

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #52

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 11th day of December, 2019, are as follows:

BY GENOVESE, J.:

2019-CA-00878

WEST FELICIANA PARISH GOVERNMENT, PLAQUEMINES PARISH COUNCIL AND ST. JAMES PARISH SCHOOL BOARD VS. STATE OF LOUISIANA, OFFICE OF MOTOR VEHICLES AND LOUISIANA UNIFORM LOCAL SALES TAX BOARD (Parish of East Baton Rouge)

After *de novo* review, we find that the funding mechanism for the Louisiana Uniform Local Sales Tax Board, as set forth in La.R.S. 47:337.102(I), is violative of La.Const. art. VI, § 29. For the reasons stated herein, the judgment of the district court declaring La.R.S. 47:337.102(I) unconstitutional and permanently enjoining the State of Louisiana, Department of Public Safety and Corrections, Office of Motor Vehicles from withholding locally levied sales and use taxes under the authority of La.R.S. 47:337.102(I) and from disbursing any funds withheld to the Louisiana Uniform Local Sales Tax Board is hereby affirmed.

AFFIRMED.

Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, heard this case as Justice pro tempore, sitting in the vacant seat for District 1 of the Supreme Court. She is now appearing as an ad hoc for Justice William J. Crain.

Retired Judge James Boddie Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

10/11/19

SUPREME COURT OF LOUISIANA

No. 2019-CA-00878

**WEST FELICIANA PARISH GOVERNMENT, PLAQUEMINES PARISH
COUNCIL AND ST. JAMES PARISH SCHOOL BOARD**

VERSUS

**STATE OF LOUISIANA, OFFICE OF MOTOR VEHICLES AND
LOUISIANA UNIFORM LOCAL SALES TAX BOARD**

**ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE**

GENOVESE, JUSTICE*

The case comes to this Court on direct appeal from the Nineteenth Judicial District Court of East Baton Rouge Parish pursuant to La.Const. art. V, § 5(D)¹ upon a declaration by that court that La.R.S. 47:337.102(I), enacted by 2017 La. Acts No. 274 (“Act 274”), is unconstitutional.²

Plaintiffs are the Plaquemines Parish Council and the St. James Parish School Board, each being designated as the single collector for sales and use taxes levied by all taxing authorities within their respective parishes.³ Plaintiffs filed a Petition for Declaratory Judgment and Request for Preliminary and Permanent Injunction, and supplementing and amending petitions thereto, alleging that La.R.S. 47:337.102(I)

* Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, heard this case as Justice pro tempore, sitting in the vacant seat for District 1 of the Supreme Court. She is now appearing as an ad hoc for Justice William J. Crain. Retired Judge James Boddie Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

¹ Louisiana Constitution Article V, § 5(D) provides that “a case shall be appealable to the supreme court if . . . a law or ordinance has been declared unconstitutional[.]”

² The district court did not identify the provision or provisions of the Louisiana Constitution that it found to be violated by the enactment of La.R.S. 47:337.102(I).

³ West Feliciana Parish Government was an original plaintiff, but it subsequently dismissed its claims before any substantive actions were taken in the district court.

is in violation of La.Const. art. VI, § 29 and La.Const. art. VII, § 3.⁴ Defendants herein are the State of Louisiana, Department of Public Safety and Corrections, Office of Motor Vehicles, an agency of the State of Louisiana, and the Louisiana Uniform Local Sales Tax Board, a political subdivision of the State of Louisiana.⁵

After conducting our legally mandated *de novo* review,⁶ we find that La.R.S. 47:337.102(I) is unconstitutional. Consequently, the judgment of the district court declaring La.R.S. 47:337.102(I) unconstitutional and permanently enjoining the State of Louisiana, Department of Public Safety and Corrections, Office of Motor Vehicles from withholding locally levied sales and use taxes under the authority of La.R.S. 47:337.102(I) and from disbursing any funds withheld to the Louisiana Uniform Local Sales Tax Board is hereby affirmed.

FACTS AND PROCEDURAL HISTORY

Plaintiffs, Plaquemines Parish Council (“Plaquemines Parish”) and St. James Parish School Board (“St. James Parish”), are the local taxing jurisdictions, and are also the designated single collector for sales and use taxes levied by all taxing authorities within their respective parishes.⁷ In 2010, Plaquemines Parish entered into an Agreement to Collect Local Taxes Due on the Sale or Use of Motor Vehicles and Factory Built Homes (“the agreement”) with the Louisiana Department of Public

⁴ Plaintiffs also included allegations that La.R.S. 47:337.102(I) violated La.Const. art. VI, § 32 and La.R.S. 39:704; however, those claims were not pursued.

⁵ The record reveals Plaintiffs also requested service on Attorney General “Jeff” Landry. Although not a party to this litigation, the Attorney General of Louisiana, pursuant to La.Const. art. IV, § 8, La.R.S. 13:4448, and La.Code Civ.P. art. 1880, submitted a Memorandum in Support of Constitutionality of La.R.S. 47:337.102(I) for the district court’s consideration in relation to the constitutional questions raised.

⁶ *Iberville Par. Sch. Bd. v. Louisiana State Bd. of Elementary & Secondary Educ.*, 17-257, 17-633, 17-634 (La. 3/13/18), 248 So.3d 299; *State v. All Prop. & Cas. Ins. Carriers Authorized & Licensed to do Business in the State*, 06-2030 (La. 8/25/06), 937 So.2d 313.

⁷ Pursuant to La.Const. art. VII, § 3(B)(1), “sales and use taxes levied by political subdivisions shall be collected by a single collector for each parish.” *See also* La.R.S. 47:337.13.

Safety and Corrections (“the Department”) on behalf of the Department and the Vehicle Commissioner (“OMV”) for the collection of sales and use taxes levied in the parish. The agreement contains a provision allowing OMV to collect the identified sales and use taxes and to retain 1% of the taxes levied.⁸ St. James Parish also entered into an agreement with OMV for the collection of sales and use taxes levied in the parish. Their agreement contains the identical provision allowing OMV to collect the sales and use taxes and to retain 1% of the taxes levied as payment for its collection duties.

Pursuant to their respective agreements, OMV collects certain identified sales and use taxes and retains 1% of the taxes levied. With respect to Plaquemines Parish, a 1977 sales tax proposition levied a 1% sales and use tax to be used for parish government operations and public services and facilities.⁹ Additionally, in November 2009, the voters of Plaquemines Parish adopted an ordinance, effective in 2010, which levied a 1% sales and use tax and provided that the use of the proceeds be limited to the payment of costs associated with establishing a fire department and fire protection in Plaquemines Parish.¹⁰ In St. James Parish,

⁸ Paragraph (F) of the 2010 agreement provides:

As compensation for its service as agent and to pay the cost of collecting and remitting the taxes, the Department shall withhold from the taxes collected on behalf of the Local Collector one percent (1%) of the proceeds of the taxes so collected. The proceeds (less this one percent) shall be remitted to the Local Collector each month, and such remittance shall represent collections by the Department for the previous calendar month.

⁹ The proposition language for the sales tax proposition included, in part, the following:

[T]he proceeds of said sales and use tax (after paying reasonable and necessary costs and expenses of collecting and administering the tax) to be used for the purpose of paying expenses of operating parish government and providing public services and facilities.

¹⁰ The proposition language for the sales tax proposition included, in part, the following:

[The proceeds of the Tax (after paying reasonable and necessary costs and expenses of collecting and administering the Tax) to be used to pay the salaries, benefits, training, insurance, administration, maintenance and other costs associated with establishing a paid fire department for the Parish, with said funds to be additionally

pursuant to the agreement, OMV began collecting sales and use taxes approved by the voters in 1965,¹¹ 1981,¹² and 2003,¹³ which levied a 1% sales and use tax and designated the proceeds for appropriation and expenditure by St. James Parish to include: the payment of school employee salaries; the operation of the public school system; capital improvements in the public school system; and, health benefits for school employees.

In 2017, Act 274, among other things, created the Louisiana Uniform Local Sales Tax Board (“the Board”) via the enactment of La.R.S. 47:337.102,¹⁴ a new

dedicated for expenditure for the acquisition of fire fighting equipment, lands, buildings and machinery as may be necessary to provide adequate fire protection[.]

¹¹ The proposition language for the sales tax proposition included, in part, the following:

[T]he avails or proceeds of said sales and use tax (after paying reasonable and necessary costs and expenses of administering the tax) to be dedicated and used by said School District for the purpose of the payment of salaries of teachers employed in the public elementary and secondary schools of the Parish of St. James and/or for the operation of said schools as provided for by law[.]

¹² The proposition language for the sales tax proposition included, in part, the following:

[S]ixty per cent (60%) of the proceeds of the Tax (after paying reasonable and necessary costs and expenses of collecting and administering the Tax) to be used for the purpose of paying salaries of school teachers and other school employees, and the remaining forty per cent (40%) of the proceeds of the Tax to be dedicated and used for the purpose of paying the operation and maintenance expenses of the public school system and/or for the purpose of making capital improvements to the public school system of the Parish (including, but not limited to, constructing, acquiring, erecting, improving and repairing schools and school related facilities)[.]

¹³ The proposition language for the sales tax proposition included, in part, the following:

[T]he proceeds of the Tax (after paying the reasonable and necessary expenses of collecting and administering the Tax), to be dedicated and used solely for the purposes of paying salaries and related benefits for teachers and employees, including the payment of health benefits and to further implement the “Blueprint for Better Schools” approved by the School Board on July 10, 2001[.]

¹⁴ The Board was created as a political subdivision of the state and is comprised of the executive directors of the Louisiana Municipal Association, the Louisiana School Boards Association, the Police Jury Association of Louisiana, and the Louisiana Sheriffs Association. *See* La.R.S. 47:337.102(A)-(B). In addition, each of the aforementioned associations appoints one additional board member to the Board, and that appointee must be the head of a single parish sales tax collector’s office. *See* La.R.S. 47:337.102(B).

Louisiana Revised Statutes 47:337.102(C) enumerates the powers and duties of the Board. The subsequent provisions, La.R.S. 47:337.102(D)-(H), (L), address the issuance of policy advice, rulemaking, voluntary disclosure program, refunds, multi-parish audits, and education and training of collectors of local sales and use taxes.

provision within the Uniform Local Sales Tax Code (“ULSTC”). La.R.S. 47:337.1, *et seq.*¹⁵ Specifically, La.R.S. 47:337.102(I) provided authority for and the means of funding the Board by authorizing OMV to retain an **additional** 0.2% of the total statewide collections of local sales and use taxes levied on motor vehicles and to remit these withholdings to the Board. This amount to be remitted to the Board is in addition to and separate from the 1% currently collected by OMV for its services in collecting local sales and use taxes for all local taxing authorities on motor vehicle transactions in the state.

Louisiana Revised Statutes 47:337.102(I) provides:

I. Funding. (1) The board shall be funded through a dedication of a percentage of the total statewide collections of local sales and use tax on motor vehicles, in accordance with the limitations provided in this Paragraph and the budgetary policy as provided in Paragraph (2) of this Subsection. Monies shall be payable monthly from the current collections of the tax. The dedication shall be considered a cost of collection and shall be deducted by the state and disbursed to the board prior to distribution of tax collections to local taxing authorities. The dedication shall be in addition to any fee imposed by the office of motor vehicles for the collection of the local sales and use tax on motor vehicles. The amount to be disbursed to the board in any fiscal year shall not, under any circumstances and notwithstanding any budget adopted by the board, exceed the following:

- (a) In Fiscal Year 2017-2018, one-fifth of one percent of the collections.
- (b) In Fiscal Year 2018-2019, one-quarter of one percent of the collections.
- (c) In Fiscal Year 2019-2020 and each fiscal year thereafter, three-tenths of one percent of the collections.

¹⁵ The ULSTC is the body of law that governs the assessment, collection, administration, and enforcement of local sales and use taxes. *See* La.R.S. 47:337.2(A)(1)(b).

Pursuant to La.R.S. 47:337.102(I), OMV began withholding the additional 0.2% of the local sales and use taxes collected by it on the sale of motor vehicles from all local sales and use taxes due on the sale of motor vehicles.¹⁶

Following the enactment of La.R.S. 47:337.102, Plaquemines Parish and St. James Parish filed an original Petition for Declaratory Judgment and Request for Preliminary and Permanent Injunction, and supplements thereto, alleging that the Board's funding mechanism found in La.R.S. 47:337.102(I)¹⁷ is in violation of La.Const. art. VI, § 29 and La.Const. art. VII, § 3. Named as Defendants were OMV and the Board.

Plaquemines Parish and St. James Parish aver that their respective agreements with OMV do not contain any provision allowing its retention and distribution to the Board of any proceeds from the additional 0.2% of the taxes levied by La.R.S. 47:337.102(I). Further, Plaintiffs assert that since July 2017, OMV has retained the additional 0.2% of the taxes levied, despite there being no agreement authorizing OMV's actions and despite the use of the proceeds of the sales and use taxes levied by the respective ordinances, which were approved by the voters of Plaquemines Parish and St. James Parish. Therefore, Plaintiffs assert La.R.S. 47:337.102(I) is an impermissible use of dedicated local sales and use taxes pursuant to La.Const. art. VI, § 29. Additionally, to the extent that the statute mandates that the Board serve as the agent for the collection and administration of local sales and use taxes, La.R.S. 47:337.102(I) violates La.Const. art. VII, § 3. In terms of relief, Plaintiffs sought a declaration of the unconstitutionality of La.R.S. 47:337.102(I) and a permanent

¹⁶ According to Plaintiffs' petition, at the time of its filing, the Board had not yet been fully appointed, had an initial organizational meeting, elected officers, adopted a budget, established a depository, hired employees, or entered into contracts.

¹⁷ Plaintiffs' constitutional challenge is limited solely to the funding mechanism for the Board found in La.R.S. 47:337.102(I), and it does not encompass the remainder of the statute relating to the existence, goals, or operations of the Board.

injunction enjoining OMV from withholding locally levied sales and use taxes under the authority of La.R.S. 47:337.102(I) and from disbursing any funds withheld to the Board.

As reflected in the Pre-Trial Order of the district court and prior to trial on the merits, the parties entered into several factual stipulations, including, in part, that Plaintiffs do not contest the reasonableness of the cost of the services of the Board. Additionally, the parties jointly agreed to the introduction of several exhibits, including the respective agreements between Plaintiffs and OMV, the documents pertaining to the 1977 and 2009 sales and use taxes passed in Plaquemines Parish, and the documents pertaining to the 1965, 1981, and 2003 sales tax elections in St. James Parish.

Following a trial on the merits,¹⁸ the district court issued an oral ruling on February 4, 2019, granting Plaintiffs' declaratory judgment declaring La.R.S. 47:337.102(I) unconstitutional and issuing a permanent injunction enjoining OMV from withholding locally levied sales and use taxes under the authority of La.R.S. 47:337.102(I) or from disbursing any funds withheld pursuant to La.R.S. 47:337.102(I) to the Board. The district court signed an April 1, 2019 judgment, which provides, in pertinent part:¹⁹

Considering the stipulations, exhibits, testimony, law, jurisprudence and argument of counsel, the Court finds in favor of **PLAINTIFFS**, and declares that LRS 47:337.102(I) is **UNCONSTITUTIONAL**.

¹⁸ The parties agreed to forego a preliminary injunction hearing and set the matter for trial on the declaratory judgment and permanent injunction.

¹⁹ Although the record reflects that the district court adopted Plaintiffs' Post-Trial Brief as its reasons for judgment, Plaintiffs' Post-Trial Brief is not included in the record. A February 4, 2019 transcript reveals that Plaintiffs' Post-Trial Brief could not be located by the district court. Further, the transcript contains a statement by the district court that it wanted to give Plaintiffs the opportunity to put their arguments on the record; however, the argument of Plaintiffs' counsel is not included in the portion of the transcript provided. The transcript states that, after hearing Plaintiffs' arguments and the trial testimony, "the court agrees with the Plaintiff[s] in terms of [Act 274] requiring these local governments to participate in this uniform tax board. And so the court will find Act 274, subsection (I) to be unconstitutional."

This provision being severable, the remainder of LRS 47:337.102 remains in full force and effect.

THERE IS HEREBY ISSUED a Permanent Injunction enjoining the State of Louisiana, Department of Motor Vehicles, Office of Motor Vehicles from withholding locally levied sales and use taxes under the authority of LRS 47:337.102(I) and from disbursing any funds withheld to the Louisiana Uniform Sales Tax Board as provided in LRS 47:337.102(I).

OMV and the Board, pursuant to La.Const. art. V, § 5(D), directly and suspensively appealed the district court judgment to this Court.²⁰

LAW AND ANALYSIS

Because the issue before this Court involves the constitutionality of a revised statute enacted by the Louisiana Legislature, we restate the governing principals of judicial review regarding same. As a general rule, statutes are presumed to be constitutional; therefore, the party challenging the validity of the statute bears the burden of proving that statute to be unconstitutional.²¹ Because the provisions of the Louisiana Constitution are not grants of power, but instead are limitations on the otherwise plenary power of the people, exercised through the legislature, the legislature may enact any legislation that the constitution does not prohibit.²² The “party challenging the constitutionality of a statute must point to a particular provision of the constitution that would prohibit the enactment of the statute, and

²⁰ Inexplicably, the record also contains an Order of the district court dated April 24, 2019. That Order provides, in part:

Whereupon, the Court, for oral reasons assigned, granted judgment in favor of Plaintiff[s] finding Act 274 subsection I to be unconstitutional. The Court adopts the Plaintiff[s'] Post-Trial Brief as its written reasons for judgment.

Omitted from this Order of the district court is any language relative to the issuance of a permanent injunction.

²¹ *State v. Citizen*, 04-1841, p. 11 (La. 4/1/05), 898 So.2d 325, 334; *Louisiana Mun. Ass'n v. State*, 04-227, p. 45 (La. 1/19/05), 893 So.2d 809, 842; *Bd. of Comm'rs of North Lafourche Conservation, Levee & Drainage Dist. v. Bd. of Comm'rs of Atchafalaya Basin Levee Dist.*, 95-1353, p. 3 (La. 1/16/96), 666 So.2d 636, 639.

²² *Louisiana Mun. Ass'n*, 893 So.2d at 842-43; *Polk v. Edwards*, 626 So.2d 1128, 1132 (La.1993).

must demonstrate clearly and convincingly that it was the constitutional aim of that provision to deny the legislature the power to enact the statute in question.”²³ Additionally, because it is presumed that the legislature acts within its constitutional authority in enacting legislation, this Court must construe a statute so as to preserve its constitutionality when it is reasonable to do so.²⁴ Nevertheless, the constitution is the supreme law of this state to which all legislative instruments must yield.²⁵ When a legislative instrument conflicts with a constitutional provision, the legislative instrument must fall.²⁶ Finally, the presumption of constitutionality is especially forceful in cases involving statutes related to taxation and public finance.²⁷ With these principles in mind, we now turn to the merits of Plaintiffs’ constitutional challenges.

In this case, Plaintiffs assert that La.R.S. 47:337.102(I)’s funding mechanism violates both La.Const. art. VI, § 29 and La.Const. art. VII, § 3. As framed by Plaintiffs, the constitutional questions presented are: (1) whether the legislature may, constitutionally, redirect local sales and use taxes, the use of which were established in the ballot propositions that authorized the levy of those taxes; and, (2) whether the legislative rededication of local sales and use taxes as a mandatory funding

²³*Frugé v. Bd. of Trs. of Louisiana State Emps.’ Ret. Sys.*, 08-1270, pp. 5-6 (La. 12/2/08), 6 So.3d 124, 128 (citing *World Trade Ctr. Taxing Dist. v. All Taxpayers, Property Owners*, 05-374, p. 12 (La. 6/29/05), 908 So.2d 623, 632; *Caddo-Shreveport Sales & Use Tax Comm’n v. Office of Motor Vehicles Dep’t of Pub. Safety & Corrs. of the State*, 97-2233, pp. 5-6 (La. 4/14/98), 710 So.2d 776, 779; *Polk*, 626 So.2d at 1132).

²⁴ *Id.*; *Moore v. Roemer*, 567 So.2d 75, 78 (La.1990).

²⁵ *Iberville Par. Sch. Bd.*, 248 So.3d at 306; *La. Fed’n of Teachers v. State of Louisiana*, 13-0120, 13-0232, 13-0350, p. 22 (La. 5/7/13), 118 So.3d 1033, 1048 (citing *World Trade Ctr. Taxing Dist.*, 908 So.2d at 632; *Caddo-Shreveport Sales & Use Tax Comm’n*, 710 So.2d at 780).

²⁶ *Id.*

²⁷ *Beer Indus. League of Louisiana v. City of New Orleans*, 18-280, 18-285, p. 8 (La. 6/27/18), 251 So.3d 380, 386 (citing *Caddo-Shreveport Sales & Use Tax Comm’n*, 710 So.2d at 779); *Bd. of Dirs. of Louisiana Recovery Dist. v. All Taxpayers, Property Owners, & Citizens of State of Louisiana*, 529 So.2d 384, 387 (La.1988).

mechanism for the Board infringes on the authority of the single local collector in each parish.

Louisiana Constitution Article VI, § 29 – Local Governmental Subdivisions and School Boards; Sales Tax

Plaintiffs challenge the funding mechanism of the Board pursuant to La.R.S. 47:337.102(I) as an impermissible rededication of dedicated local sales and use taxes in violation of the La.Const. art. VI, § 29, which provides, in relevant part:

(A) Sales Tax Authorized. Except as otherwise authorized in a home rule charter as provided for in Section 4 of this Article, the governing authority of any local governmental subdivision or school board may levy and collect a tax upon the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption, of tangible personal property and on sales of services as defined by law, if approved by a majority of the electors voting thereon in an election held for that purpose. The rate thereof, when combined with the rate of all other sales and use taxes, exclusive of state sales and use taxes, levied and collected within any local governmental subdivision, shall not exceed three percent.

(B) Additional Sales Tax Authorized. However, the legislature, by general or by local or special law, may authorize the imposition of additional sales and use taxes by local governmental subdivisions or school boards, if approved by a majority of the electors voting thereon in an election held for that purpose.

Plaintiffs argue that a tax in accordance with La.Const. art. VI, § 29, which is subject to a use dedication approved by the voters, may not be used for any other purpose without approval of the voters.²⁸ In this case, Plaintiffs assert that the sales and use taxes levied by Plaquemines Parish and St. James Parish at issue are such dedicated taxes for the uses identified in the respective ballot propositions. *See infra*, pp. 3-4 notes 9-13.

²⁸ *City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund*, 05-2548, p. 14 (La. 10/1/07), 986 So.2d 1, 14; *Denham Springs Econ. Dev. Dist. v. All Taxpayers, Property Owners*, 04-1674, p. 13 (La. 2/4/05), 894 So.2d 325, 335; *Orleans Par. Sch. Bd. v. City of New Orleans*, 3 So.2d 745, 487-88 (La.1941); *Cent. Cmty. Sch. Bd v. East Baton Rouge Par. Sch. Bd.*, 08-36, p. 10 (La.App. 1 Cir. 6/6/08), 991 So.2d 1102, 1110, *writs denied*, 08-1480, 08-1538 (La. 12/12/08), 997 So.2d 561.

The Board counters that its funding is not in violation of sales and use tax dedications. It concedes that once an election is held where citizens approve a tax dedicated to a specific purpose, the tax proceeds cannot be used for any other purpose.²⁹ However, the Board maintains that the manner in which it is funded through La.R.S. 47:337.102(I) does not divert sales and use tax revenues outside of the approved purposes for two reasons. First, the Board argues that not all local sales and use taxes are dedicated to a specific purpose. Second, it argues that all of the duties and activities of the Board fall within the dedicated purposes of the sales and use tax propositions the voters approved.

As to its first argument, relying on *Denham Springs Economic Development District*, 894 So.2d 325, the Board argues that not all sales and use taxes are dedicated to a specific purpose. Further, it contends that non-dedicated taxes can be used for other purposes. *Id.*; *Louisiana Assessors' Retirement & Relief Fund*, 986 So.2d 1. In this case, the Board takes the position that Plaquemines Parish's 1977 sales and use tax proposition levying a 1% sales and use tax is a non-dedicated tax. *See infra*, p. 3 note 9. The Board asserts that Plaquemines Parish could pay its entire annual obligation to the Board solely out of this non-dedicated sales and use tax revenue; thus, for this reason alone, Plaquemines Parish's claims fail. Relying on *Louisiana Assessors' Retirement & Relief Fund*, the Board maintains that where the financial obligation can be met by using non-dedicated tax revenue funds, there is no violation of the dedication language of other tax propositions.

Plaintiffs do not dispute that such language dedicating a sales and use tax for the benefit of the taxing body or its operations is open to a wide range of uses; however, those uses are expressly limited by the dedication to be used for the benefit

²⁹ *Local Number 1442, Prof'l Firefighter's Ass'n. v. Crowley*, 08-1392, p. 4 (La. 5/5/09), 9 So.3d 792, 796 (citing *Denham Springs Econ. Dev. Dist.*, 894 So.2d at 331).

of the taxing body. Consequently, they are dedicated taxes subject to La.Const. art. VI, § 29. Additionally, Plaintiffs counter that while the Board asserts that the taxes can be used for other purposes, the differentiating legal element between the instant matter and *Louisiana Assessors' Retirement & Relief Fund* is the constitutional mandate implicated in that case, La.Const. art. X, § 29(E). In the instant matter, there is no commensurate constitutional mandate.

In *Louisiana Assessors' Retirement & Relief Fund*, 986 So.2d 1, the issue before this Court was whether La.R.S. 11:1481, the statutory funding provision of the Assessors' Retirement Fund ("the Fund"), violated La.Const. art. VI, §§ 26(B)³⁰ and 32,³¹ because it allowed the Fund to divert dedicated taxes to a purpose other than that for which they were designated. Therein, this Court opined:

This court has consistently interpreted the constitution to prohibit the use of dedicated and special taxes for purposes other than those for which they were levied. For example, in *Orleans Parish School Board v. City of New Orleans*, 238 La. 738, 116 So.2d 505 (La.1959), the Orleans Parish School Board challenged the constitutionality of LSA-R.S. 47:1910, which required the Department of Finance for the City of New Orleans to deduct from taxes collected for the school board a proportionate share of the City's contribution to the expense fund of the Board of Assessors for the Parish of Orleans. The district court granted an injunction and ordered the City to pay to the school board, without any deductions, all of the money collected from a tax levied by the Board. This court affirmed, holding that the challenged statute was unconstitutional insofar as it authorized a deduction from the funds payable to the school board because the legislature has no power to divert to others proceeds the constitution requires "be paid daily to said board." *See also, Orleans Parish School Board v. City of New Orleans*, 198 La. 483, 3 So.2d 745 (1941) (City could not deduct from school board's tax revenues cost of collecting tax as the constitution requires that the entire amount derived from the tax be paid to the board.); *Ziemer v. City of New Orleans*, 195 La. 1054, 1067, 197 So. 754, 759 (1940) ("Where [tax] funds are dedicated to a certain purpose they cannot be intermingled with other funds and used indiscriminately, but must be applied as dedicated."). Indeed, this principle was recently confirmed by

³⁰ Louisiana Constitution Article VI, § 26 governs parish ad valorem taxes.

³¹ Louisiana Constitution Article VI, § 32 states: "For the purpose of acquiring, constructing, improving, maintaining, or operating any work of public improvement, a political subdivision may levy special taxes when authorized by a majority of the electors in the political subdivision who vote thereon in an election held for that purpose."

this court in *Denham Springs Economic Development District v. All Taxpayers, Property Owners*, 04-1674 (La.2/4/05), 894 So.2d 325, wherein, in interpreting a tax increment financing statute, we recognized that the statute prohibited dedicated taxes from being used for purposes other than their dedicated purpose.

Louisiana Assessors' Ret. & Relief Fund, 986 So.2d at 14-15.

Thereafter, this Court addressed the Fund's argument that La.Const. art. X, § 29(E)(3) created an exception to the prohibition in La.Const. art. VI, §§ 26(B) and 32 against diverting dedicated taxes to a purpose other than that for which they were levied. This Court rejected the Fund's interpretation, reasoning that it would place the constitutional provisions in direct conflict and negate the protections provided in La.Const. art. VI, §§ 26(B) and 32. Finding no conflict between La.Const. art. VI, §§ 26(B) and 32 and La.Const. art. X, § 29(E), this Court reasoned:

To the contrary, the constitutional provisions can easily be construed to harmonize with each other in a manner that gives full effect to each of them. A plain reading of its language demonstrates that the clear intent of La. Const. art. X, § 29(E)(3) was to authorize the legislature to use contributions from three sources to attain and maintain actuarial soundness, including among those sources dedicated taxes which the legislature adopts and dedicates to funding retirement systems. In other words, the dedicated taxes authorized by section 29(E)(3) as one method for attaining actuarial soundness **refers to taxes the legislature may levy and dedicate for the purpose of funding statewide retirement systems, not to taxes dedicated by the constitution or by voters to other purposes.**

Viewed in this light, the constitutional provisions complement, rather than conflict with, each other. A "dedicated tax" is, quite simply, a tax that is dedicated for a specific purpose. Under the constitution, taxes dedicated to a specific purpose cannot be used for another purpose. **Should the legislature elect to levy a "dedicated tax" to fund the Fund, as authorized by Article X, § 29(E)(3), then Article VI, §§ 26(B) and 32 would protect that dedicated tax and prevent the diversion of its proceeds to other purposes.**

Louisiana Assessors' Ret. & Relief Fund, 986 So.2d at 15–16 (emphasis added).

Louisiana Assessors' Retirement & Relief Fund reasoned that it is permissible for the legislature to levy a dedicated tax for the purpose of funding the Fund. However, it does not support the diversion of taxes dedicated for a specific purpose

when passed to another purpose via legislation. To the contrary, this Court reiterated its holding in *Denham Springs Economic Development District*, 894 So.2d 325, stating:

As we recognized in *Denham Springs Economic Development District*, 04-1674 at 14, 894 So.2d at 335, when citizens are presented with a proposition that would impose a special tax for a specific purpose, and they approve the imposition of that tax, a covenant is created which must be respected and upheld. Once citizens vote for a tax dedicated to one purpose, the tax cannot be used for a purpose other than that approved by the citizens. Any alteration of a prior dedication must be by vote of the people. The constitution, at Article VI, §§ 26(B) and 32, respects and upholds this most basic proposition.

Louisiana Assessors' Ret. & Relief Fund, 986 So.2d at 16. Accordingly, this Court concluded that La.Const. art. X, § 29(E) did not authorize the diversion of taxes dedicated by voters for one purpose to another; rather, it simply acknowledged that taxes dedicated to the financing of statewide public retirement systems are one of the funding mechanisms, and it was not an exception to the constitutional provisions prohibiting the diversion of taxes dedicated to other purposes.

The alternative argument advanced by the Fund in *Louisiana Assessors' Retirement & Relief Fund* was that La.R.S. 11:1481(1)(a)(i) did not require the use of dedicated taxes to fund the retirement system. In asserting this alternative argument, the Fund contended that because the City could meet its obligation under the statute without using any portion of dedicated taxes, it did not run afoul of the constitution. Interpreting the language of La.R.S. 11:1481(1)(a)(i), this Court found that “the intent of the statute [was] simply to provide direction as to the method of calculating the amount of each governmental entity’s obligation to the Fund.” *Louisiana Assessors' Ret. & Relief Fund*, 986 So.2d at 18. Specifically, “the statute [did] not direct, require, or identify from which source the funds to pay this amount [were] to be deducted prior to being remitted.” *Id.* The critical difference between La.R.S. 11:1481(1)(a)(i) and La.R.S. 47:337.102(I) at issue in this case is that

“nowhere in the language of [La.R.S. 11:1481(1)(a)(i) was] there a directive that the amount required to be remitted to the Fund be paid from dedicated or special taxes.” *Louisiana Assessors’ Ret. & Relief Fund*, 986 So.2d at 18. Additionally, La.R.S. 11:1481(1)(a)(i) did not result in the beneficiary of the dedicated taxes receiving less than the full amount of dedicated revenues. *Louisiana Assessors’ Ret. & Relief Fund*, 986 So.2d at 19. As this Court recognized:

The reason for such an omission is obvious: the use of dedicated or special taxes for any purpose other than that for which they are designated is specifically prohibited by the constitution. La. Const. art. VI, §§ 26(B) and 32. These constitutional provisions mandate that each recipient fund receive the full measure of what is due from dedicated funds.

Id. Because it found, based upon the foregoing reasoning, that the statute could be interpreted in a manner rendering it consistent and not in conflict with the constitutional provisions prohibiting the diversion of dedicated taxes, La.R.S. 11:1481 was found not to violate the principles of La. Const. art. VI, §§ 26(B) and 32. *Id.*

In this case, of the ballot propositions at issue, the proposition containing the least specific language is found in the 1977 ordinance of Plaquemines Parish, which provides that the proceeds are “to be used for the purpose of paying expenses of operating parish government and providing public services and facilities.” While that tax proposition lacks a narrow specification on the use of the proceeds thereof, it does contain a clear restriction that the funds must be used by the taxing body for the benefit of the taxing body. Inherently, that decision rests solely with the taxing authority and does not allow the local taxes to be redirected by the legislature for any purpose. Therefore, we find no merit to the Board’s contention that the 1977 ordinance is an “undedicated tax” and, thus, outside of the protections of La. Const. art. VI, § 29.

An examination of the remaining ballot propositions at issue herein readily reveals that the taxes passed by the voters were dedicated for the specific purposes identified therein. The voters approved the purposes outlined in the ballot propositions, which included uses such as costs associated with the establishment of a fire department, the payment of school employee salaries, the operation of a public school system, capital improvements in the public school system, and health benefits for school employees. What is apparent is that the voters did *not* authorize those sales and use tax proceeds to be directed for a use to be determined by the legislature. Moreover, the voters did not expressly authorize the use of any of those sales and use tax proceeds by the legislature for purposes of funding the Board. Accordingly, we conclude that the sales and use taxes at issue herein were specifically dedicated only for the uses set forth in the ballot propositions approved by the voters. Therefore, as dedicated taxes, absent the voters' approval to rededicate those local sales and use taxes to the Board, the legislature is not empowered to override the authority granted by the voters by enacting La.R.S. 47:337.102(I).

The Board's second argument is that even when the dedicated sales and use taxes at issue are considered, given that the services it provides relate to collection and administration of local sales and use taxes, its funding falls within the ambit of the dedication language of the ballot propositions as a permissible use of the proceeds approved by the voters. Thus, it urges that despite the local sales and use taxes being dedicated, each proposition contains language to the effect that the sales and use tax dedication is subject to a deduction of the necessary costs of collections. The Board points to each ballot proposition wherein, before the language dedicating the sales and use tax proceeds to any specific purpose, the proposition provides: "after paying reasonable and necessary costs and expenses of collecting and administering the tax[.]"

On the requisite element of reasonableness, the Board correctly notes that Plaintiffs stipulated in the district court that they did not contest the reasonableness of the costs of the Board. Thus, the relevant inquiry is whether the Board is a “necessary cost[] and expense[] of collecting and administering the tax[.]”

The Board posits that the controlling factor in determining the necessity of the costs is the understanding that can reasonably be ascribed to the voting population as a whole in approving the propositions.³² Stated differently, the issue is whether it is reasonable to believe that the common understanding of the voting public would be that the Board is a “necessary cost[] and expense[] of collecting and administering the tax.”

The duties and activities of the Board are set forth in La.R.S. 47:337.102. Among other things, the statute authorizes the Board to: (1) promulgate rules and regulations; (2) issue policy advice on the imposition, collection, and administration of local sales and use taxes; (3) issue private letter rulings on local sales tax issues; (4) prescribe uniform forms for use by local sales tax collectors and taxpayers; (5) create a multi-parish voluntary disclosure program; (6) create a coordinated multi-parish audit program; (7) coordinate multi-parish refund claims; (8) procure the development of computer software to be used by local collectors for sales and use tax collections; and, (9) provide for the education and training of local collectors and their employees. The Board argues that all of the foregoing services and activities are related to the collection and administration of local sales and use taxes, which

³² In *Local Number 1442, Professional Firefighter’s Association*, 9 So.3d at 796-97, this Court opined:

In order to determine whether the City’s use of the sales tax proceeds is appropriate, we must determine what the voters intended when they approved the proposition dedicating the tax revenues to City employees’ salary increases with a portion going to fire personnel. In making this determination, the controlling factor is the understanding that can reasonably be ascribed to the voting population as a whole. *Denham Springs Economic Development Dist.*, 04-1674 at p. 15, 894 So.2d at 335.

were not available before the Board's creation, especially in the context of coordinated multi-parish programs. Additionally, these are activities that enhance and assist local sales and use tax collection and administration for all local taxing authorities that parish collectors were unable to do individually.

Turning therefore to the voting public's understanding, the Board concludes that it is reasonable to believe that the voting public would agree and expect that the practical cost of funding the Board is a "necessary cost[] and expense[] of collecting and administering the tax," especially in a day and age where multi-parish sales tax transactions and issues are increasingly common, which in turn makes uniformity in the assessment, collection, administration, and enforcement of the sales and use taxes imposed by taxing authorities increasingly important. Thus, the Board maintains that its funding falls squarely within the permissive uses found in the dedication language of the tax propositions at issue in this case.

Plaintiffs acknowledge that the various ballot propositions contain language regarding reasonable and necessary costs and expenses relating to the collection and administration of the tax; however, Plaintiffs do not agree with the Board's conclusion arising therefrom. Rather, Plaintiffs argue that these provisions simply allow for a local tax collector to voluntarily contract with the Board to provide assistance in the administration and collection of taxes. Plaintiffs maintain that by virtue of the clause "after paying reasonable and necessary costs and expenses of collecting and administering the tax[,]” a local collector could do so without violating the will of the voters, assuming the costs paid for these services is reasonable. However, neither Plaquemine Parish or St. James Parish, nor any other local tax collectors, have contracted with the Board to provide such services.

Further as to the necessity of the costs, Plaintiffs urge that the Board plans to provide free services to taxpayers relative to collection issues; however, this does

not correlate with a necessary cost of administration of collection at the local collector level. Additionally, Plaintiffs note that local collectors, if they so choose, are already paying for training, which contradicts the Board's argument that the legislatively mandated payments to the Board are necessary expenses. Finally, Plaintiffs urge that a decision on the necessity of the costs should rest with the local collector as opposed to the legislative mandate of La.R.S. 47:337.102(I).

Accordingly, Plaintiffs conclude that while it is true that the Board "may," pursuant to La.R.S. 47:337.102(C), provide numerous services to assist the local collectors and "may" enter into contracts with the local collectors, the Board has not actually entered into any such contracts. Despite this, every local sales and taxing authority in the State is being forced to pay for the operational expenses of the Board without the local taxing authorities' consent, by means of an impermissible legislative mandate that redirects local dedicated sales and use taxes.

Consistent with the Board, OMV argues that La.R.S. 47:337.102(I) is not violative of La.Const art. VI, § 29. First, OMV argues that La.R.S. 47:337.102(I) is a valid exercise of the power to tax as vested in the legislature pursuant to La.Const. art. VII, § 1(A).³³ Conversely, parish and municipal governments are subordinate political subdivisions of the state and possess only those powers delegated to them by the state and its constitution.³⁴

OMV's analysis begins with the broad grant of power to tax vested in the legislature by La.Const. art. VII, § 1(A). Subject to this grant of power to the

³³ Louisiana Constitution Article VII, § 1(A) provides:

Except as otherwise provided by this constitution, the power of taxation shall be vested in the legislature, shall never be surrendered, suspended, or contracted away, and shall be exercised for public purposes only.

³⁴ *Radiofone, Inc. v. City of New Orleans*, 93-962 (La. 1/14/94), 630 So.2d 694, 696; *Rollins Envtl. Servs. of Louisiana, Inc. v. Iberville Par. Police Jury*, 371 So.2d 1127, 1131 (La.1979).

legislature, La.Const. art. VI, § 29(A) grants governing authorities of local governmental subdivisions or school boards the authority to levy and collect sales and use taxes up to a rate of 3%. Any rate increase above 3% requires legislative approval,³⁵ thereby recognizing the power of the legislature with regard to taxation. OMV posits that this same section of the constitution, La.Const. art. VI, § 29, establishes a uniformity requirement in paragraph (D) granting authority to the legislature to enact legislation to facilitate the uniform collection of local sales and use taxes.³⁶ OMV states that La.R.S. 47:337.102 is in furtherance of this goal, and paragraph (C) of the statute lists actions that can be taken by the Board to facilitate the uniformity requirement. Because the legislature is empowered to define and limit the scope of all state and local sales and use taxes, local governments are only authorized by the constitution to impose sales and use taxes as defined by the legislature. Therefore, OMV contends that while local governments may enact sales and use taxes, they must define the terms thereof in accordance with general state laws on sales and use taxes, and they cannot go beyond the limits defined by the legislature in La.R.S. 47:301, *et seq.*

³⁵ La.Const. art. VI, § 29(B).

³⁶ La.Const. art VI, § 29(D) provides:

Exemptions; Protection of Bonds. Except when bonds secured thereby have been authorized, the legislature may provide for the exemption or exclusion of any goods, tangible personal property, or services from sales or use taxes only pursuant to one of the following:

- (1) Exemptions or exclusions uniformly applicable to the taxes of all local governmental subdivisions, school boards, and other political subdivisions whose boundaries are not coterminous with those of the state.
- (2) Exemptions or exclusions applicable to the taxes of the state or applicable to political subdivisions whose boundaries are coterminous with those of the state, or both.
- (3) Exemptions or exclusions uniformly applicable to the taxes of all the tax authorities in the state.

Against this backdrop of the powers of taxation, OMV argues that in the instant case, the legislature defined what are included as uniform administrative expenses in the collection of local sales and use taxes in La.R.S. 47:337.102(C).³⁷ Thus, according to OMV, La.R.S. 47:337.102(I) has been defined as an administrative expense in connection with the collection of local sales and use taxes.

Lastly, OMV asserts that the funding mechanism of La.R.S. 47:337.102(I) is merely in the nature of a fee the legislature has elected to assess upon political subdivisions for services to be provided by the Board, and such fees are authorized by La.Const. art. III, § 2(A)(4) and La.Const. art. VII, § 2.1. OMV contends that the enactment of this fee is required as La.Const. art. VII, § 14 prohibits the loan, pledge, or donation of “the funds, credit, property, or things of value of the state or of any political subdivision” “to or for any person, association, or corporation, public or private.” Therefore, OMV urges that the only way for the Board to provide these services is to charge for the services, and the mechanism in La.R.S. 47:337.102(I) is the one chosen by the legislature. Like the Board, OMV concludes the funding mechanism is, therefore, a reasonable and necessary administrative cost and expense of collecting and administering the local sales and use taxes as defined by the legislature and in furtherance of the uniformity requirement in La.Const. art. VI, § 29(D).

In response to OMV’s focus on a uniformity requirement embedded in La.Const. art. VI, § 29(D) as granting authority to the legislature to enact legislation to facilitate the uniform collection of local sales and use taxes, Plaintiffs note that by its clear language, paragraph (D) applies solely to exemptions from sales and use taxes. Therefore, Plaintiffs counter that La.Const. art. VI, § 29(D) is not a

³⁷ *BP Oil Co. v. Plaquemines Par. Gov’t*, 93-1109 (La. 9/6/94), 651 So.2d 1322.

constitutional obligation of the legislature to facilitate uniformity of collection of local sales and use taxation. Further, although OMV cites *BP Oil Co.*, 651 So.2d 1332, Plaintiffs argue that decision has nothing to do with empowering the legislature to rededicate the use of local taxes to facilitate the uniform collection of local sales and use taxes, much less to rededicate local sales and use taxes to fund an entity created by the State, a use contrary to that provided in the ballot measures considered by the voters.

Although their analyses differ, both the Board and OMV argue that La.R.S. 47:337.102(I) is constitutionally permissible given that each ballot proposition allows for the payment of reasonable and necessary costs and expenses of collecting and administering the tax. We disagree.

First, as to the arguments advanced by the Board, although apparently reasonable, it is not within the purview of the legislature to decide if the costs are necessary. To the contrary, the decision relative to the necessity thereof rests with the local tax collectors.

Relative to OMV's analysis, in our view, the enactment of La.R.S. 47:337.102(I) is not a valid exercise of the power of the legislature to tax pursuant to La.Const. art. VII, § 1(A). That constitutional provision expressly recognizes exceptions otherwise granted by the constitution. Louisiana Constitution Article VI, § 29 is such a provision. As this Court noted in *Caddo-Shreveport Sales & Use Tax Commission*, 710 So.2d at 782, “[t]he 1974 Constitution elevated the sales and use tax levy and collection powers of local government to constitutional dignity.” This Court opined:

In Board of Directors of La. Recovery Dist. v. All Taxpayers, Property Owners, and Citizens of State of La., 529 So.2d 384 (La.1988), we recognized that one of the objectives of Article VI of the 1974 constitution was to make parishes and municipalities more than mere creatures of the legislature through grants of self-operative powers. The

delegates hoped to grant a greater degree of self-government and independence from the legislature to municipalities and parishes. 529 So.2d at 388 (citing XVIII Records of the Louisiana Constitutional Convention of 1973: Verbatim Transcripts, Sept. 29, 1973, at 22 [hereinafter cited as Records]; XVI Records, Sept. 20, 1973, at 41, 44-45, 47; Kean, *Local Government and Home Rule*, 21 Loy.L.Rev. 63 (1975)).

Id. at 781-82.

We further disagree with OMV's assertion that the enactment of La.R.S. 47:337.102(I) is merely in furtherance of the uniformity requirement of La.Const. art. VI, § 29(D), granting authority to the legislature to enact legislation to facilitate the uniform collection of local sales and use taxes. Thus, we do not agree that La.R.S. 47:337.102(I) has legislatively been defined as an administrative expense in connection with the collection of local sales and use taxes. To the contrary, we agree with Plaintiffs that the uniformity requirement found in La.Const. art. VI, § 29(D) applies solely to tax exemptions not implicated in the instant case.³⁸ Therefore, OMV's reliance upon La.Const. art. VI, § 29(D) as a constitutional uniformity requirement in the collection of sales and use taxes is misplaced.

Finally, we reject OMV's assertion that somehow La.R.S. 47:337.102(I) is permissive due to the constraints imposed by La.Const. art. VII, § 14. While it is not our role to prescribe the manner in which the Board is to be funded, we recognize that there exist alternatives, such as the local taxing authorities returning to their respective voters for approval of a portion of the local sales and use taxes being rededicated to the operations of the Board. Thus, as an example, funding may be accomplished by passing a dedicated tax for the purpose of funding the Board.

³⁸ See *Arrow Aviation Co., LLC v. St. Martin Parish School Board Tax Sales Department*, 16-1132, pp. 5-6 (La. 12/6/16), 218 So.3d 1031, 1036, wherein this Court held "that the plain and unambiguous meaning of this constitutional provision is that a legislative tax exclusion must treat 'all local governmental subdivisions, school boards, and other political subdivisions' the same. Otherwise, it is prohibited by the constitution."

However, we reject OMV's characterization of the funding mechanism in La.R.S. 47:337.102(I) as a permissible fee assessment.

In reaching our conclusion herein, we emphasize that the intended purpose of the legislature for the use of the sales and use tax proceeds, i.e. the funding of the Board, is irrelevant. The relevant inquiry is whether the voters approved the legislature's assessment of the local tax. In this case, they did not. Absent the voters' approval to rededicate the local sales and use taxes to the Board, there is no constitutional directive granting the legislature the power to override the decision of the voters on the use of the local sales and use taxes. *See Denham Springs Economic Development District*, 894 So.2d at 333. As we have opined:

We do not suggest that economic development is not a valid governmental undertaking. However, guided by the law, we find that once citizens vote for a tax dedicated to one purpose, the tax cannot be used for a purpose other than that approved by the citizens. Any alteration of a prior dedication should also be by vote of the people.

Id. at 335.

The Board and the amicus curiae briefs underscore that not all of the services of the Board, especially in the context of coordinated multi-parish programs, were available before its creation. Additionally, many services provided by the Board are activities that enhance and assist local sales and use tax collection and administration for all local taxing authorities that parish collectors could not do individually. Indeed, the assertion made is that the critical funding mechanism for the Board was a result of deliberate, painstaking, and consolidated efforts relative to sales and use tax collection and administration. While we acknowledge the foregoing, and we do not dispute the benefits of the Board's services, nor the laudable goal of uniformity in the collection and administration of local sales and use taxes, this does not negate the requirement that the voters must approve that use at the ballot box. *Id.*

For the foregoing reasons, we find that La.R.S. 47:337.102(I) violates La.Const. art. VI, § 29 in impermissibly rededicating local sales and use taxes to fund the Board. While the statute allows for the Board to assist local tax collectors in the collection and administration of local sales and use taxes, and the local collectors may elect to utilize the services of the Board, assuming the costs are reasonable and necessary, the payment for these services cannot constitutionally be mandated by legislation via a funding mechanism that redirects dedicated local sales and use taxes approved by the voters.

We acknowledge that the unconstitutionality of one portion of a statute does not necessarily render the entire statute unenforceable. *Arrow Aviation Co. LLC*, 218 So.3d at 1040 (citing *World Trade Ctr. Taxing Dist.*, 908 So.2d at 637). If the offending portion of the statute is severable from the remainder, this Court may strike only the offending portion and leave the remainder intact. *Id.* (citing *Pierce v. Lafourche Par. Council*, 99-2854, p. 9 (La. 5/16/00), 762 So.2d 608, 615). But, where the purpose of the statute is defeated by the invalidity of the offending portion, the entire statute is void. *Id.* (citing *World Trade Ctr. Taxing Dist.*, 908 So.2d at 638). In this case, the district court expressly found La.R.S. 47:337.102(I) was severable; thus, the remainder of the statute remained in full force and effect. Additionally, Plaintiffs' constitutional challenge to the statute is limited solely to the funding mechanism found in La.R.S. 47:337.102(I), and they do not urge any issue relative to severability before this Court. For these reasons, the district court's finding relative to severability is affirmed.

Louisiana Constitution Article VII, § 3 – Local Collector Authority

Plaintiffs also challenge the funding mechanism of the Board pursuant to La.R.S. 47:337.102(I) as an impermissible infringement on the authority and right

of the single local collector in each parish to collect local sales and use taxes, thereby violating of La.Const. art. VII, § 3(B)(1), which provides, in part:

Notwithstanding any contrary provision of this constitution, sales and use taxes levied by political subdivisions shall be collected by a single collector for each parish.

The parties focus on this Court's holding in *Caddo-Shreveport Sales & Use Tax Commission*, 710 So.2d 776. In that case, this Court considered whether the constitutional grant of authority to local governments to levy and collect taxes found in La.Const. art. VII, § 3 prohibited the legislature from requiring local governments to agree that local taxes on motor vehicles would be collected by OMV. As framed by this Court, "[t]he resolution of this issue turns on our interpretation of what necessarily falls within the ambit of the constitution's specific delegation to local governments of the right to levy and *collect* sales and use taxes." *Id.* at 780. Ultimately, this Court held that "a statute appointing a mandatory agent [OMV] cannot deprive local government of the right to exercise constitutionally conferred sales tax collection powers"; thus, the statute was found to be unconstitutional. *Id.* at 783.

The Board argues that La.R.S. 47:337.102(I) does not run afoul of the constitutional considerations outlined in the *Caddo-Shreveport Sales & Use Tax Commission* decision for two reasons. First, the Board does not collect taxes. The Board focuses on the element of "collection" and contends that La.R.S. 47:337.102(I) does not require local taxing authorities to utilize it as an agent of collection. While admitting that its services are related to the collection and administration of local sales and use taxes, the Board denies that it gathers in local taxes owed by the taxpayers to local taxing authorities. Second, the Board focuses on the fact that it is not a state agency. The Board points out that it was conceived as a political subdivision of the state; therefore, it contends that it is an entity of the

same classification and type as other local governments. La.R.S. 47:337.102(A); La.Const. art. VI, § 44(2). It argues that instead of infringing upon the local government's right to collect their own local sales and use taxes, it promotes the local government's independence as a "fellow local government" entity that provides services, advice, and support as a resource to enhance the local government's tax collection efforts.

Plaintiffs maintain that the ruling of *Caddo-Shreveport Sales & Use Tax Commission* is applicable herein, and they refute the Board's attempt to distinguish *Caddo* by arguing either that collection is the mere act of receiving dollars, or because the Board is more like a parish or city government than a state entity. Plaintiffs conclude that to construe La.Const. art. VII, § 3 so narrowly as to limit its application only to the physical receipt of money would defeat the concept of the single local collector and effectively grant the legislature the ability to amend the constitution by an act of legislation, without the necessary super majority or vote of the people. Relative to the Board's status as a political subdivision and the Board's self-characterization as a "local government unit," Plaintiffs respond that nowhere in La.Const. art. VI, which addresses governments, does it intimate, imply, or suggest that the Board is of the same class as a parish or municipality, or that it is a local government.

Essentially, resolution of this issue would require a determination of whether the actions of the Board constitute a "collection" of the local sales and use taxes, and/or whether the status of the Board as political subdivision of the state, as opposed to a state agency, renders it more in the nature of a local government unit such as a parish, city, or school board, rather than a state entity. Given our holding that the statute violates La.Const. art. VI, § 29, we pretermitted a constitutional analysis of whether La.R.S. 47:337.102(I) also violates this second constitutional provision.

DECREE

After *de novo* review, we find that the funding mechanism for the Louisiana Uniform Local Sales Tax Board, as set forth in La.R.S. 47:337.102(I), is violative of La.Const. art. VI, § 29. For the reasons stated herein, the judgment of the district court declaring La.R.S. 47:337.102(I) unconstitutional and permanently enjoining the State of Louisiana, Department of Public Safety and Corrections, Office of Motor Vehicles from withholding locally levied sales and use taxes under the authority of La.R.S. 47:337.102(I) and from disbursing any funds withheld to the Louisiana Uniform Local Sales Tax Board is hereby affirmed.

AFFIRMED.