



RICHARD P. IEYOUNG
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

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OPINION 03-0186

Mr. Thomas A. Nelson, Jr.
City Council Member At-Large
308 E. Main Street
New Roads, LA 70760

9 CIVIL SERVICE
78 DUAL OFFICEHOLDING
R.S. 42:61, et seq.

An employee in the classified civil service may not hold elected office.

Dear Mr. Nelson:

You advise that you are an elected councilman with the governing body of New Roads, Louisiana. You ask if you may accept a "classified/restricted appointment" with the Louisiana Department of Insurance.

Assuming your position is in fact one of employment, of concern would be R.S. 42:63(D) which prohibits a local elected official from holding employment in the government of the state.¹ However, the exemption of R.S. 42:64 may be applicable to you, as New Roads may fall under a population of six thousand five hundred:

N. Nothing in this Part shall be construed to prohibit a person holding employment in the government of the state from holding at the same time an elective office in the government of a municipality of this state with a population of less than six thousand five hundred according to the 1990 federal decennial census, unless the particular nature of such employment in combination with the duties and interests of such elective office is incompatible as provided in this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

¹ R.S. 42:63(D) and R.S. 42:62(6) provide, respectively:

D. No person holding an elective office in a political subdivision of this state shall at the same time hold another elective office or full-time appointive office in the government of this state or in the government of a political subdivision thereof. No such person shall hold at the same time employment in the government of this state, or in the same political subdivision in which he holds an elective office. In addition no sheriff, assessor, or clerk of court shall hold any office or employment under a parish governing authority or school board, nor shall any member of any parish governing authority or school board hold any office or employment with any sheriff, assessor, or clerk of court.

(6) The executive branch of state government includes the following named officers and all other officers, agents, employees, or other persons holding or exercising an employment with them, namely, the governor; lieutenant governor; secretary of state; attorney general; treasurer; commissioner of agriculture; commissioner of insurance; superintendent of education; commissioner of elections; members of the State Civil Service Commission, the Public Service Commission, the Board of Regents, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the State Board of Elementary and Secondary Education, the Board of Trustees for State Colleges and Universities, and the State Bond Commission. The executive branch shall also include the officers, members, agents, and employees of any department, office, agency, instrumentality, board, commission, or other entity created by the constitution or by law whose functions are not primarily legislative, judicial, or local in nature or operation.

Of more concern would be Article X, §9 of the Louisiana Constitution of 1974, which specifically prohibits state civil service employees from engaging in political activities:

§9. Prohibitions against political activities

Section 9. (A) Party Membership; Elections. No member of a civil service commission and no officer or employee in the classified service shall participate or engage in political activity; be a candidate for nomination or election to public office except to seek election as the classified state employee serving on the State Civil Service Commission; or be a member of any national, state, or local committee of a political party or faction; make or solicit contributions for any political party, faction, or candidate; or take active part in the management of the affairs of a political party, faction, candidate, or any political campaign, except to exercise his right as a citizen to express his opinion privately, to serve as a commissioner or official watcher at the polls, and to cast his vote as he desires.

(B) Contributions. No person shall solicit contributions for political purposes from any classified employee or official or use or attempt to use his position in the state or city service to punish or coerce the political action of a classified employee.

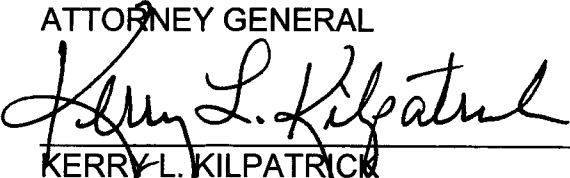
(C) Political Activity Defined. As used in this Part, "political activity" means an effort to support or oppose the election of a candidate for political office or to support a particular political party in an election. The support of issues involving bonded indebtedness, tax referenda, or constitutional amendments shall not be prohibited.

If your position with the insurance department is actually with the state civil service, you could not hold elected office.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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