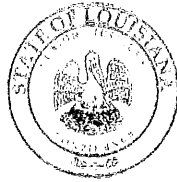
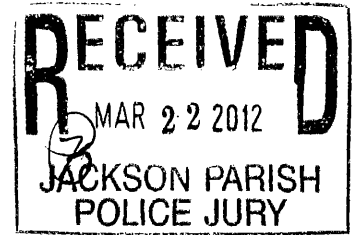


OFFICE OF THE



DISTRICT ATTORNEY

JONATHAN M. STEWART
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March 20, 2012

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Jackson Parish Police Jury
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Mr. Eddie Langston
Jackson Parish Police Jury
770 Taylor Road
Jonesboro, Louisiana 71251

Mr. Josh Peterson
Jackson Parish Police Jury
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Mr. Nathaniel Zeno, Jr.
Jackson Parish Police Jury
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Jonesboro, Louisiana 71251

Ms. Maxie Monroe
Jackson Parish Police Jury
802 Leon Drive
Jonesboro, Louisiana 71251

Mr. Charles Garrett
Jackson Parish Police Jury
1006 Gansville Road
Jonesboro, Louisiana 71251

Mr. Lynn Treadway
Jackson Parish Police Jury
505 Fifth Street
Jonesboro, Louisiana 71251

Mr. Kenneth Pardue
Jackson Parish Police Jury
500 East Court Street, Room 301
Jonesboro, LA 71251

Re: Additional La. R.S. 16:6 Payment from Jackson Parish
Police Jury to Second Judicial District Attorney's Office

Dear Gentlemen and Ms. Maxie:

I hope this letter finds each of you well.

You will remember that I met with the Finance Committee of the Jackson Parish Police Jury on February 6, 2012. At that meeting, I outlined the dire financial situation that the District Attorney's Office is in and I requested financial assistance. President Culpepper, at the end of the meeting, asked if I would be willing to meet with members of the Police Jury, Sheriff and other parties concerning this matter. I told him that I certainly would and for him to notify me of any meeting. Since that time, I have not heard back from the Police Jury.

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I wish to put in writing for your consideration some of the matters that I outlined for the Finance Committee.

1. During my term as District Attorney, I have been a good and conservative administrator of public funds. In my first year as District Attorney, I cut out two programs that the office was involved with and also reduced the District Attorney's salary by approximately \$77,000.00 per year. This resulted in a budgetary savings of more than \$160,000.00. I am the only District Attorney of our district since 1972 who doesn't have a car paid for by the office. In fact, because money has been so tight, the office hasn't reimbursed me for automobile mileage, it only pays for my gasoline.

The crisis that our office faces is one of declining revenues which have resulted not from action or inaction on the part of the District Attorney's Office, but from areas beyond our control.

2. At the end of March, the District Attorney's office will have depleted substantially all of its funds and we will be unable to make our payroll for the second pay period in April, unless we receive other funds.
3. Unfortunately, our criminal court system in the Second Judicial District has been largely dependent upon traffic fines and court costs. This is not what the law intends, but is a situation which has occurred for many years. Much of the traffic revenue is generated by the LACE Programs which operate in Claiborne and Bienville Parishes. Jackson Parish has not had a LACE Program, but Sheriff Brown has indicated to me that he might begin one in the future.

The General Fund Budget of the District Attorney's Office, if IV-D is excluded, approaches \$1.2 million dollars per year. Although La. R.S. 16:6 and the jurisprudence thereunder requires the Police Juries of the Judicial District to fully fund the Office of the District Attorney, this never had occurred. In fact, the three Police Juries in our judicial district provide roughly one-fourth (1/4th) of the monies required to operate our office. The additional monies necessary for our office to operate have come partly from self-generated funds on hot check collections and pre-trial intervention programs and partly from the fines and forfeitures.

A portion of the fines and forfeitures (12%) are paid directly to the District Attorney's Office and the remainder of fines go to the Second Judicial District Criminal Court Costs Fund which is administered by the Secretary-Treasurer of the Claiborne Parish Police Jury. Court costs of \$20.00, if assessed and collected, goes to the District Attorney's Office for every traffic, misdemeanor and felony conviction. In contrast, the Indigent Defender Board receives \$40.00 from every traffic conviction. The Clerk's Office receives \$25.00 from every traffic

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conviction, \$50.00 from every misdemeanor and \$100.00 from every felony court cost imposed. In many cases, court costs and fines are either waived, not imposed or not collected.

4. In the year 2000, before the LACE program was ever instituted, the District Attorney's Office received approximately \$20,000.00 per month from the Criminal Court Fund. For the year 2011, our office only averaged approximately \$13,000.00 per month.

In addition, for the first time in history, there were not sufficient funds in the Criminal Court Fund for the payment of any monies to the District Attorney's Office for the months of November and December of 2011, and for January and February of 2012. This is due to a number of factors. Primarily, the number of traffic tickets written has dropped in Claiborne Parish over the last quarter to almost a third of what it has been over the last several years. From 2008 to 2010, there was an almost 30% reduction in the total number of traffic tickets written. The number of tickets in Bienville Parish has dropped over the last several years but in the last few month appears to be on the upswing. Jackson Parish fines and costs collected are less than 20% of the total collected for the District.

The District Attorney's Office has done everything in its power to encourage tickets to be written. Through our Intergovernmental Agreement with the Claiborne and Bienville Parish Sheriffs, we have increased the deputy pay, effective October 1, 2011, from \$20.00 to \$25.00 per hour. However, fines and forfeitures for non traffic matters have dropped dramatically and are much less than they were a decade ago.

If the reduced traffic tickets and failure to obtain adequate fines and forfeitures continues, the Criminal Court Fund will not be a significant contributor to the budgets of the District Attorney's Office and Judges. The Judges may be able to weather this storm since they have surplus funds well in excess of \$600,000.00. For example, for the year 2011, the District Attorney's Office anticipated revenues from fines and forfeitures was approximately \$100,000.00 less than anticipated. It is absolutely essential that our office receive, each month, a significant amount of money from the Criminal Court Fund in order to operate. Since we have received no monies for the last four months other than for reimbursement of LACE payments that our office advances, we are in a terrible deficit situation.

5. In addition to the decrease in revenues, our office has had certain expenses increase dramatically during the time that I have been District Attorney. Some of these increase are as follows, to-wit:

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- A. Prior to January, 2009, the District Attorney's Office was not required to make retirement contributions for its Assistant District Attorneys. We are now required to make 12.25% contributions beginning July 1, 2012. Retirement contributions for our clerical staff have increased from approximately 12.25% to 15.75%.
 - B. Our office provides group health insurance benefits for its employees. The office pays approximately 75% of the premium and the employee pays approximately 25%. Since I have been District Attorney, the increase in insurance premiums from 2008 through 2011 has been a 28.5% increase.
6. I enclose a copy of Opinion Number 11-0167 of the Louisiana Attorney General's Office. This opinion succinctly points out that the Police Juries of a Judicial District are required to fully fund all reasonable expenses of the District Attorney's Office and to be a "reliable source of funding." This duty is required by law under La. R.S. 16:6 and the holding of *Reed v. Washington Parish Police Jury*, 588 So. 2d 1044 (La. 1988). This duty is a mandatory duty and the District Attorney is not required to depend on a Criminal Court Fund or fines and forfeitures or other sources as the primary source of its operating budget. Any funds received by the District Attorney from collateral sources does not relieve the Police Jury from its funding obligation.

In many jurisdictions, the District Attorney's Office simply submits a budget to the Police Jury and the Police Jury fully funds its operations. This has never occurred in the Second Judicial District and I am not asking our Police Juries to do so at this time.

REQUESTED ACTION

Because of our budget crisis, I met with the Bienville Parish Police Jury on March 16th and I asked the Police Jury to make an immediate additional La. R.S. 16:6 payment to our office of \$50,000.00. I told the Parish Police Jury that I would only come back and ask for additional funds if our revenue problems continued. I am now asking the Jackson Parish Police Jury to do as Bienville Parish has done and to make a one time La. R.S. 16:6 additional payment to the Second Judicial District Attorney's Office of \$50,000.00. I will be asking the Claiborne Parish Police Jury to do the same.

However, receipt of these funds will only help our situation for the next several months. I am hopeful that traffic revenues will increase and that we will have an increase in the amount of fines and forfeitures levied by our Judges. However, I cannot guarantee that this will happen.

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In the event that our revenue crisis continues, I will have no other choice but to submit a budget to our Police Juries and request full funding for the operation of our office. I certainly hope that this does not occur.

If either or both Jackson Parish and Claiborne Parish refuse to pay this additional \$50,000.00 assessment, then I will have no other choice but to file a mandamus suit requesting our Court to order the Police Juries to full fund my office. The law is very clear and the Police Juries will be required to pay all reasonable expenses of the office. In addition, the Police Juries will be responsible for paying both its own attorney's fees and the attorney's fees of the District Attorney's Office which I would estimate to be close to \$100,000.00 based upon my review of earlier court cases.

I would like to have your answer to my request for immediate additional La. R.S. 16:6 funds of \$50,000.00 by April 2, 2012. I regret having to make this request because I know every governmental entity is having budgetary problems. However, I have no choice but to make this request. My budget contains no fat that I can cut and the revenue problems are not of my making and are in fact beyond my control.

FUTURE SAVINGS ON PRE-TRIAL PRISONERS

On perhaps a more pleasant note, I want you to know that my office is instituting a couple of measures which I am hopeful will save each of my Police Juries a significant amount of the monies that they spend for pre-trial detainees on felony charges. We have started, in Jackson Parish, a priority program for people who are incarcerated on felony charges and are unable to bond out. My primary felony assistant in Jackson Parish, Mr. Stokes, is setting these cases for trial on a priority basis. In addition, I am hopeful that Judge Teat will agree to implement a program that Judge Fallin has agreed to implement in Bienville Parish at my request.

As you may know, when a person is charged with a felony, due to the fact that we only have six regular felony jury terms per year, and due to the backlog of cases, it takes probably nine (9) months after a person is arraigned for his trial date to come up. Typically, our Judges set a pre-trial hearing about a month before trial and then a plea date about two weeks before trial. Judge Fallin has agreed, in Bienville Parish, for all those people who are charged with felonies and unable to bond out to have the pre-trial hearing fixed for the month following arraignment rather than approximately eight months away. He has agreed to fix a plea day within a couple of weeks after our pre-trial hearing date. As you may know, at a pre-trial hearing, the case is discussed among the attorneys and the Judge and the Judge informs the attorneys what sentence he will impose if the person pleads. I do not know what Jackson Parish spent last year on pre-trial detainees. In Bienville Parish, after looking at the figures, I believe that our new program may save the Bienville Parish Police Jury over \$100,000.00 per year. I am hopeful that we can institute this program in Jackson Parish and have significant

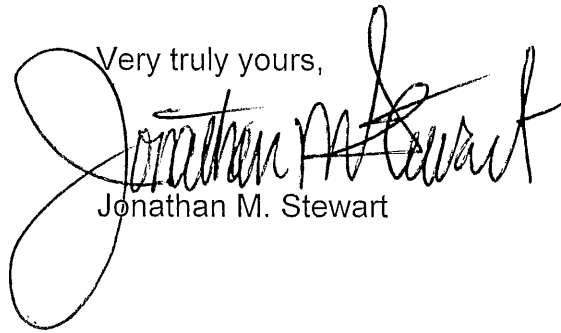
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savings in the immediate future.

I will be happy to meet with the Jury personally to discuss this or any other matter. Would you please favor me with a reply to this request on or before April 2, 2012. I thank each of you for your courtesy and attention to this matter and with best regards, I remain,

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonathan M. Stewart". The signature is written in a cursive style with a large, looping initial "J".

Jonathan M. Stewart

JMS:chf
Enclosures

August 25, 2011
Opinion 11-0167

Honorable Michael C. Cassidy
District Attorney, 31st Judicial District
Post Office Box 1388
Jennings, Louisiana 70546

90 - A - 1 PUBLIC FUNDS & CONTRACTS
La. R.S. 15:571.11
La. R.S. 16:6

When there are not sufficient funds in the criminal court fund to reimburse the district attorney for the expenses of his office, the police jury must provide funds to reimburse the district attorney for those expenses, provided the expenses are determined to be reasonable.

Dear Mr. Cassidy:

You have requested an opinion of this office regarding funding for the district attorney's office when there is a deficit in the criminal court fund.

Your request states that in your judicial district, the judge's and district attorney's offices pay their respective expenses with office funds and then seek reimbursement from the criminal court fund. You each prepare a letter to the police jury seeking reimbursement for listed expenses and attach supporting documentation of the expenses. The judge signs your letter and you sign off on his letter to indicate approval of the request for reimbursement of the submitted expenses.

During 2010, the district attorney's office paid approximately \$300,000 in expenses which were not reimbursed because the criminal court fund had insufficient funds. As a result, the following question has arisen: is the police jury financially and legally responsible for the deficit in the criminal court fund if all of the funds therein have been used to pay the reasonable expenses of the judge's office and district attorney's office in that jurisdiction and the district attorney's office remains underfunded?

It is well settled that pursuant to La. R.S. 16:6, police juries have a mandatory duty to fund the reasonable expenses of the district attorney's office. La. R.S. 16:6 provides:

The district attorneys of this state, the parish of Orleans excepted, shall be entitled to an expense allowance for salaries of stenographers, clerks and secretaries, and salaries or charges for special officers, investigators and other employees and an expense allowance for stationery forms, telephone, transportation, travel,

postage, hotel and other expenses incurred in the discharge of their official duties.

The police juries of the various parishes of the state of Louisiana are hereby authorized to pay from their general fund any of the items of expense, as provided for herein, incurred by the several district attorneys of this state when acting in their official capacities.

In *Reed v. Washington Parish Police Jury*, 518 So. 2d 1044 (La. 1988), the Supreme Court of Louisiana found that “because of the importance of the constitutional function performed by the district attorney’s office, it is imperative that there be a reliable source of funding to ensure the effective operation of the office.” *Reed*, 518 So. 2d at 1048. The court concluded that a police jury’s funding obligation under La. R.S. 16:6 was to be that “reliable source of funding” and held as follows:

After analyzing the history and language of 16:6, reviewing other available sources of funding and considering practical implications of an alternative construction, we conclude 16:6 *creates a mandatory duty on the part of the police jury to fund the 16:6 expenses of the district attorney’s office in their entirety*. By amending 16:6 to authorize police juries to fund the office, the legislature did not intend to give the police jury discretion to fund the 16:6 expenses. Rather, the legislature directed the police jury to do so. We hold, however, that the police jury’s duty to fund the 16:6 expenses is *limited by the standard of reasonableness*. This limitation comports with traditional interpretations of the doctrine of inherent powers afforded the judicial branch of government and satisfies the system of checks and balances underpinning a republican form of government with its separation of powers. Accordingly, the budget request of the district attorney must be legitimate in that it is related to the function of his office. Also it must be quantitatively reasonable.

Reed, 518 So. 2d at 1049 (emphasis added). In reaching this conclusion, the court examined other sources of funding for district attorney’s offices, including the criminal court fund. The criminal court fund was created by La. R.S. 15:571.11 and is composed of fines and forfeitures resulting from violations of state law or parish ordinances. This fund is available to judges, district attorneys and sheriffs. It can be used for a wide range of expenses incurred by criminal courts. La. R.S. 15:571.11(A)(1)(a), (b). A district attorney may, after obtaining court approval, use revenues from the CCF to defray his 16:6 expenses, as well as other expenses related to his office. With regard to whether the criminal court fund was intended by the legislature as a primary source of funding, the Court stated:

We do not believe that the legislature could have intended to require the district attorneys of this state to depend on the CCF as the primary source of funds to operate their offices. Instead, we view the CCF, the twelve percent fund, and provisions such as R.S. 16:15 and 16:16 to be nothing more than a recognition by the legislature of the increased cost of operating the district attorney's office. *These additional sources were never intended to wrest the primary responsibility for funding the 16:6 expenses from the shoulders of the legislative branch of government.* Characteristics such as discretionary usage, instability of amounts available, allocation among several officers, the need for court approval, negate the availability of these funds as a primary source to insure the basic function of the district attorney will not be impaired. The fact that these alternate funds exist suggests a need for cooperative intergovernmental relations. The lack of such cooperation, and the problems which result, addresses itself to the legislature or to the political arena for resolution.

Reed, 518 So. 2d at 1048-49 (emphasis added). The court made it clear in *Reed* that the funds a district attorney receives from the criminal court fund do not relieve the police jury of its La. R.S. 16:6 funding obligation.

In La. Atty. Gen. Op. No. 88-242, our office was asked to opine as to whether the criminal court funds retained by a district attorney or sheriff had to be exhausted before the police jury's financial obligations could be enforced. The opinion analyzed La. R.S. 15:571.11 and the *Reed* decision and determined that "the language of La. R.S. 15:571.11(A)(1)(b) gives the district attorney the authority to use the twelve percent of the fines and forfeitures collected for his office to defray the expenses of his office at his discretion. The statute does not require that these funds be utilized before the police jury is required to pay reasonable funds under R.S. 16:6."

The law and jurisprudence clearly provide that the police jury has the primary responsibility to provide funding for the reasonable expenses of the district attorney's office. The law also provides for additional sources of funding, such as the criminal court fund, for the district attorney's office. The Supreme Court of Louisiana has determined that the "additional sources were never intended to wrest the primary responsibility for funding the 16:6 expenses from the shoulders of the legislative branch of government." *Reed*, 518 So. 2d at 1048. Therefore, it is the opinion of this office that when there are not sufficient funds in the criminal court fund to reimburse the district attorney for the expenses of his office, the

police jury must provide funds to reimburse the district attorney for those expenses, provided the expenses are determined to be reasonable.¹

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: _____
Lindsey K. Hunter
Assistant Attorney General

¹ *Reed* established a dual test to determine the reasonableness of an expense. First, the expense request must be legitimate in that it is related to the function of the office. Secondly, the expense request must be quantitatively reasonable. La. Atty. Gen. Op. No. 09-0022.

SYLLABUS
Opinion 11-0167

90 - A - 1 PUBLIC FUNDS & CONTRACTS
La. R.S. 15:571.11
La. R.S. 16:6

When there are not sufficient funds in the criminal court fund to reimburse the district attorney for the expenses of his office, the police jury must provide funds to reimburse the district attorney for those expenses, provided the expenses are determined to be reasonable.

Honorable Michael C. Cassidy
District Attorney, 31st Judicial District
Post Office Box 1388
Jennings, Louisiana 70546

Date Received:

Date Released: August 25, 2011

Lindsey K. Hunter
Assistant Attorney General