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OPINION 03-0187

Mr. Jimmy Solar
37 Rachel Lane
Many, LA 71449

78 DUAL OFFICEHOLDING
R.S. 42:64, R.S. 40:1498
Assistant fire chief may not serve as board member of the fire district board which employs him.

Dear Mr. Solar:

In recent correspondence to this office you advise that you are employed as the Assistant District Chief of your fire district, and you also simultaneously serve as appointee to the fire district board. The law prohibits the concurrent holding of these positions.

You hold a position of employment with the fire protection district. You also hold part-time appointive office as member of the board who employs you. These facts invoke application of the incompatibility provisions of R.S. 42:64 of the Louisiana Dual Officeholding and Dual Employment Laws, specifically 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.

We acknowledge that the secretary-treasurer of the board, who is also a member of the board, is compensated for his office. The law specifically permits such compensation, as R.S. 40:1498 provides:

§1498. Compensation of board members

A. Members of the governing boards of fire protection districts, including members of police juries serving ex officio, may be paid a per diem of thirty dollars for attending meetings of the board, not to exceed two meetings in any one calendar month, and may be reimbursed any expenses incurred in performing the duties imposed upon them by virtue of their serving as members. The amounts paid by virtue of this Section shall be paid from funds of the respective fire protection districts. Per diem payments under this Section to members of police juries serving ex officio as members of the governing boards of fire protection districts shall be in addition to per diem paid them as members of the police juries.

If a member is elected secretary or treasurer or secretary-treasurer of the board, he may be compensated additionally for such office.

A similar exception in the law does not exist applicable to your situation. Dual office-holding provisions require you to resign from one of the two positions.

Very truly yours,

RICHARD P. IEYOUNG
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BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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