



Leslie Turk &lt;leslie@thecurrentla.com&gt;

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**Fwd: Legal Opinion Mayor-President Available under Charter section 3-06**

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Leslie Turk &lt;leslie@thecurrentla.com&gt;

Thu, Jul 28, 2022 at 4:00 PM

Draft

From: Gregory Logan <greg@loganfirm.com<mailto:greg@loganfirm.com>>  
Subject: Legal Opinion Mayor-President Available under Charter section 3-06  
Date: July 27, 2022 at 7:44:39 AM CDT  
To: "AB Rubin, Parish Council District 5" <ABRubin@LafayetteLA.gov<mailto:ABRubin@LafayetteLA.gov>>, "Nanette Cook, City Council District 4" <nanettecook@LafayetteLA.gov<mailto:nanettecook@LafayetteLA.gov>>, "Glenn Lazard, City Council District 5" <GlennLazard@LafayetteLA.gov<mailto:GlennLazard@LafayetteLA.gov>>, "Kevin Naquin, Parish Council District 2" <KevinNaquin@LafayetteLA.gov<mailto:KevinNaquin@LafayetteLA.gov>>, "Josh Carlson, Parish Council District 3" <JoshCarlson@LafayetteLA.gov<mailto:JoshCarlson@LafayetteLA.gov>>, "John Guilbeau, Parish Council District 4" <JohnGuilbeau@LafayetteLA.gov<mailto:JohnGuilbeau@LafayetteLA.gov>>, "Bryan Tabor, Parish Council District 1" <BryanTabor@LafayetteLA.gov<mailto:BryanTabor@LafayetteLA.gov>>, "Patrick Lewis, City Council District 1" <PatrickLewis@LafayetteLA.gov<mailto:PatrickLewis@LafayetteLA.gov>>, "Liz Hebert, City Council District 3" <lizhebert@LafayetteLA.gov<mailto:lizhebert@LafayetteLA.gov>>, "Andy Naquin, City Council District 2" <AndyNaquin@LafayetteLA.gov<mailto:AndyNaquin@LafayetteLA.gov>>  
Cc: Paul Escott <pescott@LafayetteLA.gov<mailto:pescott@LafayetteLA.gov>>, Veronica Williams <vwilliams@lafayettela.gov<mailto:vwilliams@lafayettela.gov>>, Cydra Wingerter <cwingerter@LafayetteLA.gov<mailto:cwingerter@LafayetteLA.gov>>, 'Michael Hebert' <mhebert@lawbecker.com<mailto:mhebert@lawbecker.com>>

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Good Morning Council Members:

Yesterday Parish Council Chair AB Rubin joined our daily call with the Mayor-President and was able to speak directly to him. In accordance with my earlier legal opinion, the Mayor-President remains available while tending to his medical needs. For your ready reference, attached below is a 2011 legal Opinion from Michael Hebert when he was City-Parish attorney that comports with the legal opinion I gave on Monday. This opinion was given years ago under Joey Durel's administration. Since 2011 communication while out of the office has only improved.

Finally, I know there is some discussion regarding appointing an Interim Mayor-President by the Councils. Please be advised that this would violate Louisiana's Intrusion into Office Act and would subject those responsible to a \$500 per day fine and 6 months in jail or both, pursuant to La. R.S. 42:71, et seq. It is my duty as your lawyer to let you know about relevant laws. Further, as your attorney, it is my legal advice that you do not proceed on this course.

If you have any additional questions, please give me a call,

Greg

From: Michael D. Hebert <mhebert@LafayetteLA.gov<mailto:mhebert@LafayetteLA.gov>>  
><mailto:mhebert@LafayetteLA.gov>>  
Sent: Thursday, May 31, 2012 10:54 AM  
To: Dee Stanley <deestanley@lafayettela.gov<mailto:deestanley@lafayettela.gov>><mailto:deestanley@lafayettela.gov>>; Becky Perret <bperret@lafayettela.gov<mailto:bperret@lafayettela.gov>>><mailto:bperret@lafayettela.gov>>  
Cc: Stephanie M. Hanks <smhanks@LafayetteLA.gov<mailto:smhanks@LafayetteLA.gov>>><mailto:smhanks@LafayetteLA.gov>>; Laurie D. Lormand <ldlormand@lafayettela.gov<mailto:ldlormand@lafayettela.gov>>><mailto:ldlormand@lafayettela.gov>>; Joey Durel <jdurel@LafayetteLA.gov<mailto:jdurel@LafayetteLA.gov>>><mailto:jdurel@LafayetteLA.gov>>  
Subject: Electronic Signature -- CONFIDENTIAL AND PRIVILEGED

Importance: High

For your convenient reference, below is my previous opinion regarding Joey's ability to execute documents by electronic signature while he is out of the Parish.

Michael D. Hebert | City-Parish Attorney  
101 La Rue France, Suite 200 / PO Box 3723 / Lafayette, LA 70502  
p: 337-291-8015 / [mhebert@lafayettela.gov](mailto:mhebert@lafayettela.gov)<mailto:mhebert@lafayettela.gov><mailto:mhebert@lafayettela.gov> / [lafayettela.gov](http://lafayettela.gov)<http://lafayettela.gov>

[image002.jpg]

From: Michael D. Hebert  
Sent: Friday, September 02, 2011 10:29 AM  
To: Dee Stanley  
Cc: Joey Durel; Laurie D. Lormand ([ldlormand@LafayetteLA.gov](mailto:ldlormand@LafayetteLA.gov)<mailto:ldlormand@LafayetteLA.gov><mailto:ldlormand@LafayetteLA.gov>); Stephanie M. Hanks; Jenny Meadows; Becky Perret ([bperret@LafayetteLA.gov](mailto:bperret@LafayetteLA.gov)<mailto:bperret@LafayetteLA.gov><mailto:bperret@LafayetteLA.gov>)  
Subject: Emergency Declaration -- Tropical Depression 13 (Initial) -- CONFIDENTIAL AND PRIVILEGED  
Importance: High

This will confirm the substance of my verbal opinion to Dee on this matter earlier today.

I understand that President Durel is out of state, but otherwise has full communication capability with Lafayette Parish by all modern communication methods. The question at hand is whether, under those circumstances, President Durel can execute an emergency declaration pursuant to La. R.S. 29:721 et seq.

Section 3-06(A) of the City-Parish Charter provides that "When the President is absent from and unavailable to Lafayette Parish for more than 48 hours, the powers and duties of the office of President shall be exercised by the chair of the Council."

This section thus requires two elements to be satisfied: (1) the President's absence from Lafayette Parish, and (2) the President's unavailability to Lafayette Parish.

This provision seems to recognize the realities of modern communication technology not at the time of the drafting of previous Charters.

For example, the provisions of the former 2-09(C) of the Lafayette City Charter (adopted in 1965) provided that the Mayor's powers and duties were exercised by the President of the Council "during the temporary absence of the Mayor from the City," without recognizing the possibility that the Mayor might be "available" to the City.

Because President Durel is currently "available to Lafayette Parish" via email, telephone, cell phone, and/or fax communication, and perhaps even by other similarly immediate forms of communication, it is my opinion that he still retains his powers and duties under Section 3-06(A) of the Charter.

That leaves the question as to whether President Durel may execute an emergency declaration electronically from his current location.

This issue is addressed squarely by the Louisiana Uniform Electronic Transactions Act, specifically La. R.S. 9:2607. That statute provides as follows in pertinent part:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

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1. If a law requires a record to be in writing, an electronic record satisfies the law.
2. If a law requires a signature, an electronic signature satisfies the law.

With these authorities in mind, my opinion is as follows:

1. President Durel currently retains full authority as City-Parish President and the provisions of Section 3-06(A) of the City-Parish Charter have not resulted in any transfer of his powers.
2. President Durel may execute an emergency declaration by electronic signature, pursuant to the provisions of the Louisiana Uniform Electronic Transactions Act as described above.

If I can be of further assistance in this matter, please do not hesitate to contact me.

Michael D. Hebert  
City-Parish Attorney  
(337) 291-8015