



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
BATON ROUGE
70804-9005
March 20, 2003
OPINION 03-0114

One American Place
301 Main Street, Suite 600
P.O. Box 94005
TEL.: (225) 342-7013
FAX: (225) 342-2090

Mr. William T. Olague
3310 Lorraine
Shreveport, LA 71107

78 Dual Officeholding
R.S. 42:64; R.S. 40:1496.7
Fire chief may not legally hold a position as
appointed commissioner of the fire protection
district board as the fire protection district board
administers the general operating fund from which
the fire chief is compensated.

Dear Mr. Olague:

You have asked this office to determine whether the Fire Chief of Caddo Parish Fire District Two may also serve as a member of the Board of Commissioners of Fire District Two. We conclude that the law prohibits this arrangement.

The fire chief, who is compensated by the fire protection district, holds a position of employment with the fire protection district. A member of the board of commissioners of the fire protection district holds part-time appointive office.¹ We make these assertions based upon the definitional section of the Louisiana Dual Officeholding and Dual Employment Laws, R.S. 42:61, et seq., which pertinently state:

(2) "Appointive office" means any office in any branch of government or other position on an agency, board, or commission or any executive office of any agency, board, commission, or department which is specifically established or specifically authorized by the constitution or laws of this state or by the charter or ordinances of any political subdivision thereof and which is filled by appointment or election by an elected or appointed public official or by a governmental body composed of such officials of this state or of a political subdivision thereof.

(3) "Employment" means any job compensated on a salary or per diem basis, other than an elective or appointive office, in which a person is an employee of the state government or of a political subdivision thereof.

(4) "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.

¹R.S. 40:1496.7, pertains to the board of Caddo Parish Fire District Number Two and provides:

Notwithstanding the provisions of R.S. 40:1495 and R.S. 40:1496, a board of commissioners of the Caddo Parish Fire District Number Two is hereby created. The board of commissioners shall perform and exercise all duties, functions, and powers provided in this Part, and shall be responsible for the operation and maintenance of the district. The members of the board of commissioners shall receive compensation as provided by R.S. 40:1498. The board shall consist of five members appointed by the governing authority of the parish of Caddo, and each member shall be a resident and elector of the parish of Caddo and shall serve on such board at the pleasure of the governing authority of the parish of Caddo. All funds of the Caddo Parish Fire District Number Two shall be administered by the board.

(5) "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.

Of concern are the incompatibility provisions of R.S. 42:64, providing:

A. In addition to the prohibitions otherwise provided in this Part, no other offices or employments shall be held by the same person in combination if any of the following conditions are found to pertain and these prohibitions shall exist whether or not the person affected by the prohibition exercises power in conjunction with other officers:

(4) The incumbent of one office, whether or not in conjunction with fellow officers, or employment is required by law to execute orders and follow directions given by the incumbent of the other office or employment.

(5) One office, whether or not in conjunction with fellow officers, or employment is charged with auditing the accounts of or approving the budget of the other position.

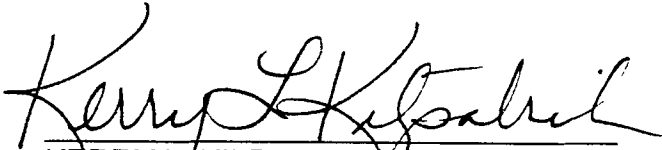
(6) Funds received by one office or employment are deposited with or turned over to the other office or position. (Emphasis added).

R.S. 40:1496.7 states that "all funds of the Caddo Parish Fire District Number Two shall be administered by the board". You state in your correspondence that the fire chief is compensated from the general operating budget of the fire district which by law are administered by the board. These facts alone would, in our opinion, invoke the incompatibility provisions of R.S. 42:64(A)(6) quoted above. For this reason, we conclude that the two positions may not be concurrently held.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams