

October 11, 2001
OPINION 01-163

Ms. E. Anne Dunn
House Legislative Services
P. O. Box 44486
Baton Rouge, LA 70804-4486

77 Dual Officeholding
R.S. 42:63(E)
A part-time legislative assistant may also serve as a part-time or full-time assistant district attorney.

Dear Ms. Dunn:

You have asked this office to address the following question: Can a part-time legislative assistant also serve as a full-time or part-time assistant district attorney?

We respond in the affirmative. The Louisiana Dual Officeholding and Dual Employment Laws, R.S. 42:61, et seq., do not prohibit one from holding part-time employment in the government of the state while holding a part-time or full-time appointive office in a political subdivision of the state. For purposes of dual officeholding and dual employment, the position of legislative assistant constitutes employment in the legislative branch of state government, defined in R.S. 42:62(7) as follows:

The legislative branch of state government includes the members of the Senate and the House of Representatives, the officers, agents, and employees of the legislature of either house or of a committee of either house thereof, the legislative auditor, legislative fiscal officer, or any other agency created by law which is primarily legislative in nature and any other legislative officer, office, or instrumentality of the state. (Emphasis added).

The office of the district attorney is considered a "political subdivision" for purposes of the dual officeholding laws, as per R.S. 42:62(9), providing:

"Political subdivision" means a parish, municipality, and any other unit of local government, including a school board and a special district authorized by law to perform governmental functions. In addition for the purposes of this Part, mayor's courts, justice of the peace courts, district attorneys, sheriffs, clerks of court, coroners, tax

assessors, registrars of voters, and all other elected parochial officials shall be separate political subdivisions. (Emphasis added).

It is significant that the office of the district attorney is, for purposes of dual officeholding, considered a separate political subdivision of the state, and is not included within the judicial branch of state government as defined by R.S. 42:62(8), providing:

The judicial branch of state government includes all judges, employees, and agents of the supreme court, the judicial administrator, courts of appeal, district courts, including the civil and criminal district courts of Orleans Parish, parish courts, city courts, juvenile and family courts, and any other judicial offices and instrumentalities of the state, but does not include judges or employees of courts not enumerated in this Paragraph.

The exclusion of the district attorney from the definition of “judicial branch” makes the prohibition of R.S. 42:63(B) inapplicable to the instant matter. That statute provides:

Except as otherwise provided by the Louisiana Constitution, no person holding office or employment in one branch of the state government shall at the same time hold another office or employment in any other branch of the state government.

Thus, the only prohibition here of concern is R.S. 42:63(E), providing:

No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these.

Since one of the positions in question is held on a part-time basis, the prohibition of R.S. 42:63(E) is also inapplicable.¹

¹ R.S. 42:62(4) and (5) define “full time” and “part time” respectively as follows: “Full time” means the period of time which a person normally works or is expected to work in an appointive office or employment and which is at least seven hours per day of work and at least thirty-five hours per week of work. “Part time” means the period of time which a person normally works or is expected to work in an appointive office or employment which is less than the number of hours of work defined in this Section as full time.

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We conclude that a part-time legislative assistant may also serve as a part-time or full-time assistant district attorney.

Should you have further questions in which we may provide assistance, please contact this office.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: _____
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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Kerry L. Kilpatrick
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