

CIVIL SUIT NO. 257, 03A
DIV. "B"

PHILLIP TERRELL, IN HIS CAPACITY
AS DISTRICT ATTORNEY OF RAPIDES
PARISH, ET AL

9TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

TOWN OF LECOMPTE, ET AL

STATE OF LOUISIANA

**PETITION FOR DECLARATORY JUDGMENT, PERMANENT INJUNCTIVE RELIEF,
AND OTHER RELIEF**

The petition of the, **PHILLIP TERRELL**, in his capacity as District Attorney of **Rapides Parish** and **OTIS PAYNE** and **EDWARD CHRISTIE** (Payne and Christie) are electors, residents and domiciliaries of the Town of Lecompte) through undersigned counsel, respectfully represent:

1.

Made defendants are:

- (A) **THE TOWN OF LECOMPTE**, a political entity created under the Lawrason Act, which may be served through its Mayor Robert Baxter;
- (B) **Robert Baxter**, in his official capacity as Mayor of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte;
- (C) **Virginia Bailey**, in her official capacity as Alderman of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte
- (D) **Patrick Baker**, in his official capacity as Alderman of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte
- (E) **Lavern Clark**, in his official capacity as Alderman of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte
- (F) **Lonnell Clark**, in his official capacity as Alderman of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte
- (G) **Tamara Williams**, in her official capacity as Alderwoman of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte and
- (H) **Anglique Tharp** in her official capacity as Clerk of the Town of Lecompte and a resident and domiciliary of the Town of Lecompte

2.

Plaintiff, Phillip Terrell is the duly elected District Attorney of Rapides Parish.

3.

The District Attorney has the legal authority to enforce the election laws of the State of Louisiana and to prevent the misuse of funds that are spent contrary to a tax proposition approved by the voters of the electors of the Town of Lecompte.

4.

Plaintiffs OTIS PAYNE and HAROLD ROBERTS are electors and citizens of the Town of Leecompte, living within the municipal boundary limits of the Town of Leecompte; are property owners who will suffer a massive increase in their fire insurance policy premiums as a result of the defendants' diversion of the sales tax proceeds and the consequential lowering of the Town's fire rating.

5.

On May 5, 1989 the Mayor and the Board of Aldermen of the Town of Leecompte ordered a special election to be held on April 29, 1989 for the citizens to consider a Sales Tax Proposition.

6.

The Sales Tax Proposition provides as follows:

Shall the Town of Leecompte, State of Louisiana, under the provisions of Article VI, Section 29 of the Constitution of 1974, and other constitutional and statutory authority supplemental thereto, be authorized to levy and collect, and adopt an ordinance providing for such levy and collection, a tax of one per cent (1%) (the "Tax") on the sale at retail, the use, the lease or rental, the consumption, and storage for use or consumption, of tangible personal property and on sales of services within the Town, all as defined in La. R.S. 47:301 through La. R.S. 47:317, inclusive, with the avails or proceeds of said Tax (after paying the reasonable and necessary costs and expenses of collecting and administering the Tax) to be used for the purpose of constructing, acquiring, improving, operating and maintaining garbage collection and disposal facilities, fire protection facilities and civil defense facilities, including all necessary sites, furnishings, equipment and vehicles in connection therewith, and further, shall the Town be authorized to fund the proceeds of the Tax into bonds to be issued in series from time to time to pay the capital cost thereof to the extent and in the manner permitted by the laws of Louisiana, including Sub-Part F, Part III, Chapter 4, Title 39 of the Louisiana Revised Statutes of 1950, as amended? (Emphasis supplied)

7.

The Sales Tax Proposition was approved and the Town passed Ordinance No. 1137 imposing the Sales Tax. (The Ordinance is attached as Exhibit A).

8.

The proposition specified that the proceeds from the Sales Tax could only be used for: " . . . the purpose of constructing, acquiring, improving, operating and maintaining garbage collection and disposal facilities, fire protection facilities and civil defense facilities, including all necessary sites, furnishings, equipment and vehicles in connection therewith. . . "

9.

At the time of the passage of the Sales Tax there was in existence an agency within State and local governments known as the State and Local Civil Defense Agency. (LSA R.S. 29:604 -

617).

10.

LSA R.S. 29: 608 (A) then provided as follows:

A. The police juries of the various parishes in the state and the governing bodies of every municipality are hereby authorized and directed to establish a local organization for civil defense in accordance with the state civil defense plan and program. Each local organization for civil defense thus created shall have a director who shall be appointed by the state director of civil defense upon recommendation by the governing authority of the parish or municipality establishing a local civil defense organization. The director of the local organization for civil defense shall have direct responsibility for the organization, administration and operation of such local organization for civil defense subject to the direction and control of the local governing body under the general direction and control of the governor and the state civil defense agency. Municipal governing body, as used in this Subsection, means that body which exercises the legislative power of the municipality. A.

The police juries of the various parishes in the state and the governing bodies of every municipality are hereby authorized and directed to establish a local organization for civil defense in accordance with the state civil defense plan and program. Each local organization for civil defense thus created shall have a director who shall be appointed by the state director of civil defense upon recommendation by the governing authority of the parish or municipality establishing a local civil defense organization. The director of the local organization for civil defense shall have direct responsibility for the organization, administration and operation of such local organization for civil defense subject to the direction and control of the local governing body under the general direction and control of the governor and the state civil defense agency. Municipal governing body, as used in this Subsection, means that body which exercises the legislative power of the municipality. (Emphasis supplied)

11.

Based upon information and belief it is alleged that at the time of the passage of the Sales Tax the Town of Lecompte had established a municipal civil defense organization.

12.

At the time of the passage of the Sales Tax the law that allowed for the creation of the municipal civil defense organization in the Town of Lecompte defined civil defense in LSA R.S. 29:614 (1) as follows:

“Civil defense” shall mean the preparation for and the carrying out of all emergency functions other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by enemy attacks,

sabotage or other hostile action, or by fire, flood, earthquake, or other natural causes.”

13.

The Civil Defense Agency and the legislative authority allowing for the creation of the municipal civil defense was repealed by Acts 1993, No. 770, Section 1. The act abolishing civil defense was effective on August 1, 1993.

14.

Therefore, since the effective date of Acts 1993 No. 770, Section 1, one of the purposes for which the Sales Tax proceeds could be used to fund namely, “Civil defense” no longer existed.

15.

Therefore, as of the effective date of the aforementioned act that repealed civil defense statutes -- the Sales Tax proceeds could not be utilized to fund any “civil defense” activities.

16.

In the event that the Court considers the activity of the Town of LeCompte Police Department as constituting “Civil Defense” it is suggested that since “Civil Defense” was repealed in 1993 the purpose of “Civil Defense” and thus the alleged derivative activity of the police department did not exist as a purpose authorized by the tax proposition. Thus, any expenditure for the Police Department was unauthorized by the tax proposition.

17.

Alternatively, in the event that the Court finds that the repeal of Civil defense did not prohibit expenditure of funds for Civil defense, it is respectfully suggested that any expenditure of the Sales Tax proceeds derived from the election of April 29, 1989 and after the repeal of Civil Defense Statute was limited to the activity of Civil Defense as Civil Defense was defined by RSA 29:614 (1) “ . . . the preparation for and the carrying out of all emergency functions other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by enemy attacks, sabotage or other hostile action, or by fire, flood, earthquake, or other natural causes.”

18.

Based upon information and belief it is alleged that for at least during the fiscal years ending June 30, 2014 and June 30, 2015 that the Town of LeCompte improperly transferred funds from the proceeds of the Sales Tax to accounts or funds within the Town of LeCompte budget that were for payment of activities that were not allowed under tax proposition; on information and belief, the diversion by the governing officials of the Town is ongoing and continuing.

It is alleged that the expenditures were for impermissible activities including but not limited

to:

- a. Equipment for the Lecompte Police Department;
- b. Fuel expense for the Lecompte Police Department;
- c. Repairs to Lecompte Police Department vehicles;
- d. Electrical usage by the Police Department;
- e. Fire Extinguishers for the Old Lecompte High School;
- f. Orange Warning Cones for the Police Department;
- g. Termite and Pest Control service for the Police Station;

20.

LSA R.S. 47:338.27 provides: "The ordinance imposing said tax, authorized by R.S. 47:338.1, and any amendments thereto, shall specify the purpose or purposes for which said tax is imposed. The revenues derived from said tax shall be dedicated and used solely for said purposes."

21.

LSA R.S. 47:338.67 provides in part "... The question or proposition approved at said election shall constitute a full and complete dedication of the avails or proceeds of said tax and its provisions shall control the allocation and expenditures thereof."

22.

Based upon information and belief it is anticipated that the Town of Lecompte may contend that the use of the Sales Tax proceeds for the payment of Police Department expenses is an activity that is authorized by the following language contained in the tax call:

"civil defense facilities, including all necessary sites, furnishings, equipment and vehicles in connection therewith . . . "

23.

Plaintiffs show however that at all times described in paragraph 18 above, the laws authorizing the creation and operation of "civil defense facilities" have been repealed and accordingly any expenditures of dedicated tax funds for this purpose is prohibited.

24.

The plaintiffs are either taxpayers residing within the municipal boundaries of the Town of Lecompte and who purchase goods within the Town of Lecompte and therefore, pay the sales tax described above or in the case of the District Attorney have a legal and constitutional basis to seek judicial declaration regarding the possible expenditure of tax proceeds contrary to law.

25.

Under the provisions of La. C.C.P. Art. 1841 et seq. and more specifically La. C.C.P. Art. 1872 they are: "A person . . . whose rights, status, or other legal relations are affected by a . . . municipal ordinance . . . may have determined any question of construction or validity arising under the . . . ordinance . . . and obtain a declaration of rights, status, or other legal relations thereunder."

26.

Petitioners seek from this court a determination of the following:

- a. Since the Civil defense legislation was repealed does the repeal prevent or preclude the use of Sales Tax proceeds for Civil defense activities?
- b. If the repeal of the Civil defense legislation did not preclude the use of the Sales Tax proceeds for Civil defense activities is the use of the Sales tax proceeds limited to Civil defense activities as was defined by LSA R. S. 29: 614 (1)?
- c. Is it permissible to use the Sales Tax proceeds for expenses related to the day-to-day policing activities of the Lecompte Police Department?


27.

If the court finds that the funds may not be used for the Police Department or such use is limited to narrowly defined expenditures, petitioners further request and are entitled to an injunction and a judgment of this court ordering defendant, The Town of Lecompte through its Mayor Robert Baxter, the Town Clerk and the Board of Alderman to not authorize nor allow the use of the sales tax proceeds described herein for the purpose of paying expenses of the Lecompte Police Department or for any other purpose not specifically authorized by tax proposition.

Wherefore, Petitioners, **PHILLIP TERRELL, in his capacity as District Attorney of Rapides Parish, OTIS PAYNE and EDWARD CHRISTIE** pray that defendants **THE TOWN OF LECOMPTE** through its Mayor Robert Baxter, **ROBERT BAXTER** in his official capacity as Mayor of the Town of Lecompte, **VIRGINIA BAILEY**, in her official capacity as Alderwoman of the Town of Lecompte; **PATRICK BAKER**, in his official capacity as Alderman of the Town of Lecompte;

LAVERN CLARK, in his official capacity as Alderman of the Town of Lecompote; **LONNELL CLARK**, in his official capacity as Alderman of the Town of Lecompote; **TAMARA WILLIAMS**, in his official capacity as Alderman of the Town of Lecompote and **ANGLIQUE THARP**, in her official capacity as the Clerk of the Town of Lecompote be served with a copy of this petition, and after all legal delays and due proceedings had, there by judgment rendered herein in favor of petitioners, **PHILLIP TERRELL, in his capacity as District Attorney of Rapides Parish, OTIS PAYNE and EDWARD CHRISTIE** and against defendants **THE TOWN OF LECOMPTE** through its Mayor Robert Baxter, **ROBERT BAXTER** in his official capacity as Mayor of the Town of Lecompote, **VIRGINIA BAILEY**, in her official capacity as Alderwoman of the Town of Lecompote; **PATRICK BAKER**, in his official capacity as Alderman of the Town of Lecompote; **LAVERN CLARK**, in his official capacity as Alderman of the Town of Lecompote; **LONNELL CLARK**, in his official capacity as Alderman of the Town of Lecompote; **TAMARA WILLIAMS**, in his official capacity as Alderman of the Town of Lecompote and **ANGLIQUE THARP** finding that defendants and the **BOARD OF ALDERMEN** have used and are using the proceeds of the Sales Tax for purposes not authorized by the tax proposition described herein and that an injunction issue and be made permanent ordering **THE TOWN OF LECOMPTE AND ALL NAMED DEFENDANTS** to not authorize nor allow the use or expenditure of the sales tax proceeds described herein for the purpose of paying expenses of the Lecompote Police Department or for any other purpose not specifically authorized by the tax proposition together with all other general and equitable relief and the defendants be assessed with all court costs.

Respectfully submitted,


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ATTORNEY FOR PETITIONERS

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PLEASE SERVE THE DEFENDANTS:
THE TOWN OF LECOMPTTE, THROUGH
MAYOR ROBERT BAXTER;
1402 Sugar St.
Lecompte, LA 71346

ROBERT BAXTER, in his capacity as Mayor of the Town of Lecompte
1402 Sugar St.
Lecompte, LA 71346

VIRGINIA BAILEY
1511 Maple St.
Lecompte, LA 71346

PATRICK BAKER
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