

STATE OF LOUISIANA

OFFICE OF STATE INSPECTOR GENERAL



UNIVERSITY OF LOUISIANA AT LAFAYETTE Review of Proposed Land Exchange

Date Released:

April 13, 2007

File No. 1-07-0011

STATE OF LOUISIANA
OFFICE OF
STATE INSPECTOR GENERAL



UNIVERSITY OF LOUISIANA AT LAFAYETTE

Sharon B. Robinson, CPA
State Inspector General

A handwritten signature in black ink, appearing to read "K. Blanco", with the date "4/14/07" written below it.

Approved by:
Governor Kathleen Babineaux Blanco

March 14, 2007

File No. 1-07-0011

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State of Louisiana
DIVISION OF ADMINISTRATION

OFFICE OF STATE INSPECTOR GENERAL
Sharon B. Robinson, CPA
(225) 342-4262
1-800-354-9548
FAX (225) 342-6761

KATHLEEN BABINEAUX BLANCO
GOVERNOR

JERRY LUKE LEBLANC
COMMISSIONER OF ADMINISTRATION

March 14, 2007

Honorable Kathleen Babineaux Blanco
Governor of the State of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

Re: Case No. 1-07-0011

Dear Governor Blanco:

This report addresses concerns raised about a proposed land exchange between the University of Louisiana at Lafayette and BRE-ARD, LLC, a private entity. The report includes two recommendations that if implemented would be in the best interest of the state.

We provided drafts of the report to ULL and the University of Louisiana System. Their written responses are included as Appendix A.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sharon B. Robinson".

Sharon B. Robinson, CPA
State Inspector General

SBR/LS

Enclosure

Executive Summary

Audit Initiation

In November 2005, the Office of State Inspector General received an allegation that a proposed land exchange between the University of Louisiana at Lafayette (ULL) and BRE-ARD, LLC--a private entity-- was not of equivalent value. We did not begin to address the complaint immediately, because University of Louisiana system staff assured us that they were still working on ensuring that the values were equivalent. Although the exchange had not materialized, on October 23, 2006, we began a review of the transaction out of concern that an unequal land exchange could be a violation of the state's constitution (Article VII, Section 14).

After examining the sequence of events leading up to the proposed exchange, we established the following audit objectives:

1. Determine whether any rules, regulations or state laws were or could possibly be violated in the proposed exchange.
2. Determine whether the properties to be exchanged were of equivalent value

Summary of Findings

- During our audit of the proposed land exchange, nothing came to our attention to suggest that any laws were breached or any illegal activities occurred.
- Determining whether the properties involved in the exchange are equivalent in value will be difficult. The two pieces of property in question currently are used for different purposes. It may be difficult to "carve up" the ULL property in a manner that will yield a portion that is equivalent in value to the property that ULL is seeking to acquire. (Page 7)
- Subsequent to beginning the audit, we learned that signed documents were filed with the Lafayette Clerk of Court. These documents may cloud the ULL property's title. (Page 13)

Background

The University of Louisiana at Lafayette's (ULL) is the largest of eight universities within the University of Louisiana System (UL System). Its campus consists of approximately 650 acres:

- Main campus: 137 acres
- Athletic complex and Cajun Dome: 243 acres
- University Research Park: 148 acres
- Center for Ecology and Environmental Technology: 51 acres
- Primate Center in New Iberia: 71 acres

According to ULL's website, its total fall 2006 enrollment was 16,303, including 1,379 graduate students. Dr. Ray Authement has been president of ULL since 1974.

In 1920, ULL purchased approximately 100 acres of land for an agricultural program, which is now known as the Horse Farm. This land is not adjacent to the rest of the campus. It is situated in the heart of Lafayette and is surrounded on three sides by residential neighborhoods and on the fourth side by Johnston Street. The land is currently undeveloped land, except for a dilapidated barn.

Views of the Horse Farm





Barn on Horse Farm Property

In 2005, Dr. Authement sought to acquire property adjacent to the university, which is owned by Mr. James J. Davidson, III. Mr. Davidson was president of the ULL Foundation's Board of Trustees from 1987 to 1990 and is still an active member of the Board. According to Dr. Authement, he received an offer for the entire Horse Farm property but he did not want to sell the entire property. Instead, he proposed an exchange of the Davidson property for part of ULL's Horse Farm.

Two businessmen, Mr. Jerry Brents and Mr. Dan Menard, formed BRE-ARD, LLC on July 29, 2005 to purchase the Davidson property and then to exchange it for a portion of ULL's Horse Farm. Mr. Brents is a member emeritus of ULL Foundation's Board of Trustees.

Dr. Authement's efforts to obtain the Davidson property date back to at least 2001. Once the idea to exchange the properties appeared to be a viable option, appraisals were done and documents were drafted to complete the exchange. However, in February 2006, Dr. Authement stopped the transaction.

The following table is a timeline of events relating to the proposed land exchange.

TIMELINE OF EVENTS FOR ULL LAND EXCHANGE

YEAR	DATE	ACTION
2001	May	Dr. Authement discusses purchasing Davidson property with James Davidson III
2003	December 4	1st Davidson property appraisal: \$3,250,000
2005	June 6	1 st Horse Farm appraisal (24.24 acres): \$2,570,000
	July 29	BRE-ARD, LLC formed by Jerry Brents and Dan Menard
	August 26	UL System Board conditionally approves exchange of 36 acres of Horse Farm for 4.1 acres of Davidson property: both valued at \$3.25 million subject to further approvals by staff and legal counsel
	September 8	2 nd Davidson Property appraisal: \$3,575,000. Appraiser estimates the property increased in value by 10% from 2003.
	September 13	Agreement to Exchange Realty signed by Dr. Authement and BRE-ARD, LLC principals
	December 1	Addendum to June 6, 2005 appraisal of the Horse Farm changing the appraised area from 24.24 acres to 35.14 acres. 2nd appraisal: \$5,370,000
2006	February	Dr. Authement decides to not go forward with completing the exchange
	May 29	3 rd Davidson property appraisal: \$1,500,000.
	October 20	Agreement to Exchange Realty filed with the Lafayette Parish Clerk of Court and East Baton Rouge Clerk of Court
Source: Prepared by Inspector General's staff using information obtained from UL System staff and the Lafayette Parish Clerk of Court Office.		

Scope and Methodology

We conducted this examination of the proposed ULL's land exchange in accordance with *Principles and Standards for Offices of Inspector General* as promulgated by the Association of Inspectors General.

The scope of the examination included reviewing all documentation pertaining to the land exchange. Our examination consisted of:

1. Interviewing the parties involved in the exchange and University of Louisiana System employees;
2. Visiting the properties in question
3. Reviewing newspaper articles, UL System Board minutes, rezoning request documents at the Lafayette Consolidate Government Planning, Zoning and Codes Department, appraisals, documents related to the property exchange sent to the UL System for approval and correspondence;
4. Reviewing pertinent state laws, rules and regulations.

This examination was somewhat less in scope than our normal audits because part of the activities related to this transaction are conducted by private parties. While this office has no authority to obtain documents from private individuals, the parties interviewed were cooperative.

Unclear Whether ULL Land Exchange Would Have Been Of Equivalent Value

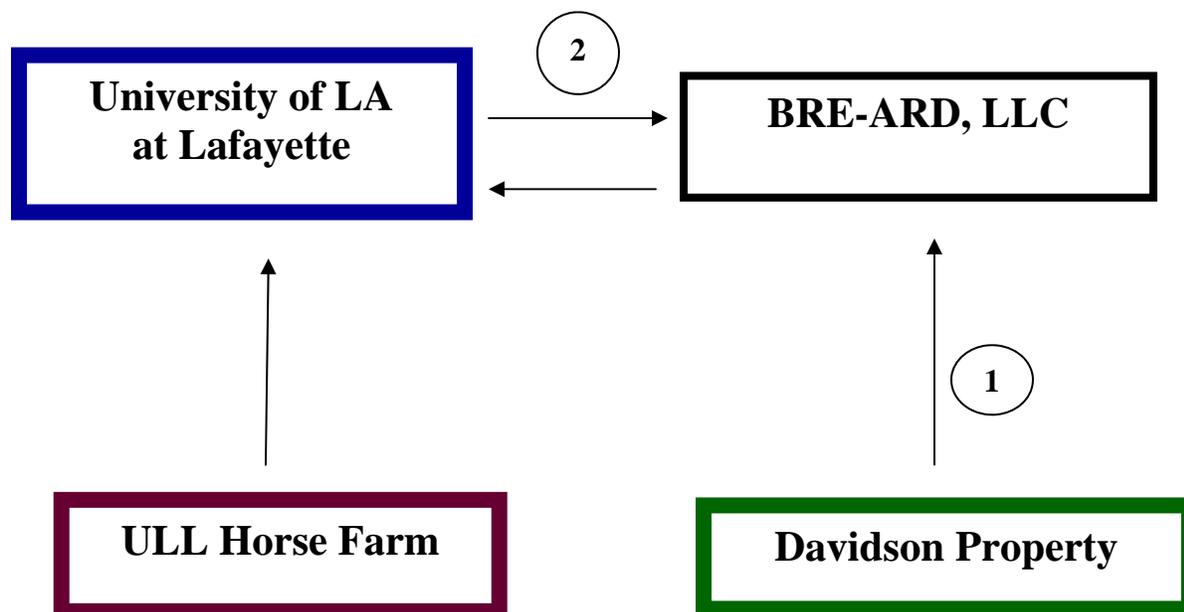
Our examination found that it would be difficult to ensure the portion of the Horse Farm that ULL wishes to exchange for the Davidson property is of equivalent value. The two appraisals of the Horse Farm (both done in 2005) show different values. However, each appraisal also included different-sized portions of the property. In addition, the company that is party to the exchange was also adding other incentives that may or may not be figured into the overall value. Louisiana Revised Statutes (R.S.) 17:3351(A) (9) gives the college and university board the authority to sell, transfer or exchange land or other property not needed for university purposes. However, Article VII, Section 14 of the state constitution prohibits loaning, pledging, or donating property of the state to or for any person, association, or corporation, public or private. Thus, if the Horse Farm is of greater value than the Davidson property, then the exchange would not have been in the best interest of ULL.

According to Dr. Authement, ULL needs to acquire more property near the university because there is no space on the campus for growth. In other words, ULL is essentially landlocked. He also said he has for many years wanted to acquire the Davidson property, which is adjacent to ULL, as a means of expanding the campus. The Davidson property is 4.133 acres and currently includes two residences and a storage building.

Dr. Authement said an individual approached him wanting to buy the entire Horse Farm property. However, Dr. Authement did not want to sell the entire property, but proposed exchanging an equally valued portion of the Horse Farm for the Davidson property. He said he attempted a property exchange rather than a sale because an exchange is easier than obtaining legislative approval, which is required prior to selling university property to a specific individual. He considered other options such as obtaining capital outlay funds through the Board of Regents to purchase the Davidson property, but those funds are currently set aside for a project at another university.

BRE-ARD, LLC was formed by the parties interested in obtaining the Horse Farm property to facilitate the exchange. Under Dr. Authement's proposal, BRE-ARD, LLC would purchase the Davidson property then ULL would exchange 36.34 acres of the 99.465 acre Horse Farm for the Davidson property. However, the transaction is not a typical land exchange of one parcel for another. Other considerations are involved.

Diagram of Property Acquisition and Exchange



Steps involved

1. BRE-ARD, LLC buys Davidson Property
2. BRE-ARD, LLC exchanges Davidson Property for portion of ULL's "Horse Farm"

As part of the agreement, BRE-ARD, LLC agreed to donate approximately 6.5 acres of the 36.34 acres back to the university. BRE-ARD, LLC also agreed to construct a concrete bridge with a pedestrian path across a concrete-lined coulee on the Horse Farm property. Furthermore, the exchange would include BRE-ARD, LLC constructing a minimum 40-foot wide paved roadway approximately 1,200 feet long crossing the coulee bridge and connecting Johnston Street to the remaining ULL property at no cost to the university. In addition, James Davidson III, who owns one of the residences on the Davidson property, agreed to donate \$150,000 to the ULL Foundation. It does not appear the value of these additional incentives have been considered in determining whether the Davidson Property is commensurate in value to the ULL Horse Farm.

Appraised Values Vary Widely. Because the estimated property values in the appraisals done on both the Horse Farm and the Davidson property from December 2003 to May 2006 varied so widely, we could not determine whether the properties to be exchanged were of equivalent value. The appraisals were also done at different times and, thus, may not be comparable.

Below is a summary of the appraisals done on the Davidson property and the Horse Farm.

Summary of Property Appraisals

Davidson Property		Horse Farm		
Date	Value	Date	Value	Acreage
12/4/2003	\$3,250,000			
9/8/2005	3,575,000*	6/6/2005	\$2,570,000	24.24
5/29/2006	1,500,000	12/1/2005	5,370,000	35.16

*Appraiser simply estimated the property value increased by 10% from the 2003 appraisal.

After reviewing the first appraisal on the Horse Farm property, the UL System told ULL to get an appraisal for “highest and best use” for the Horse Farm property. The appraisal for the Horse Farm property went from \$2.57 million to \$5.37 million. According to UL System staff, because of the discrepancy in the appraisals the deal would have to go back before the Board because the UL System staff is not allowed to approve radical changes to the concept.

Davidson Property Appraisals. The appraisal of the Davidson property that ULL submitted to the UL System Board in August 2005 was done in 2003. The UL System requested an updated independent appraisal of the Davidson property. Facility Planning and Control selected the appraiser with ULL paying the costs. The new Davidson property appraisal, done in June 2006, set a value of \$1.5 million, which is less than one-half of the 2003 appraised value. According to UL System staff, the System Board would not have approved the deal because of the significant changes in the appraisals.

Not only do the appraisal values on the Davidson property vary greatly but so do the methods of appraising the property. The 2003 appraiser took the approach the best use for the property was commercial and appraised it as such. The 2006 appraiser’s approach was:

“Since the subject tract is large and improved with two homes and a warehouse, the property was divided into four distinct parcels to facilitate the valuation process. This was necessary, because it is reasoned that a buyer would not likely purchase the entire tract, given the subject's residential zoning. It is doubtful that a single buyer would have use for both homes, the excess land, and the warehouse.”

The 2006 appraiser also measured the square footage of one of the residences 1,667 square feet less than original appraiser. In addition, the 2006 appraiser did

not count the 4,400 square feet of the second floor of the adjacent warehouse due to low ceilings.



View of Davidson Property

Horse Farm Appraisals. The same appraiser performed two appraisals on the Horse Farm. However they are not identical in scope. The first appraisal done in June 2005 was based on 24.24 acres of which 6 acres were appraised as commercial, 17.78 acres appraised as residential and the remaining 0.46 acres (inside the coulee) as of little, if any, value. The front 6 acres (near Johnston Street) were valued at \$6 per square foot and the back 17.78 acres were valued at \$1.30 per square foot. This portion of the Horse Farm was valued at \$2.57 million.



Coulee Running Through Horse Farm Property

The second appraisal, in December 2005, was done on 35.16 acres, which was appraised entirely as commercial. The front 6 acres were valued at \$6 per square foot and the back 29.16 acres were valued at \$3 per square foot. This

portion of the Horse Farm was valued at \$5.37 million. It appears the second appraisal is nearly twice the first appraisal because it includes approximately 50 percent more property and the back acreage was valued at a higher rate.

Because of the vast differences in the appraisals and sizes of portions of the Horse Farm being appraised, it is difficult to determine if the exchange is truly for equivalent values.

Recommendation:

1. Should ULL and Dr. Authement seek to complete the land exchange, all parties should work closely with UL System staff to ensure “highest and best use” appraisals for both properties are obtained and that the properties being exchanged are of equivalent value before seeking UL System Board approval.

Status of Exchange of Horse Farm Property Should Be Addressed

In August 2005, the UL System Board of Supervisors conditionally approved ULL's plan to exchange the Horse Farm for the Davidson Property. The condition to be met was UL System staff and legal counsel had to ensure all documents necessary for the exchange conform to statutory and administrative requirements before the exchange could take place. ULL abandoned its plan in February 2006. However, in October 2006, BRE-ARD, LLC filed signed documents with the Lafayette Clerk of Court suggesting the property exchange is final. As a result, any further transactions regarding the Horse Farm Property may be impaired.

As required by UL System policy, ULL submitted documentation of the proposed exchange to the UL System Board of Supervisors for approval. The Board of Supervisors approved the exchange at its August 26, 2005 meeting, pending staff review of all documents. The minutes of the Board meeting state:

“Dr. Sally Clausen, President of the University of Louisiana System, and/or Dr. Ray Authement, President of the University of Louisiana at Lafayette, are/is hereby designated and authorized to execute any and all documents necessary to execute said properties exchange documents....UL System staff and legal counsel ensure that all documents conform to statutory and administrative requirements **prior to concluding** the exchange.”
(Emphasis Added)

Dr. Authement signed an Agreement to Exchange Realty with BRE-ARD, LLC (Mr. Menard and Mr. Brents) on September 13, 2005. However, UL System staff contends Dr. Authement did not have authority to sign the Agreement to Exchange Realty until given final approval by the UL System staff. Dr. Authement said he fully intended to come back to the Board with the conveyance documents.

The agreement contains a requirement that ULL get the Horse Farm property rezoned to “general business.” To comply with the requirement of the exchange, ULL submitted documentation to the Lafayette Zoning Commission to get 35.7 acres of the Horse Farm property re-zoned to general business. This request was defeated by the Zoning Commission at its December 5, 2005 meeting. Final action on the rezoning request was to take place by the Lafayette City-Parish Council at its January 24, 2006 meeting. BRE-ARD, LLC sent Dr. Authement a letter on December 23, 2005 waiving the requirement of the Horse Farm property being re-zoned prior to completing the exchange. Dr. Authement said he did not accept the waiver because if the property remained residential, high density housing would be constructed and diminish the value of the rear property of the Horse Farm, which ULL would still own.

Despite the waiver, ULL requested that final action be postponed until the Lafayette City-Parish Council's March 1, 2006 meeting. Dr. Authement withdrew the rezoning request from the Lafayette City-Parish Council in late February 2006. Dr. Authement said the request was withdrawn because he knew he did not have enough votes on the Council for it to pass. He said in his mind not getting the property re-zoned negates the deal.

BRE-ARD, LLC did not consider the deal negated and on October 20, 2006 filed the exchange documents with the Clerk of Court in Lafayette Parish. BRE-ARD, LLC representatives said they filed these documents to cloud the title on the properties. The documents filed include:

- Agreement to Exchange Realty
- Act of Exchange, which was unsigned
- Agreement to Acquire Realty, which was signed by BRE-ARD, LLC and the Davidsons
- Cash Sale, which was unsigned
- Agreement to Donate Real Estate, which was signed by BRE-ARD, LLC and Dr. Authement

Recommendation:

2. The UL System should determine if the document filing clouds the Horse Farm's title and, if so, take the necessary steps to clear it.

APPENDIX A

Responses



Office of the President

University of Louisiana at Lafayette

P. O. Drawer 41008
Lafayette, LA 70504-1008
(337) 482-6203
Fax: (337) 482-5914
e-mail: president@louisiana.edu

Université des Acadiens

March 5, 2007

Ms. Sharon B. Robinson, CPA
Office of State Inspector General
P. O. Box 94095
Baton Rouge, LA 70804-9095

RE: Case No.: 1-07-0011
UL Lafayette Property Exchange

Dear Ms. Robinson:

I thank you for providing a draft audit report on the proposed land exchange between the University of Louisiana at Lafayette and BRE-ARD, LLC. I will provide a written response on the draft audit report as requested, but I want to first commend you and your investigators for your professionalism, exactness and understanding in pursuing the facts surrounding this case. You helped make a distasteful situation more tolerable.

I now provide a response to the three findings listed in the Summary of Findings.

Finding 1: During our audit of the proposed land exchange nothing came to our attention to suggest that any laws were breached or any illegal activities occurred.

Response: I concur in this finding. Rumors of “pay offs” or kickbacks were circulated around the City. I was certain that no illegal activities had occurred.

Finding 2: Determining whether the properties in the exchange are equivalent in value will be difficult. The two pieces of property currently are used for different purposes. It may be difficult to carve up the ULL property that will yield a portion that is equivalent in value to the property that ULL is seeking to acquire.

Response: I concur in the finding that determining whether the properties in the exchange are equivalent will be difficult. However, I call your attention to the following statement on page 6 of the audit: “As part of the Agreement BRE-ARD, LLC agreed to donate approximately 6.5 acres of the 36.34 acres back to the university. BRE-ARD, LLC also agreed to construct a concrete bridge with a pedestrian path across a concrete-lined coulee on the Horse Farm property. Furthermore, the exchange would include BRE-ARD, LLC

constructing a minimum 40-foot wide paved roadway approximately 1,200 feet long crossing the coulee bridge and connecting Johnston Street to the remaining ULL property at no cost to the university. In addition, James Davidson III, who owns one of the residences on the Davidson property, agreed to donate \$150,000 to the ULL Foundation. It does not appear the value of these additional incentives have been considered in determining whether the Davidson Property is commensurate in value to the ULL Horse Farm.”

In all of the negotiations on the property exchange, the University insisted that the back 70 acres be retained by the University, requiring the return of 6.5 acres to the University. The construction of a three-lane bridge capable of handling 18 wheelers and 1,200 feet of 40-foot wide paved roadway connecting Johnston Street with the back 70 acres of University property was estimated to increase the value of the property by 10 to 20 percent.

It is an absolute fact that these additional incentives were not considered in determining the exchange and tilted the “gain factor” in favor of the University.

Finding 3: Subsequent to beginning the audit we learned that signed documents were filed with the Lafayette Clerk of Court. These documents may cloud the ULL property title.

Response: The find is correct. The University was under the impression that all documents signed had been reviewed and cleared by attorneys working for and with the Board and subsequently approved unanimously by the Board of Supervisors for the University of Louisiana System. It was clearly understood that the University would return to the Board of Supervisors and/or staff for final approval of all documents necessary to complete the conveyance of the University property to BRE-ARD.

The University is confident that it can work with Mr. Jerry Brents and Mr. Dan Menard to remove a cloud on the Horse Farm’s title. Throughout the negotiations with Mr. Brents and Mr. Menard, it was clear that their intention was to assist the University in acquiring additional property close to its main campus while developing a part of the Horse Farm. It is a fact that subsequent to rezoning the Horse Farm property for commercial use, they offered to complete the exchange without a zoning change.

The University will work with the System staff to remove any clouds from the Horse Farm’s title.

Ms. Sharon B. Robinson
Page 3
March 5, 2007

Please call my office if additional information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Authement". The signature is written in a cursive style with a large initial "R".

Ray Authement
President

jl

UNIVERSITY OF LOUISIANA

S Y S T E M

Claiborne Building • 1201 North Third Street, Suite 7-300 • Baton Rouge, LA 70802 • 225-342-6950 • Fax 225-342-6473
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March 13, 2007

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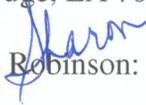
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Sharon B. Robinson, CPA
State Inspector General
Office of State Inspector General
P.O. Box 94095
Baton Rouge, LA 70804-9095

Dear Ms.  Robinson:

We appreciated the opportunity to visit with you and your staff at the exit conference on February 27, 2007. My staff and I were pleased with the draft report we were provided and we thank you for incorporating several changes we suggested.

Regarding your first recommendation, we want to emphasize that staff and legal counsel have consistently required that any land exchange should result in the State receiving property of equal value or greater. We have required current and "highest and best use" appraisals throughout the process in order to assure that any final Board action would be consistent with Constitutional requirements. I believe that was President Authement's intention as well.

Your second recommendation to ascertain whether the documents filed with the Lafayette Clerk of Court place a cloud on the title and, if so, take steps to remove the cloud, is already being addressed. We will continue to work with Dr. Authement until all issues are resolved.

Thank you again for your time and your thorough report.

Sincerely,



Sally Clausen
President

c: Dr. Ray Authement

Twenty-seven copies of this public document were published in this first printing at a cost of \$122.64. The total cost of all printings of this document, including reprints is \$122.64. This document was published by the Office of State Inspector General, State of Louisiana, Post Office Box 94095, 224 Florida Street, Suite 303, Baton Rouge, LA 70804-9095 to report its findings under authority of LSA-R.S. 39:7-8. This material was printed in accordance with the standards for printing by state agencies established pursuant to LSA - R.S. 43:31.

A copy of this report has been made available for public inspection at the Office of State Inspector General and is posted on the Office of State Inspector General's website at www.doa.louisiana.gov/oig/inspector.htm. Reference should be made to Case No. 1-07-0011. If you need any assistance relative to this report, please contact Bruce J. Janet, CPA, State Audit Director at (225) 342-4262.

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