

**SUPREME COURT OF LOUISIANA**

**No. 01-CA-0009**

**LOUISIANA PUBLIC SERVICE COMMISSION**

**VERSUS**

**FOSTER**

**CALOGERO, Chief Justice, concurs.**

I agree with the majority opinion. However, my reason for finding that Act 11 does not violate La. Const. Art. III, § 16 (A) is as follows.

Art. III, § 16 (A) provides that “no money shall be withdrawn from the state treasury except through specific appropriation, and no appropriation shall be made under the heading of contingencies or for longer than one year.” In its brief, LPFA notes its failure to locate an “appellate opinion in which the portion of this provision prohibiting an appropriation ‘under the heading of contingencies’ has been interpreted.” LPFA argues that the appropriation of \$5,000,000 is contingent upon two conditions: 1) The LPFA must transmit funds to the state treasury, and 2) the funds must be incorporated into the funds available for appropriation and expenditure by the Revenue Estimating Conference.

As argued by LPFA, the appropriation does appear to be contingent, i.e. contingent on the trust’s collecting five million dollars, transmitting it to the state treasury, and incorporating it into funds available for appropriation and expenditure. However, that contingency does not seem to be what the constitution contemplates. I believe the purpose of this provision of the constitution, Art. III, § 16 (A), is to prevent the legislature from 1) appropriating money from the state’s general fund for more than a one year period, or 2) having contingencies trigger utilization of general fund monies. I do not think this section of the constitution is meant to stop the

legislature from controlling expenditures of public authorities by requiring them to transmit money they have collected and place them in the state treasury to be returned to them by the legislature with stipulations.