

VERMILION PARISH POLICE JURY



COMPLIANCE AUDIT  
ISSUED NOVEMBER 18, 2009

**LEGISLATIVE AUDITOR  
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LOUISIANA LEGISLATIVE AUDITOR  
STEVE J. THERIOT, CPA

November 18, 2009

Mr. Gerald Butaud, President,  
and Members of Vermilion Parish Police Jury  
100 N. State St., Suite 200  
Abbeville, Louisiana 70510

Dear Mr. Butaud:

We have audited certain operations and transactions of the Vermilion Parish Police Jury (Police Jury) for the period July 1, 2009, through August 31, 2009. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain transactions.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required of an audit by *Government Auditing Standards*; therefore, we are not offering an opinion on the Vermilion Parish financial statements or system of internal control nor assurance as to compliance with laws and regulations. The concerns and results of our audit are listed below for your consideration.

The Police Jury conducted executive sessions on July 6, 2009, and July 22, 2009, to discuss the Acadiana C & D Landfill (landfill) fire. Louisiana law allows public bodies to enter executive session under specific circumstances and with restrictions including the following:

1. The discussion of a limited number of matters including prospective litigation after formal written demand or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body<sup>1</sup>; however, no final or binding action can be taken during an executive session.<sup>2</sup>
2. The executive sessions must be included in the public meeting agenda notice or added to the agenda through unanimous approval.<sup>3</sup>

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<sup>1</sup>R.S. 42§6.1 states, in part, that “a public body may hold an executive session pursuant to R.S. 42:6 for one or more of the following reasons . . . Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation with an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.”

<sup>2</sup>R.S. 42§6 states, in part, that “. . . however, no final or binding action shall be taken during an executive session.”

<sup>3</sup>R.S. 42§6 states, in part, that “a public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:7.”

R.S. 42§7 states, in part, that “all public bodies . . . shall give written public notice of any regular, special or rescheduled meeting . . . such notice shall include the agenda, date, time, and place of the meeting, provided that upon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting.”

3. If an executive session concerns litigation, then the executive session along with certain information about the litigation must be included in the meeting notice.<sup>4</sup>

It appears the Parish may not have met this criteria.

According to Police Jury minutes, the Police Jury entered into executive session July 6, 2009, and July 22, 2009, to discuss prospective litigation regarding the landfill. In a letter dated August 5, 2009, Mr. Paul Moresi, parish general counsel, stated that the Police Jury received correspondence that he characterized as two written demands concerning the landfill. Upon review of these documents, we noted that one letter, from the landowner's attorney, requested access to his property and for equipment to be removed. The second set of documents, as indicated in Mr. Moresi's letter, was a pair of transmittal letters from a vendor confirming the receipt of invoices. Because there was no written demand concerning current or on-going filed litigation involving the landfill, the Police Jury may have violated the open meetings law by going into these two executive sessions.

If the correspondence provided by Mr. Moresi did constitute formal written demand as required in Louisiana law, the Police Jury may not have met the criteria outlined in Louisiana law<sup>3</sup> to discuss the landfill fire at the regular meeting on July 6, 2009, or the special meeting on July 22, 2006. The public notice for the July 6, 2009, Police Jury meeting did not include an agenda item nor was one added during the meeting to discuss the landfill in regular or executive session. Therefore, the Police Jury may not have met the criteria to discuss the landfill fire in regular or executive session during that meeting. The public notice for the July 22, 2009, special meeting did contain an agenda item to discuss "the Acadiana C&D Landfill Fire and related legal issues," but did not meet the requirements in Louisiana law,<sup>4</sup> which specifies identification of the parties involved and reasonable identification of the subject matter of prospective litigation.

During our fieldwork, we noted the Police Jury contracted with B&B Fire & Safety, Inc., to respond to a fire and environmental hazard at the landfill. B&B Fire & Safety, Inc., is partially owned and managed by Mr. Scott Butaud, son of Mr. Gerald Butaud, president of the Police Jury. This transaction has been referred to the Louisiana Board of Ethics through this report for its consideration.

We recommend that the Parish Government:

- (1) seek an Attorney General's opinion on its use of executive session for circumstances such as discussing the landfill fire to determine if correspondence received from B&B Fire & Safety, Inc., and the landowner's attorney constitutes formal written demand, and

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<sup>4</sup>R.S. 42§7 states, in part, that "following the above information there shall also be attached to the written public notice of the meeting, whether or not such matters will be discussed in an executive session . . . A statement identifying the court, case number, and the parties relative to any pending litigation to be considered at the meeting. A statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting."

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- (2) comply with the Louisiana open meetings law:
  - a. all discussion or action items must be part of the published agenda or added as an agenda item, and
  - b. publish the required information concerning litigation in the public notice.

This correspondence represents our finding and recommendations as well as management's response. This correspondence is intended primarily for the information and use of management of the Police Jury. I trust this information will assist you in the efficient and effective operations of the Parish. Should you have any questions, please contact me at (225) 339-3839 or Mr. Dan Daigle, Compliance Audit Director, at (225) 339-3808.

Sincerely,



Steve J. Theriot, CPA  
Legislative Auditor

DD:SJT:sr



## Management's Response





**OFFICE OF THE DISTRICT ATTORNEY  
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**MICHAEL HARSON  
DISTRICT ATTORNEY**

November 4, 2009

VIA FACSIMILE / U. S. MAIL

Mr. Kevin Kelley, Manager  
Office of Legislative Auditor  
P. O. Box 94397  
Baton Rouge, LA 70804-9397

Mr. Greg Lavergne, Senior Auditor  
Office of Legislative Auditor  
P. O. Box 94397  
Baton Rouge, LA 70804-9397

Re: Vermilion Parish Police Jury

Dear Kevin and Greg:

The Vermilion Parish Police Jury has authorized the following responses to the undated "preliminary draft" report from your office which was hand delivered to the President of the Vermilion Parish Police Jury on October 22, 2009.

The focus of the report is the propriety of the executive sessions held by the Vermilion Parish Police Jury on July 6, and July 22, 2009 to discuss the Acadiana CD Facility landfill fire, following a declaration of emergency by the President of the Police Jury on July 1, 2009.

The July 6, 2009 executive session was brief, and during which the Police Jury was brought up to date on the landfill fire and informed that its legal counsel had received formal written demand by the owner of the property containing the landfill, demanding that he be placed back into possession of the property. In addition to the letter, the Police Jury was informed that the legal counsel for the landowner, George Tate, personally informed the legal counsel for the Police Jury that if the landowner was not restored to possession of the property, he was prepared to file a federal lawsuit against the Police Jury.

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At the conclusion of the meeting of July 6, 2009, the Police Jury scheduled a public meeting for the next night, July 7, 2009.

The matter was discussed vigorously and at length in an open session on July 7, 2009.

A special meeting was then held on Wednesday, July 22, 2009 after the Police Jury received an invoice and request for payment from B & B Fire and Safety Services, Inc., the company that was engaged to extinguish the fire at the landfill.

At the meeting of July 22, 2009, there was a lengthy open session that involved a wide ranging and robust discussion of all of the factual issues related to the landfill fire.

When the discussion focused on the legal rights and obligations of the Police Jury in relation to the invoice submitted by B & B, and the parish's potential legal rights to pursue a lawsuit against the owner of the landfill site, a discussion was held in executive session after a unanimous vote of the Police Jury. During that executive session, the Police Jury received legal advice from undersigned regarding those two legal issues, and the prospect of litigation regarding both matters. No action was taken in executive session.

It is the position of the Vermilion Parish Police Jury that the executive sessions discussed herein were fully authorized by LSA-R.S. 42:6.1 (2) and R.S. 42:6.1(5).

LSA-R.S. 42:6.1(2) authorizes executive sessions for strategy sessions with respect to prospective litigation after formal written demand when an open meeting would have a detrimental effect on the bargaining or litigation position of the public body.

In this case, the Police Jury had received formal written demand from the landowner, coupled with a verbal threat of litigation from the landowner's attorney. The Police Jury also received a written invoice from B & B with a request for payment. Had the Vermilion Parish Police Jury received legal advice in open session, in the presence of parties who were potential legal adversaries, it clearly would have had a detrimental effect on the bargaining and/or litigating position of the Police Jury.

Forcing the Police Jury to receive legal advice regarding two potential lawsuits in the presence of the opposing parties and their attorneys would have arguably violated the confidentiality of the attorney/client relationship, and certainly would have had a detrimental effect on the legal position of the parish. The detrimental effect is perhaps even more apparent if litigation has only been threatened, as recognized in Norris v. Monroe City School Bd., 535 So.2d 840, (La. App. 2<sup>nd</sup> Cir. 1998) writ denied, 536 So.2d 1199, (La. 1998).

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In addition to the foregoing legal basis for the executive sessions, LSA-R.S. 42:6.1(5) allows a public body to hold an executive session for cases of extraordinary emergency, including but not limited to natural disasters. The Attorney General has opined that a work stoppage or strike would fit the definition of an "emergency" under this section of the law. (LA. Op. Atty. Gen. No. 85-789 Oct. 25, 1985). A "Disaster", as defined in LSA-R.S. 29:723, includes fires. This landfill fire would certainly fall within the definition of a disaster and was the subject of a declaration of emergency by the President of the Police Jury on July 1, 2009, which triggered the Parish emergency plan and response through the Vermilion Parish Office of Homeland Security and Emergency Preparedness. Therefore, in addition to being authorized as a discussion of prospective litigation, it appears to be appropriate under LSA-R.S. 42:6.1(5).

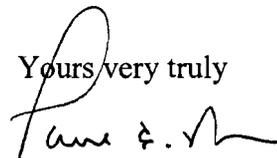
In respect to the landfill fire, the overwhelming majority of the facts and the issues relating to public interest were discussed vigorously, robustly and at length in multiple open sessions. The only time the Police Jury considered the matter in executive session was to receive legal advice from its legal counsel after written demand and with the clear prospect of litigation against third parties who were present at the meetings under discussion with legal counsel in attendance.

It is the position of the Vermilion Parish Police Jury that the purpose, spirit and letter of the Open Meeting Law was honored to the fullest extent in this matter in this matter. The Police Jury strongly believes that requiring a public discussion of the two potential lawsuits in the presence of its prospective legal opponents would not have served the purpose of the Open Meeting Law, but rather would have had a clear, detrimental effect on the bargaining and litigating position of the Vermilion Parish Police Jury.

The Vermilion Parish Police Jury asks that you include this response in any report that you issue.

With kind regards, I remain

Yours very truly



Paul G. Moresi, III  
Assistant District Attorney

PGMIII/da

cc: Vermilion Parish Police Jury  
Attn: Mr. Chris Theriot  
All members of the Police Jury  
Mr. Michael Harson, District Attorney