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May 13, 2013

Senator Eric LaFleur
Louisiana State Senate

Dear Senator LaFleur:

The Public Affairs Research Council of Louisiana has a strong interest in promoting fair and effective ethics laws, as I know you do as well. I appreciate your openness to suggestions on this issue, and particularly this session with regard to your Senate Bill 148.

Let me first address the general context. PAR is opposed to the exemption of an entire category or profession from the ethics code. One way of effecting this exemption would be to exclude certain professions from the definition of "public employee" in the ethics law. Public employees include those engaged in the performance of a "governmental function" or those under the supervision or authority of an employee of a governmental entity. While I understand and appreciate the complications the law creates for professions under some circumstances, an outright professional-class exclusion is too broad a remedy and invites too many possibilities for abuse of good ethics standards. Furthermore, the exclusion of one profession can only lead to the interest of other professions seeking similar treatment, resulting in the further erosion of ethics laws intended to hold accountable those who conduct the public's business.

In an age of privatization of local and state government operations, which may or may not be beneficial to society depending on the case, care must be taken to ensure public accountability when government authority and responsibility are delegated to private entities. Whether we are talking about state roles such as prisons or local roles such as municipal management, we would not want to create an environment ripe for unintended consequences. This issue ultimately has implications for public records law as well as ethics administration.

I hope you would agree that we should prevent a situation in which a state or local government would be able to contract with private firms for the purpose of running a government program or operation without accountability. Likewise, we would like to avoid situations in which a government is hiring new employees under the guise of a "contract" with individuals for the purpose of evading the ethics law.

In a report last year, PAR noted that the state currently does not have a definition of "governmental function" in law or rules for the Board of Ethics, although a number of board advisory opinions over the years have offered some guidance. At best, the current law is too vague. In the future, a definition of governmental function could be adopted that might address the private sector's most legitimate concerns while preserving the integrity of the state's ethics laws. PAR would be glad to contribute to that discussion.

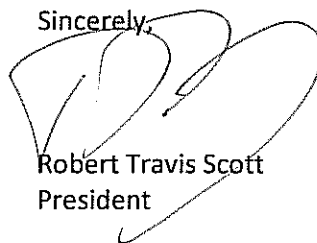
With regard to Senate Bill 148, PAR has expressed its concern about the existing language in the bill that would exclude from the definition of "public employee" a person whose public service is set forth in "a contract to provide professional services as a certified public accountant." This current version of the bill allows an exclusion that is too broad. Under definitions related to CPAs as provided in RS 37:73, the word "professional" means "arising out of or related to the specialized knowledge or skills associated with CPAs."

At the same time, we appreciate some of the concerns expressed by the CPAs and the Legislative Auditor. The state should not burden businesses with complicated or contradictory regulations. In an effort to seek a more limited solution, PAR asked representatives of the CPAs, the Legislative Auditor and the Ethics Administration to meet with us to discuss the issue. All parties participated in an informative and constructive dialog with a sincere effort to consider new options. In that meeting the CPAs suggested a simple word change to the proposed bill: to remove the word "professional" and replace it with the word "attest." The word attest is somewhat more restrictively defined in RS 37:73. In accounting, the performance of attesting is a narrower scope of service than the more general concept of professional service.

For this reason, this change in wording would be a real improvement to the bill. Our view is that this change would result in a bill that would not provide a total exclusion from the ethics laws for CPAs performing government contracts. The Legislative Auditor and the CPA Society have expressed to us that they are receptive to this change, though we urge you to hear their views in their own words. If the bill were to pass with this change, PAR would recommend that the Legislature monitor the situation with CPA contracts as the new law takes effect to evaluate its impact and to adjust course if necessary.

I apologize that I cannot attend the House and Governmental Affairs Committee hearing on Tuesday, May 14. I have a long-scheduled obligation in New Orleans that day. I hope this letter is helpful as you navigate the remainder of the legislative process with this bill and as you consider changes in the future for state ethics law.

Thank you for your genuine interest and frequent efforts to do what is best for this state. I will remain available to discuss these important ethics issues with you.

Sincerely,

Robert Travis Scott
President

cc: Rep. Tim Burns, H&GA Chairman; Rep. Michael Danahay, H&GA Vice-Chairman; Sen. Jody Amedee, S&GA Chairman; Ron Gitz, Executive Director, Society of Louisiana CPAs; Daryl Purpera, Legislative Auditor; Kathleen Allen, Ethics Administrator; Elizabeth Murrill, Division of Administration.