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FILED:

Sept 25 2018 11:00 A.

TENTH JUDICIAL DISTRICT COURT  
PARISH OF NATCHITOCHES, STATE OF LOUISIANA

NUMBER: 90,597

DIVISION: B

THE STATE OF LOUISIANA, THROUGH  
JEFF LANDRY, IN HIS OFFICIAL CAPACITY  
AS ATTORNEY GENERAL OF THE STATE,  
AND CAROLYN PRATOR

VERSUS

THE RED RIVER WATERWAY COMMISSION,  
MICHAEL DEVILLE, AND RONALD F. LATTIER

\*\*\*\*\*

PETITION

NOW INTO COURT, through undersigned counsel, come the STATE OF LOUISIANA, appearing through JEFF LANDRY, in his official capacity as Attorney General and chief legal officer of the State of Louisiana, domiciled in East Baton Rouge Parish, and CAROLYN PRATOR, a person of the age of majority, domiciled in Caddo Parish Louisiana, who respectfully represent as follows:

Made defendants are:

1.

- A. The RED RIVER WATERWAY COMMISSION, through its Board of Commissioners, a political subdivision and instrumentality of the State of Louisiana, domiciled in Natchitoches Parish, Louisiana;
- B. MICHAEL DEVILLE, a person of the age of majority, domiciled in Rapides Parish, Louisiana; and
- C. RONALD F. LATTIER, a person of the age of majority, domiciled in Caddo Parish, Louisiana.

2.

Jeff Landry, in his official capacity as Attorney General and chief legal officer of the State of Louisiana, brings this action in the name of the State of Louisiana as authorized and mandated by La. R.S. 42:76.

3.

Carolyn Prator is a necessary party to this action, pursuant to La. R.S. 42:79.

4.

The Red River Waterway District (the "district") was created for the purpose of establishing, operating, and maintaining a navigable waterway system to be known as the Red River Waterway. La. R.S. 34:2302.

5.

The district is governed by the defendant, the Red River Waterway Commission (the "Commission"), in which the corporate powers and authority of the district shall be vested and exercised by virtue of La. R.S. 34:2303(A).

6.

The Commission is given the power to sue and be sued and answer in judgment under La. R.S. 34:2309.

7.

Pursuant to La. R.S. 34:2303(A), the Commission is composed of twelve members, as

follows:

- (1) The director of public works of the State of Louisiana who shall be ex-officio chairman of the commission with full voting powers and may duly appoint a representative to represent him at any meeting of the commission with the same effect as though he were in attendance himself.
- (2) Four members-at-large who shall be residents of, own real property subject to taxation in, and be qualified voters of the seven parishes in the district, and who shall be appointed by the governor.
- (3) One member from each of the seven parishes of the district [Avoyelles, Rapides, Natchitoches, Red River, Grant, Bossier and Caddo] (hereinafter sometimes called "parish members"), to be appointed by the governor in the manner hereinafter provided.

8.

Although all serve as members of the Commission, the seven *parish members* occupy distinct offices, are selected in a different manner, hold parish versus at-large commissions, and serve six year terms as opposed to the at-large terms that run concurrent with the term of office of the appointing authority.

9.

Each of the seven parish members of the Commission are appointed by the governor initially and upon each new term from a list of nominees submitted to him by (1) the police jury of the respective parish; (2) the governing body of each levee district with territorial jurisdiction in the respective parish; and (3) the Red River Valley Association. La. R.S. 34:2303(B) and (C). Each of those entities separately nominates one person, and from the list of nominees, the governor must appoint the parish members of the Commission. La. R.S. 34:2303(C).

10.

When a vacancy occurs on the Commission in the office of parish member, as in the present case, La. R.S. 34:2303(D) and 2304 provide that the vacancy is filled by the same nomination and appointment process required for initial membership or a new term.

11.

With regard to filling vacancies in the office of a parish member, La. R.S. 34:2303(D) provides as follows:

Within thirty days prior to the expiration of the term of office of any member or within thirty days after occurrence of a vacancy prior to the expiration of the term of office of any member, the aforesaid respective nominating bodies so entitled shall, in the parish where appropriate, designate a nominee for the new term or to fill the vacancy. Such nominations shall be made on the same basis, in the same manner and in accordance with the same procedures required for nominations for initial membership on the commission. From the list or panel of names submitted, the governor shall appoint the parish member for the new term or to fill the vacancy as soon as possible after the names of the nominees of the respective nominating bodies have been received by him, subject to the requirements heretofore specified for such membership.

12.

Thus, filling a vacancy in the office of parish member within the framework of the statute requires a joint effort on the part of the three nominating entities in nominating candidates and on the part of the governor in appointing the parish member from among those nominations.

13.

Unless the nominating entities present one or more nominees for appointment and the governor appoints a member to fill the vacancy from among those nominees, the appointment cannot be regarded as a lawful appointment, and a candidate so appointed cannot be said to lawfully hold the office.

14.

Members of the Commission are “public officers” holding “public office” as those terms are defined in La. R.S. 42:1.

15.

A vacancy on the Commission occurred as a result of the death of Caddo Parish Commission member, Rogers Meredith “Mickey” Prestridge, on February 5, 2018.

16.

The Commission notified the Governor of the vacancy by letter dated February 16, 2018, and gave notice of the vacancy to the applicable nominating entities, the Caddo Parish Commission, the Caddo Levee District, and the Red River Valley Association, by letters to each dated on or about February 23, 2018.

17.

The Caddo Parish Levee District, on March 8, 2018, the Red River Valley Association, on March 13, 2018, and the Caddo Parish Commission, on March 28, 2018, provided the Governor with their respective nominations to fill the Caddo Parish vacancy on the Commission.

18.

Each of the three nominating entities nominated the same candidate, Carolyn Prator, who is eminently qualified for the office.

19.

Carolyn Prator was the sole nominee submitted by the three nominating entities for the vacancy created as a result of the death of Caddo Parish Commission member Mickey Prestridge.

20.

Pursuant to the mandatory provisions of La. R.S. 34:2303(D), Carolyn Prator is entitled to be appointed to the office of Caddo Parish Commission member.

21.

However, despite the unanimous nomination of Carolyn Prator by the applicable nominating entities for the Caddo Parish vacancy, the Governor on July 20, 2018, appointed

Michael DeVille, a resident of Rapides Parish, as a member-at-large of the Commission, even though there was no at-large vacancy to which Michael DeVille could be appointed.

22.

This appointment of Michael DeVille is invalid.

23.

Michael DeVille does not lawfully occupy the office of member-at-large of the Commission and is subject to challenge pursuant to La. R.S. 42:71, *et seq.*, La. Code Civ. P. arts. 3901 and 3902, and other applicable laws.

24.

Upon information and belief, the Governor, in August 2018, then “moved” without nomination or appointment, in connection with the vacancy created by the death of Mickey Prestridge, member-at-large Ronald F. Lattier to the office of Caddo Parish Commission member.

25.

Ronald F. Lattier had previously been appointed by the Governor as a member-at-large of the Commission in November 2017, approximately two months prior to the death of Mickey Prestridge, and Ronald F. Lattier had not completed his term as a member-at-large.

26.

The “reassignment” of Ronald F. Lattier from a member-at-large to the Caddo Parish member of the Commission is invalid such that Ronald F. Lattier does not lawfully occupy the office of Caddo Parish Commission member and is subject to challenge pursuant to La. R.S. 42:71, *et seq.*, La. Code Civ. P. arts. 3901 and 3902, and other applicable laws.

27.

Senator Gregory Tarver, Senator Barrow Peacock, and Patrick Harrison of the Caddo Levee District Board of Commissioners on September 17, 2018, sought the Attorney General’s opinion regarding the proper procedures for filling vacancies on the Red River Waterway Commission and the validity of the recent appointments of Michael DeVille and Ronald F. Lattier to the Commission. In response, the Attorney General on September 19, 2018, released La. Atty. Gen. Op. No. 18-0134, attached hereto as Exhibit A.

28.

Shortly after the release of La. Atty. Gen. Op. No. 18-0134, the Governor issued a press release stating, in part, that the Governor never intended to abide by the law and give credence to the nominations submitted by the Caddo Parish Commission, the Caddo Levee District, and the Red River Valley Association. The Governor's press release is attached hereto as Exhibit B.

29.

Upon information and belief, Michael DeVille purports to hold the office of member-at-large of the Commission without entitlement or legal right thereto.

30.

Upon information and belief, Ronald F. Lattier purports to hold the office of Caddo Parish member of the Commission without entitlement or legal right thereto.

31.

Pursuant to La. R.S. 42:80, plaintiffs allege that the person rightfully entitled to the office purportedly held by Michael DeVille, member-at-large of the Commission, is Ronald F. Lattier.

32.

The putative appointment of Michael Deville to the office of member-at-large of the Commission took place at a time when there was no vacancy in such office, and the Governor's subsequent "reassignment" of Ronald F. Lattier was invalid and lacks effect.

33.

Therefore, Ronald F. Lattier never ceased to occupy the office of member-at-large of the Commission.

34.

Pursuant to La. R.S. 42:80, plaintiffs allege that the person rightfully entitled to the office purportedly held by Ronald F. Lattier, Caddo Parish member of the Commission, is Carolyn Prator.

35.

Carolyn Prator was the sole nominee for the vacancy in the office of Caddo Parish member of the Commission.

36.

Therefore, the Governor was and remains legally obligated to appoint her to the office of Caddo Parish member of the Commission.

37.

Upon information and belief, Ronald F. Lattier further does not hold a commission from the Governor for the office of Caddo Parish member of the Commission and is therefore a usurper in violation of La. R.S. 42:71.

38.

As a result of the appointment of Michael DeVille as a member-at-large and “moving” Ronald F. Lattier to the office of Caddo Parish Commission member, the Commission is unlawfully composed in that it has more members-at-large than La. R.S. 34:2303(A) allows and fewer parish members than the statute requires.

39.

Plaintiffs herein are entitled to a declaration that Michael DeVille unlawfully purports to hold the office of member-at-large of the Commission, Ronald F. Lattier unlawfully purports to hold the office of Caddo Parish Commission member, and that Carolyn Prator is entitled to be appointed to the office of Caddo Parish Commission member.

40.

Moreover, the Governor is obligated by operation of statute and by mandate of law to appoint Carolyn Prator as the Caddo Parish Commission member forthwith, and the plaintiffs are entitled to a declaration that Carolyn Prator’s appointment should be made.

WHEREFORE, the State of Louisiana, through the Attorney General, and Carolyn Prator, pray that after due proceedings, there be judgment in their favor and against the defendants, the Red River Waterway Commission, Michael DeVille, and Ronald F. Lattier, as follows:

1. Upon answer being filed, this matter be set for hearing by preference over all other matters in accordance with La. R.S. 42:78;
2. A declaration that Michael DeVille unlawfully holds and occupies the office of member-at-large of the Red River Waterway Commission;

3. A declaration that Ronald F. Lattier unlawfully holds and occupies the office of Caddo Parish member of the Red River Waterway Commission;
4. An order recognizing Carolyn Prator as entitled to the appointment of Caddo Parish member of the Red River Waterway Commission;
5. A declaration that the Red River Waterway Commission is not lawfully composed in the manner required by La. R.S. 34:2303(A);
6. An order directed to the Red River Waterway Commission prohibiting the Commission from recognizing Michael DeVille as a member of the Commission;
7. An order directed to the Red River Waterway Commission prohibiting the Commission from recognizing and treating Ronald F. Lattier as the Caddo Parish member of the Commission;
8. An order directing the Red River Waterway Commission to take all actions necessary and advisable to secure Carolyn Prator's appointment to the Commission as Caddo Parish member;
9. An award of costs pursuant to La. R.S. 42:84; and
10. All other legal and equitable relief to which plaintiffs are entitled.

Respectfully submitted,  
**JEFF LANDRY**  
**ATTORNEY GENERAL**

BY:



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David Jeddie Smith, Jr. (LSBA #27089)  
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**SERVICE INFORMATION ON FOLLOWING PAGE**



**Please serve:**

**The Red River Waterway Commission**  
through its Executive Director,  
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Natchitoches, LA 71458

**The Red River Waterway Commission**  
through its Chairman,  
Shawn D. Wilson, Ph.D.  
1201 Capitol Access Rd.  
Baton Rouge, LA 70802

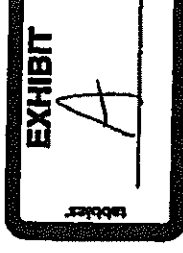
**Michael DeVille**  
573 6th Street  
Pineville, LA 71360

**Ronald F. Lattier**  
701 W. 68th St.  
Shreveport, LA 71106



Jeff Landry  
Attorney General

State of Louisiana  
DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005  
September 19, 2018  
OPINION 18-0134



Senator Greg Tarver  
Louisiana State Senator  
District 39  
1024 Piere Avenue  
Shreveport, LA 71103

Senator Barrow Peacock  
Louisiana State Senator  
District 37  
1619 Jimmie Davis Hwy.  
Bossier City, LA 71112

Patrick Harrison  
First Vice President  
Board of Commissioners  
Caddo Levee District  
P.O. Box 78262  
Shreveport, LA 71137

77 OFFICERS - Local & Municipal; Selection,  
Qualifications & Tenure; Vacancies

La. R.S. 34:2301, *et seq.*, and La. R.S. 48:76-78.

Filling a vacancy in the parish membership of the Commission, it is imperative that the appointing authorities follow the statutory appointment scheme whereby the nominating entities submit nominations to the governor, and the governor appoints from among the nominees submitted to him. Any member appointed contrary to statute holds the office unlawfully and is subject to challenge.

Dear Senators and Mr. Harrison:

Our office is in receipt of a request for an opinion concerning the procedures for filling vacancies on the Board of Commissioners of the Red River Waterway District pursuant to La. R.S. 34:2303 as well as the validity of recent appointments to the Board.

In answering your questions, we first look to the law, La. R.S. 34:3201, *et seq.*, under which the Red River Waterway District (the "District") was created and established. The District was created for the purpose of establishing, operating, and maintaining a navigable waterway system to be known as the Red River Waterway. La. R.S. 34:2302. The District is governed by the Red River Waterway Commission (the "Commission") in which the corporate powers and authority of the District shall be vested and exercised. La. R.S. 34:2303(A).

The Commission is composed of twelve members as follows:

- (1) The director of public works of the State of Louisiana who shall be ex-officio chairman of the commission with full voting powers and may duly appoint a representative to represent him at any meeting of the commission with the same effect as though he were in attendance himself.

- (2) Four members-at-large who shall be residents of, own real property subject to taxation in, and be qualified voters of the seven parishes in the district, and who shall be appointed by the governor.
- (3) One member from each of the seven parishes of the district (hereinafter sometimes called "parish members"), to be appointed by the governor in the manner hereinafter provided.

The parish members of the Commission are appointed by the governor initially and upon each new term from a list of nominees submitted to him by (1) the police jury of each parish in the district, (2) the governing body of each levee district situated wholly or partly in the district, and (3) the Red River Valley Association. Each of those entities separately nominates one person, and from the list of nominees, the governor appoints the members of the Commission. La. R.S. 34:2303(C).

When a vacancy occurs on the Commission, as in this instance, the vacancy is filled by the same nomination and appointment process required for initial membership or a new term. In that regard, La. R.S. 34:2303(D) provides:

- D. Within thirty days prior to the expiration of the term of office of any member or within thirty days after occurrence of a vacancy prior to the expiration of the term of office of any member, the aforesaid respective nominating bodies so entitled shall, in the parish where appropriate, designate a nominee for the new term or to fill the vacancy. Such nominations shall be made on the same basis, in the same manner and in accordance with the same procedures required for nominations for initial membership on the commission. From the list or panel of names submitted, the governor shall appoint the parish member for the new term or to fill the vacancy as soon as possible after the names of the nominees of the respective nominating bodies have been received by him, subject to the requirements heretofore specified for such membership.

Filling a vacancy in the office of parish board member within the framework of the statute requires a joint effort on the part of the nominating entities in nominating candidates and on the part of the governor in appointing the parish member from among those nominations. The use of the mandatory "shall" in the statute unequivocally expresses the respective parties' mandatory duties. The nominating entities "shall" put forward nominations, and the governor "shall" appoint from among the nominees. Unless the nominating entities present one or more nominees for appointment and the governor appoints a member to fill the vacancy from among those nominees, the appointment cannot be regarded as a lawful appointment, and a candidate so appointed cannot be said to lawfully hold the office. La. R.S. 42:76-79.

The critical nature of the nomination component for filling vacancies on the Commission is reinforced by La. R.S. 34:2303(E), which provides that even if one of the nominating bodies ceases to exist or function, the governor must nonetheless fill a vacancy on the Commission from among the nominees of the remaining bodies entitled to make a nomination. Nothing in the statute, however, authorizes the governor to ignore the nominations of the local entities and proceed in disregard of the nominating requirement.

Turning to the circumstances that occasion your request, the information provided to this office and readily available in public documents reflect that a vacancy on the Commission occurred as a result of the death of Commission member, Rogers Meredith “Mickey” Prestidge, on February 5, 2018. The Commission notified the Governor of the vacancy by letter dated February 16, 2018. The Commission then notified the Caddo Levee District, the Red River Valley Association, and the Caddo Parish Commission of the vacancy by letter on or about February 23, 2018 and asked them as nominating entities for a parish member to provide their respective nominations for an appointment to fill the vacancy.

The nominating entities forwarded their nominations for filling the vacancy on March 8, March 13, and March 28, 2018, respectively, and the entities unanimously nominated Carolyn Prator for appointment to the office. However, the Governor did not appoint Carolyn Prator, the unanimous nominee. Rather, several months after the nominations were provided to him, the Governor appointed a candidate to the Commission from outside the local entities’ nominations.

Assuming the foregoing facts to be correct, the failure to fill the vacancy in accordance with the mandates of La. R.S. 34:2303(D) casts doubt on the legitimacy of the appointment as well as actions and votes that may have been taken or that may be taken in the future by the involved board member(s). The occupation of the office by a candidate not lawfully appointed to it further invites a challenge to the appointment by mandamus, (Code Civ. P. arts. 3861, *et seq.*), quo warranto (Code Civ. P. arts. 3901, *et seq.*), and the intrusion into Office Act (La. R.S. 42:71, *et seq.*). Moreover, whether the Commission is lawfully composed under the existing circumstances is doubtful in our view. La. R.S. 34:2303(A).

We also understand that a question has been raised as to whether the Governor is free to abandon the statutory process if the nominations by the local entities are not made in strict compliance with the 30 day provision of the vacancy statute. We find nothing in the statute that would exempt the Governor under any circumstances from the statutory scheme for filling vacancies on the Commission. The process of appointment from nominations is rendered no less enforceable by reason of a momentary delay in the issuance of nominations, unless there is a failure to timely nominate and the necessity of appointment is urgent. Even then, however, the appropriate course is for the Governor to request expedited nominations, not to abandon the process altogether. See, e.g. *Mumill v. Edwards*, No. 92-1758 (La. App. 1 Cir. 12/21/92), 613 So. 2d 185,

194. As we appreciate the applicable law, the Governor is not given license to depart from the statutorily mandated appointment process and enter upon a "frolic of his own" merely because the nominations reach him a few days after the deadline.

Moreover, as we understand the facts in this instance, the Governor was provided with the nominations of the local entities some months before the appointment was made, and there was ample time to consider the qualifications of the nominee prior to making the appointment. We have no information to suggest, however, that the Governor made any effort to determine the qualifications of the nominee before going forward with his appointment.


Accordingly, it is the opinion of this office that in filling a vacancy in the parish membership of the Commission, it is imperative that the appointing authorities follow the statutory appointment scheme whereby the nominating entities submit nominations to the governor, and the governor appoints from among the nominees submitted to him. Any member appointed contrary to statute holds the office unlawfully and is subject to challenge.

We trust that this opinion adequately addresses the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

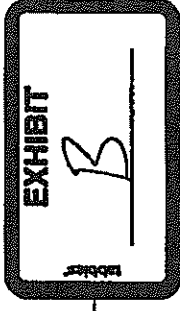
JEFF LANDRY  
ATTORNEY GENERAL

By:

  
\_\_\_\_\_  
Carey T. Jones  
Assistant Attorney General

JOHN BEL EDWARDS

OFFICE *of the* GOVERNOR



## Statement from the Office of the Governor

September 19, 2018

Today, the Office of the Governor released the following statement on Attorney General Jeff Landry's press conference regarding Red River Waterway Commission:

"Everyone should see this for what it is - another cheap political stunt from the attorney general. The simple fact of the matter is that Caddo Parish is not lacking any representation on the commission. Caddo Parish continues to have the same representation on this commission today as it has for more than a decade. The governor made a commitment in November 2017 to restore racial and geographic balance to this commission when a vacancy occurred, and that's what he has done. We stand by the appointment, and would encourage the attorney general to focus on the matters that fall under his jurisdiction and stop meddling into matters that are reserved for the Chief Executive Officer of the state, the governor."

In his press conference, the attorney general indicates that Ronald Lattiere, a Caddo Parish resident, was not nominated for his position. That is incorrect. Mr. Lattiere was nominated by the Caddo Parish Commission. His nomination letter ([/assets/docs/Letters/Caddo\\_Letter-Lattier.pdf](#)) and resolution are available here ([/assets/docs/Letters/Caddo\\_resolution-Lattier.pdf](#)).

A full factsheet is available below:

- Gov. Edwards has already appointed Carolyn Prator to the Caddo Levee District Board on April 22, 2016. In that capacity, she serves at the discretion of the governor. Therefore, if the governor were seeking some sort of political retribution, he could remove Mrs. Prator from that board, but he has not and will not.
- The Red River Waterway Commission is made up of 11 members (7 district seats and 4 at-large-seats). Statutorily, each of the seven parishes within the district served by the commission gets one seat, to be chosen by the governor from nominees from the appropriate local governing authorities. The governor can fill the four remaining at-large seats with someone from any of the seven parishes.
- Governor Edwards made a commitment in 2017 to return a seat long-held by Rapides Parish and restore balance to the commission once a vacancy became available. That would not only restore balance to the commission, but it would ensure both racial and geographical diversity. Politics was never a factor in the governor's decision.
- For a brief period, four months to be exact, Caddo had three representatives. After the passing of Mr. Mickey Prestridge on February 5, 2018, his seat became vacant. The governor filled his seat with Ronald Lattier from Caddo Parish, who had in fact been nominated by the Caddo Parish Commission. Mr. Lattier was confirmed by the Louisiana State Senate in the 2018 Regular Session. When the at-large-seat became available the governor kept his commitment and appointed a veteran from Rapides Parish.
- For nearly 14 years Caddo Parish has held a total of 2 seats - 1 parish and 1 at-large on the commission and with Gov. Edwards' appointment that remains the case for Caddo. Caddo Parish is receiving the same representation on the commission today as it has for more than a decade.

<http://gov.louisiana.gov/news/statement-from-the-office-of-the-governor>

9/24/2018

■ While it is true that Carolyn Prator was nominated to fill the vacant seat, it is also true that her letters were received after the deadline as stipulated by state law, which is 30 days after a vacancy occurs. In this case, that was immediately upon the death of Mr. Prestridge. Thus, Mrs. Prator was not timely nominated. However, the timing of the letters was not a factor in the governor's decision, as the reason for his selection was his commitment to appoint someone from Rapides Parish to the at-large position.

■ The applicable statute is Louisiana Revised Statutes 34:2303(P) which provides the pertinent part:

*Within thirty days after occurrence of a vacancy prior to the expiration of the term of office of any member, the aforesaid respective nominating bodies so entitled shall, in the parish where appropriate, designate a nominee for the new term or to fill the vacancy.*

■ The nominating organizations include: Caddo Parish commission, the Red River Valley Association, and the Caddo Levee District

■ Outrageous and false statements have been made accusing the governor of not appointing Carolyn Prator because her husband, Sheriff Steve Prator, has been vocal in his opposition to the bipartisan criminal justice reform passed by the Louisiana Legislature. The governor's appointment, Col. Ret. Michael Deville, served honorably in the Louisiana National Guard for nearly 30 years and has years of experience as a military engineer and logistics officer working on issues related to waterways, flooding, building levees and hurricane recovery and relief efforts.

■ As outlined in the statute, the governor can select anyone to fill the at-large-seats as long as the person is from one of the seven parishes that fall under the commission. The law is also clear that the governor can receive nominations but is not obligated to select from them. In this case, the governor had made a prior commitment to Rapides Parish and no matter who was recommended the governor was going to keep his word.

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