

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2013-06630

DIVISION "F"

ORLEANS PARISH SCHOOL BOARD

VERSUS

**EDOUARD R. QUATREUVUAX, IN HIS OFFICIAL CAPACITY AS INSPECTOR
GENERAL FOR THE CITY OF NEW ORLEANS AND/OR THE OFFICE OF THE
INSPECTOR GENERAL**

FILED: _____

CLERK

JUDGMENT


This matter came before the court on September 13, 2013, on Orleans Parish School Board's Motion to Quash Subpoena.

Present:	William D. Aaron, Jr. And Dewayne L. Williams	Attorneys for Orleans Parish School Board
	Suzanne Lacey Wisdom	Attorney for the Office of Inspector General, City of New Orleans

After considering the law, the pleadings, memorandum, exhibits, the evidence, and for the written reasons assigned after taking the matter under advisement, the court hereby renders judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that Orleans Parish School Board's Motion to Quash Subpoena is hereby **DENIED**.

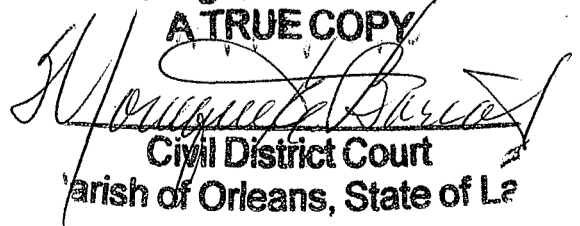
JUDGMENT RENDERED, AND SIGNED in New Orleans, Louisiana, this 19 day of September, 2013.



JUDGE CHRISTOPHER J. BRUNO

Sgd. Christopher J. Bruno
Judge, Division "F"

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Civil District Court
Parish of Orleans, State of La

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2013-06630

DIVISION "F"

SECTION 7

ORLEANS PARISH SCHOOL BOARD

VERSUS

**EDOUARD R. QUATREVAUX, IN HIS OFFICIAL CAPACITY AS INSPECTOR
GENERAL FOR THE CITY OF NEW ORLEANS AND/OR THE OFFICE OF THE
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FILED: _____

**_____
CLERK**

REASONS FOR JUDGMENT

The Orleans Parish School Board ("OPSB") is seeking to quash an administrative subpoena duces tecum served upon them by Edouard R. Quatrevaux ("Quatrevaux") in his official capacity as Inspector General for the City of New Orleans ("OIG"). OPSB argues that the OIG, a municipal governmental creation, does not have the authority to compel a political subdivision of the State of Louisiana to produce documents. The OIG counters that the City of New Orleans, as the tax collector for the OPSB, has the authority to request these documents. This court is presented with a constitutional provision which grants the OPSB independent control over its office, and a state and local statute which purports to allow a local entity the authority to scrutinize the spending by the independent entity of local tax dollars.

The OIG derives its authority from the City of New Orleans' Home Rule Charter Section 9-401 which provides that:

the council shall by ordinance create an Office of Inspector General and otherwise provide with respect thereto . . . The OIG shall provide for a full time program of investigation, audit, inspections, and performance review to provide increased accountability and oversight of entities of city government or entities receiving funds through the city, and to assist in improving agency operations and deterring and identifying, fraud, waste, abuse, and illegal acts. The OIG is specifically authorized to conduct audits of City entities

The OIG is authorized to "make investigations and examinations," and:

examine, review, audit, inspect, and investigate the records, books, reports, documents, papers, correspondence, accounts, audits, inspections, reviews, recommendations, plans, films, tapes, pictures, computer hard drives, software data, hardware data, e-mails, instant messages, text messages, and any other data and material relevant to any matter under audit, investigation, inspection, or performance review of all entities of local governmental subdivision or entities receiving funds through or for the benefit of the local governmental subdivision.

La. R.S. 33:9613 defines public agencies and/or governmental entities and quasi-public agencies and/or governmental entities which are subject to the OIG subpoena powers.

(2) For the purposes of this Section, these entities shall include but not be limited to every local governmental subdivision officer, employee, elected official, department, agency, board, commission, public benefit corporation, quasi-public agency or body, contractor, subcontractor, licensee of the local governmental subdivision, and every applicant for certification of eligibility for a municipal contract or program.

(3) These entities shall also include all local governmental subdivision governing authorities, all districts, boards, and commissions created by local governmental subdivision governing authorities either independently or in conjunction with other units of government, and all independently elected parish public officials whose offices receive funds from the municipality.

E. For the purposes of this Section, a quasi-public agency or body shall be defined as:

1) An organization, either not-for-profit or for profit, that is a component unit of local government established to perform a public purpose, and created by the state of Louisiana or any political subdivision or agency thereof or any special district or authority operating within the municipality.

(2) An organization, either not-for-profit or for profit, that is a component unit of a local governmental subdivision reporting entity, as defined under generally accepted accounting principles.

(3) An organization, either not-for-profit or for profit, created to perform a public purpose and having one or more of the following characteristics:

(a) The governing body is elected by the general public.

(b) A majority of the governing body is appointed by or authorized to be appointed by a governmental entity or individual governmental official as a part of their official duties.

(c) The entity is the recipient of proceeds of an ad valorem tax or general sales tax levied specifically for its operations.

(d) The entity is able to directly issue debt, the interest on which is exempt from federal taxation.

(e) The entity can be dissolved unilaterally by a governmental entity and its net assets assumed without compensation by that governmental entity.

The first issue is whether the OPSB is subject to the jurisdiction of the OIG.

Does the OPSB “receive funds through” the City of New Orleans and is the OPSB an entity as defined in La. R.S. 33:9613? The OPSB concedes that the City of New Orleans, through its director of finance, collects ad valorem taxes on behalf of the school board and charges a 2% collection fee which is deposited into the City’s general fund. The court finds that the OPSB receives funds through the City of New Orleans. This court also finds that the OPSB is a quasi-public agency because it is an organization “created to perform a public purpose” and its governing body is elected by the citizens of Orleans Parish under La. R.S. 33:9613(E)(3)(a). The OPSB argues that La. R.S. 33:9613, et seq. conflicts with Article VI, §5 of the Louisiana State Constitution, Home Rule Charter which provides:

(G) Parish Officials and School Boards Not Affected. No home rule charter or plan of government shall contain any provision affecting a school board or the

offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, which is inconsistent with this constitution or law.”

OPSB argues that this constitutional language forestalls any action by the OIG against the school board. In support of this argument, they cite to an advisory attorney general opinion, No. 10-0165, 2011 WL 1455960, (March 2, 2011). The Parish of Jefferson was considering establishing an inspector general’s office. *Id.* at *1. The parish wanted to know if the OIG would have the authority “to investigate the Jefferson Parish Sheriff, Clerk of Court, Assessor, Coroner, School Board, incorporated municipalities, the 24th JDC and/or the District Attorney.” *Id.* The AG’s office, extrapolating from *Diaz v. Allstate Ins., Co.*, 433 So. 2d 699 (La. 1983) stated that the district attorney and other La. Const. Art. VI, Section 5 entities’ offices, powers and duties “are governed by the constitution and the legislature, and are not subject to local control . . . His office, therefore, is an office of the state, not local government . . .” (Citations omitted). *Id.* at *3. “As a consequence, the powers granted to a parish OIG under La. R.S. 33:9613, as well as any charter provisions adopted pursuant thereto, may not infringe upon the constitutionally – protected independence of these entities.” *Id.* The AG correctly noted that the offices of the district attorney and other entities included in Article VI, §5 are independent entities. The AG does not explain how the OIG statute affects these entities inconsistently with the state constitution or laws. The AG, in its opinion, failed to articulate any potential or real conflict. Instead, the AG ultimately concluded that the authority of the OIG would be limited by the:

[c]onstitutionally protected independence of the entities, and the statutory language of La. R.S. 33:9613 (D)(1) to allow for the OIG to exercise these powers only to the extent necessary to ensure that funds and assets provided by the parish to these entities that are restricted or dedicated to a particular purposes through legislation or cooperative endeavor agreement were used only in accordance with the restriction or dedication or that there is an accurate accounting of the funds collected and distributed by an independent office that the parish may some claim to

The AG found that the independent entity is subject to the investigative powers of the OIG, but qualifies this grant of authority by defining the phrase receiving funds through to apply only to payments to the independent entities by the Parish of Jefferson under “state mandates or intergovernmental agreements or to determine whether dedicated funds received from or on behalf of the Parish were spent for only the authorized or

dedicated purposes.” *Id.* at *4. This court does not agree with the AG’s interpretation of the OIG ordinance. *See In re Shiplov*, 2005-0498 (La. App. 4 Cir. 10/18/06); 945 So. 2d 52, 60 (noting that “opinions of the Attorney General are merely advisory and, while persuasive authority, they are not binding”). Article VI, §5 does not state that the home rule charter cannot have a provision affecting a school board. “Affecting” must not be *inconsistent* with the state constitution or laws. The key word in this constitutional provision is “affecting.” The question is whether there a provision in the home rule charter “affecting” the OPSB which is inconsistent with the Louisiana State Constitution or laws. Affecting is a present participle of affect. It means to evoke a strong material response; touching upon or moving. Webster’s Third New International Dictionary, G. & C. Merriam Company, 1964. Affect has a number of meanings. As used in conjunction with affecting it means to exert an influence, to bestow. *Id.* Affect also means to produce an effect. The court in *Drew v. Parker*, 8363 (La. App. 1 Cir. 5/31/71); 249 So. 2d 356 addressed the meaning of “affect” and “affecting” as used Section 40, Article 7 of the Louisiana Constitution of 1921.¹ The plaintiffs in *Drew* were challenging a pay increase to the judiciary authorized by the Louisiana Legislature under Acts 24, 25 and 26 of the 1970 regular session of the Louisiana Legislature. *Id.* at 357. The plaintiffs argued that Section 40, Article 7 provided that “[n]o elected judge . . . except as otherwise provided in this Constitution, shall be affected in his term of . . . salary . . . during the term for which he was elected . . . and any legislation so affecting any such judge . . . shall take effect only at the end of the term of office of such judge . . .” *Id.* The court in defining “affect” cited to Ballantine’s Law Dictionary (1948) for the following definition:

¹ “No elected judge of any court of the State, except as otherwise provided in this Constitution, shall be affected in his term of office, salary, or jurisdiction as to amount, during the term or period for which he was elected; and any legislation so affecting any such judge or court shall take effect only at the end of the term of office of such judge or judges, incumbents of the court, or courts, to which such legislation may apply at the time of its enactment; provided however that nothing in this amendment shall affect the present provisions of this Constitution with respect to judges appointed to fill an unexpired term of less than one year under the provisions of this Constitution. The term of office, salary, or jurisdiction as to amount, during the term or period for which such judges were appointed shall in no way be changed by this amendment. (As amended Acts 1940, No. 386, adopted Nov. 5, 1940.)”

The word is derived from the Latin, *Afficio*, and sometimes means to act upon; to influence; but it is more frequently used in the sense of weakening, debilitation; acting injuriously upon person and things . . . The same type of language is used in defining ‘affect’ in *Words and Phrases* at page 307 as follows: ‘affect’ is often used in the sense of acting injurious upon persons; and hence when an act provides that nothing contained therein should be construed to ‘affect’ the rights of any person, etc., it means that the section must not be so construed as to Prejudice or Injuriously affect such rights. Cases in many jurisdictions use this detrimental connotation when dealing with the word ‘affect.’”

This court agrees that the use of the word ‘affecting’ in the context of Article VI, §5 must be construed as injurious or taking away a right or privilege. The OIG provision does not change any of the political structure of the OPSB. It does not dictate how the OPSB spends tax payer dollars. The OIG is simply investigating how the tax dollars of the Parish of Orleans are being spent. This court does not believe that the OIG provision in the home rule charter in any way affects the OPSB in a detrimental fashion nor does this court believe that the investigatory powers of the OIG conflict with the OPSB’s independence as a political subdivision of the State of Louisiana. *See* La. R.S. 17:81 (laying out the general powers of local public school boards).

The OPSB also argues that the phrase “receiving funds through” relates only to the payment of any funds to the OPSB, again citing to the AG’s opinion. There is nothing in the statute limiting the application of the phrase “receiving funds through” as interpreted by the AG’s office. It is a maxim of statutory construction that “the interpretation of any statutory provision starts with the language of the statute itself . . . When the provision is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect . . .” *Oubre v. Louisiana Citizens Fair Plan*, 2011-0097 (La. 12/16/11); 79 So. 2d 987, 997. The word “through” is used as a preposition in the OIG statute. It is a function word meaning “to indicate passage into and out of a treatment, handling or process.” Webster’s Third New International Dictionary, *supra*. This court finds that the OPSB receives local tax funds through the City of New Orleans, thereby bringing it within the investigatory jurisdiction of the OIG.

In a post hearing memorandum the OPSB argues that the OIG subpoena power is limited by La. R.S. 33:9613 (4)(a) which provides:

(4)(a) In the performance of its duties, a local office of inspector general in the city of New Orleans or parish of Jefferson may issue an administrative subpoena duces tecum to require the production of books, records, documents, or other evidence deemed relevant or material to an investigation, audit, or inspection. The

subpoena duces tecum shall be issued only in furtherance of the authority provided by local ordinance and by Subsections D and E of this Section and shall comply with all applicable constitutionally established rights and processes.

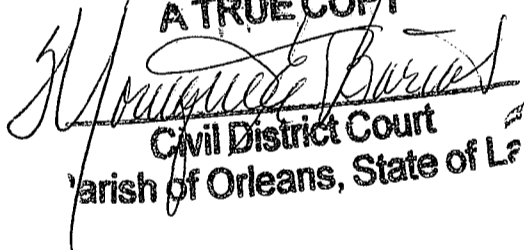
The OPSB reads this section as four separate prerequisites to the issuance of subpoenas by the OIG. The language “in furtherance of the authority provided by local authority” is construed as requiring the local ordinance to authorize subpoena power. Section (4)(a) only requires that the local ordinance provide the OIG with the authority to investigate. Article XIII, Section 2-1120 of the City Code explicitly vest the OIG with the authority to investigate. Section (4)(a) grants the OIG subpoena power in accordance with its authority to investigate. The other prerequisites have been addressed previously. The OPSB receives money through the City of New Orleans; the OPSB is a quasi-public body as defined in the OIG statute; and issuance of a subpoena complies “with all applicable constitutionally established rights and processes.” The court finds that the subpoena was issued in accordance with Louisiana Law. For the above stated reasons, OPSB’s motion to quash is hereby denied.

New Orleans, Louisiana, this 19 day of September, 2013.



JUDGE CHRISTOPHER J. BRUNO

Sgd. Christopher J. Bruno
Judge, Division "F"
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Civil District Court
Parish of Orleans, State of La