Such councils shall be governed by boards comprised of members appointed by the governing authorities of the participating political subdivisions.”

The board of the IDF made up of 21 directors consisting of 6 local governing officials appointed in the by-laws of the foundation. The other 15 directors are elected from the membership at large by the members.

Nonmember on the Board

Without legal authority, the Board of Commissioners has allowed the president to appoint an “ex-officio member” to the board for a period of a year. Dale McNally president of Dale McNally Inc. a port tenant in the steel fabrication business, was appointed Jan. 15, 1997 to replace the outgoing “ex-officio member”. This process was initiated in 1993 by the president of the Port Board at that time, and a current resolution will allow the New Iberia Port Business Association. to appoint the “ex-officio member” in the future.

The nonmember is listed on attendance records as “ex-officio member” although he does not have voting privileges during full board meetings. However, Port meeting minutes do show that Mr. McNally has been appointed to various standing and ad-hoc committees where he has on one occasion cast the deciding vote for recommendation of a new port director . The committees consist solely of the board members and Mr. McNally. He is the only nonmember allowed to participate due to his designated status.

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The law governing the make up of the Port's Board of Commissioners, LA. R.S. 34:242 states;

“The board shall consist of seven members ... their successors shall be appointed by the respective governing authorities for terms of six years each.”

The minutes reflect that Mr. McNally was present for board meetings when the board went into executive session by unanimous vote. The minutes do not indicate that Mr. McNally did not participate. The general public is not allowed in executive sessions.

The Port Board has granted access and influence to the Port business community that the general public does not enjoy.

Conclusions:

1. The Port of Iberia Board of Commissioners violated the State Constitution when it donated \$5,000 to the Iberia Industrial Development Foundation for scholarships, \$500 to the Jeanerette Chamber of Commerce for a leadership program, and \$150 for a membership in the Iberia Industrial Development Foundation.
2. The Port Board of Commissioners has no authority to appoint a person to sit on the board and function as a board member.

Recommendations:

1. The Port of Iberia Board of Commissioners should take steps to insure all expenditures are made in accordance with the State Constitution.
2. Nonmembers should not be accorded rights and duties of board members.

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Management Response

A copy of the Port's response submitted by its attorney is attached. The Iberia Industrial Development Foundation attempted to remedy the scholarship problem with a letter to the scholarship recipients to have them work for a port business for six months.

I G Response

The Port defends its funding of scholarships based on a legal opinion by its attorney. However, the opinion prescribes conditions that must be met for the scholarships to be legal, which the Port did not follow.

The Chamber of Commerce contribution was solicited and paid as a donation, not as a fee for attending the sponsored program. Records from the program indicate only one port official attended the program. The contribution was \$500, while the fee to attend was \$50. Program materials show the program was not port-related.

The Port's defense of its paid membership in the Iberia Industrial Development Foundation fails to address La. R.S. 51:1201, the statute cited in the report that limits the types of industrial development councils in which a port may be a member.

As to the "ex officio member," the Port contends this member is "unofficial." However, board minutes show this has been treated as an official position, not an unofficial honorary title. The Port also contends there is no law preventing the appointment. In fact, La. R.S. 34:242, the statute establishing the port's board of commissioners, states that "the board shall consist of seven members," not eight.

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BL/VC/fs

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November 14, 1997

VIA FACSIMILE (504) 342-1947 and U.S. Mail

Mr. Bill Lynch
OFFICE OF STATE INSPECTOR GENERAL
P. O. Box 99095
Baton Rouge, LA 70804-9095

Re: Our Client: PORT OF IBERIA DISTRICT
Your File: 1-97-0098

Dear Mr. Lynch:

At the request of our client, the Port of Iberia Board of Commissioners, we are writing in response to your correspondence of November 4, 1997 in reference to the above captioned matter. Therein, you addressed certain issues regarding appropriations by the Port and its "ex officio" member. We will address these issues below in the same order outlined in your letter and under the same title.

SCHOLARSHIPS: The Port of Iberia made these appropriations after consulting our office. We provided the Port with a Memorandum dated December 27, 1996 regarding this issue. After further review, and for the reasons stated in the referenced Memorandum, we still are of the opinion that these appropriations are proper and do not violate the Louisiana Constitution.

CONTRIBUTION TO THE CHAMBER OF COMMERCE: We agree generally that payment of membership to Chambers of Commerce has been held an illegal appropriation by the Attorney General, as evidenced by the Opinion you cited in your letter. This is well known by the Port, and it has not and will not pay for membership in any Chambers of Commerce. Furthermore, the Port has declined memberships in other organizations on numerous occasions for the same reasons that prohibit membership in Chambers of Commerce.

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However, the appropriation at issue was not payment for membership. This appropriation was in the nature of a cooperative endeavor for sponsorship of a leadership program which was attended by several Port commissioners. The Chamber of Commerce was a co-sponsor of the seminar. The Port's appropriation was to defray the expenses of the seminar, not a payment of membership dues to the Chamber. The program educated commissioners on several issues facing the rural areas of Iberia Parish which encompass the Port. The main focus of the program was to educate the attendees regarding economic development of the parish.

The Attorney General has consistently held that public officials have a legal duty to be competent, and continuing education and training was subsumed within this duty. See Attorney General Opinion 90-63, in which the Orleans Parish Clerk of Court was allowed to pay the costs of a hotel room to serve as a hospitality suite for a convention of the Louisiana Clerk's of Court Association.

Furthermore, the Attorney General has consistently held that the public expenditure must be for a public purpose creating a public benefit, and the expenditure must be proportionate to the benefit received. See Attorney General Opinions 87-804 and 90-63. One cannot argue that a public benefit was not received by the sponsorship of the program. It was an extensive study of rural economic development and an educational device which greatly benefited the Port Commissioners and others who attended. The Port's main focus, as was this program's, is the economic development of this area.

Also, the benefit received was proportionate to the expenditure. It only cost the Port \$500.00 which is extremely reasonable when considering the cost of similar seminars.

For these reasons, it is our position that the expenditure was appropriate under the Louisiana Constitution.

PORT MEMBERSHIP: In this section you criticize an appropriation to the IDF for the Port's "membership" in that organization. The primary function of the Iberia Industrial Development Foundation, as its name implies, is the promotion of industrial development in the parish. Membership in organizations which provide direct benefit to the public body and whose purpose is to further or enhance the mission of the public body is permitted. The mission of the Port of Iberia is

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to promote and facilitate industrial development in the parish.

We provided the Port with a Memo on February 9, 1994 which contains an exhaustive discussion on the law governing questions of this type. We have recommended to the Port that it verify that it received direct benefit from such organizations before appropriating money for the support of same. However, based on compliance with the appropriate criteria, we do not believe the cited appropriation violates the State's Constitution.

NON MEMBER ON THE BOARD: We are aware of no law, of either statutory or jurisprudential origin, which prohibits the Board of Commissioners or its President from appointing an "ex-officio member", or any other person, regardless of the nomenclature used, who may be asked to serve in a purely voluntary, uncompensated, unofficial capacity as non-voting advisor to the Board.

Mr. McNally, and others who have generously agreed to give their time to this position, render a valuable service to the Board, providing information and insight to the Board members whose primary tasks involve the promotion of industrial development activities at the Port, and serving the needs of those tenants who lease Port property and use Port facilities.

The "ex-officio member" is invited to attend all meetings of the Board as well as all committee meetings and is allowed to participate in all open meetings on the same basis as other members of the general public. On occasion, the "ex-officio member" is invited to attend executive sessions in situations where his knowledge and expertise may be useful to the Board. It is our opinion that the Board has the right and power to allow the attendance at executive session meetings of anyone who may be of assistance to the Board. Not only does the Board invite the attendance of professional advisors at executive session meetings, but it also may allow any person to attend who it believes may be able to assist the Board in its work.

The "ex-officio member" was accorded a vote on only one occasion and that was when he served as an appointed member of the ad-hoc advisory committee which assisted in the search for a new port director and made "recommendations" to the full Board. Again, we know of no law which prohibits the Port from creating ad hoc advisory committees to assist and advise the Board in its work.

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In the case of the ad hoc committee cited above, the Port Board of Commissioners had full power and authority to accept or reject the recommendations of its advisory committee and the vote of such committee had no legally binding effect on the Board.

The Port of Iberia is a Port District created under Section 31 of Article XIV of the 1921 Louisiana Constitution and L.R.S. 34:241 et seq. as such it has broad power and authority to "organize...departments and forces of the Board..." (L.R.S. 34:242); to "...prescribe rules to govern its meetings..." (L.R.S. 34:244); and "...to do any and all things necessary or proper for the government, regulation, development and control of the [its] business...". (La. Const. of 1921, Section 31, Art XIV)

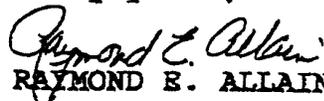
The above language contains a fairly broad grant of authority which leads us to conclude that the actions discussed above are within the power and authority of the Board, unless specifically prohibited by state law.

We therefore maintain that the practice in question violates no law or ethical rule and, to the contrary, should be applauded rather than criticized. It demonstrates the clear exercise of wise and sound public policy to solicit the input of those citizens whose knowledge and expertise can assist the public body in fairly and effectively delivering public services and performing the tasks assigned to it.

The two Memoranda referred in our response were provided to your staff previously. Additional copies will be attached to the mail copy of this letter.

If there is any further information you may require, please don't hesitate to contact us.

Very truly yours,

By: 
RAYMOND E. ALLAIN

REA/rma

Enclosures

xc: Roy Pontiff, Executive Director
Board of Commissioners, Port of Iberia District