

March 20, 2019

Mr. Paul D. Escott  
Lafayette City/Parish Attorney  
614 E. University Avenue  
Lafayette, LA 70503

**Via Email:**  
**[pescott@LafayetteLA.gov](mailto:pescott@LafayetteLA.gov)**  
**and U.S. Mail**

**RE:** *Lafayette Utilities Department*  
**OFN:** 1-176859

Dear Paul:

I have been engaged to represent several local citizens in connection with an inquiry those citizens have about present ownership of the Lafayette Utilities Department. As we know, the former City-Parish government has been deconsolidated as a result of an election of the people, and the process of working out all of the details is ongoing in preparation for election of new council, City as well as Parish, in the fall. I have discussed the inquiry with my clients, and I want to propose to you what I believe is correct and ask that you let me know whether you agree. If you do, then in my judgment, the Lafayette Utilities Department cannot be transferred from the Lafayette City/Parish government, to the City of Lafayette, as that transfer would violate Sec. 4.08 of the City/Parish Consolidated Government Charter.

The Lafayette City-Parish Consolidated Government Charter was passed a number of years ago, and governed everything within the City-Parish organization. Sec. 4.08 of that Charter provides in pertinent part, as follows:

Utilities System, Sale or Lease

Sec. A. The Lafayette public utilities authority shall not sell, lease or in any manner dispose of the utilities system or any substantial part thereof without approval by a majority vote of the qualified electors residing within the boundaries of the City of Lafayette voting in an election called for that purpose.

It's my understanding that during the January 8, 2019 LPUA meeting, the LPUA attempted to dispose of the communications system of the Lafayette Utilities System (13 Sec. 4-07 C (a): Division of Communication Services is hereby created within utilities. (0-263-2004; 11-16-04) without a vote of the city of Lafayette voters as is required by the Home Rule Charter. We have already quoted Sec. 4-08 of the Charter that requires a majority vote of the qualified electors residing in the boundaries of the city of Lafayette voting in an election called for that purpose to approve the sale of any part of the

utilities department. The disposal by the LPUA of the communications division of the Lafayette Utilities System violates that Charter section, as we see it.

In order to accomplish what is sought, sale or lease or burdening of the utilities system, the Charter Sec. 7.03 calls for a two-thirds vote of the council, calls for a full text of the amendment to be published, and then calls for a majority of the electors who vote in the election and who live in the city of Lafayette. These requirements were not, in my opinion, met in this case as a precursor to the LPUA disposing of the communications division. Thus, as I see it, the attempt at disposal of the communications division of the LUS system is invalid.

Further, I note that July 10, 2018 on the Council agenda, Item #45, 0-121-2018, proposed, among other things, abolition of the Lafayette Public Utilities Authority and substituting in its place the Lafayette City Council as the governing authority of the utility department of the Lafayette Public Power Authority. It also called for an election of the people for adoption of that ordinance. While the ordinance was adopted, it was vetoed by the Mayor after the council adoption of July 24. Subsequent thereto, amendment of the same ordinance was proposed and passed, and that amendment which came before the Council August 7, 2018 had as part of it a summary of the differences between the proposed Charter Amendments document introduced July 10, 2018 and the offered substitute amended version of the Charter document proposed at the August 7, 2018 meeting. It included the following:

Sec. 1-02 is changed to clarify that the City Council and the Parish Council, acting jointly, constitute the legislative branch of the Lafayette City-Parish Consolidated Government;

In the same meeting, and the Amendment was approved by the Council vote of 6-3, Sec. 4-07 was changed to "clarify" that:

The Lafayette City Council is also the governing authority of the communications division of the Utilities Department, and that the City Council shall remain the governing authority of any division of the Utilities Department that is reorganized, restructured, relocated, or which becomes its own department.

Sec. 4-08, regarding the requirement that there be a vote of the electorate of the City of Lafayette in the event there is a proposal to "sell, lease, or in any manner dispose of the Utilities System or any substantial part thereof," has been expanded to include "any contract whereby an entity would purport to manage any substantial part of the Utilities System". This existing requirement that any proceeds from

the sale or lease of public utility be used for capital improvements in the city of Lafayette has been similarly expanded to include proceeds from disposal or sale of any or substantial part of the Utilities System or any contract to manage any substantial part thereof. The provisions also clarify to explicitly state that the Lafayette City Council will be the sole body to call any such election and if the call of such an election must be by two-thirds vote of the Lafayette City Council.;

The above amendment fails to legally make the transfer of the utilities department or any section thereof from the former Lafayette Consolidated Government to the Lafayette City Council because the transfer, even as amended, violates the Charter. As we have indicated, the sale or lease of the System or any part of it must be vote of the electors, and that includes city and parish electors as the City-Parish owns the Utilities System. Further, as it was an amendment of the Charter, two-thirds of the Council was required and the full text of the Amendment had to be published. As I see it, that full text was not as it appears to me that those proposing the election were not aware that the transfer of ownership of the utilities department was actually taking place and therefore did not publish in the call for the election or the election itself, that outcome. The result is, in my opinion, a failure of the governing authority to appropriately transfer the utility department, the communications division of that department, or any asset of the utility department from the former City-Parish, its owner, to the City of Lafayette, or to have those same departments or portions of departments of the Utility System governed solely by the City Council rather than the former City-Parish Council. Transfer of the asset itself or of the control of the asset itself is tantamount to control of the asset from one body to another, and the requirements for doing that were not met here, in my opinion.

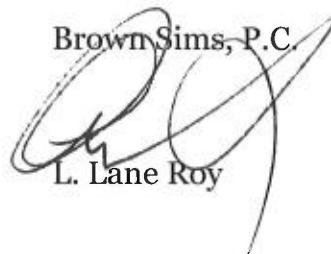
Based upon our observations and my opinion, I would greatly appreciate it if you agree with my opinion. As indicated, if my opinion is correct, then it is my judgment that the transfer has not been legally made as the transfer attempt violates the current Charter, and that further action would have to be taken in order to accomplish the transfer.

If you have any questions or would like to discuss my inquiry, I am happy to do that. I appreciate your time and your attention and will look to hear from you regarding the matter.

With kind regards, I am

Yours very truly,

Brown Sims, P.C.

A handwritten signature in black ink, appearing to be "L. Lane Roy", written over the printed name.

L. Lane Roy

LLR/ymh/#4839-9644-0973