

June 16, 2005
OPINION 05-0206

Mr. Rod Schouest
P. O. Box 10
Gretna, LA 70054

78 DUAL OFFICEHOLDING
R.S. 42:63(D); R.S. 42:62(2);
State law prohibits one from holding local elective office and a full-time appointive office; thus, individual may not hold the office of justice of the peace and the full-time appointive office of deputy clerk.

Dear Mr. Schouest:

You have asked this office to advise you whether you may legally hold the elected position of justice of the peace while holding a full-time appointed position as deputy clerk of court. Our response is the law prohibits the concurrent holding of these positions.

The provisions of our state's Dual Officeholding and Dual Employment Laws, R.S. 42:61, et seq., govern our response to your question. R.S. 42:63(D) is pertinent to your inquiry and states:

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. (Emphasis added).

A justice of the peace holds elective office.¹ Your position as deputy clerk constitutes full-time appointive office. "Appointive office" is defined as R.S. 42:62(2) as follows:

. . . Any office in any branch of government. . . which is specifically established or specifically authorized by the constitution or laws of this state or by the charter or ordinance of any political subdivision thereof and

¹ R.S. 42:62(1) provides:

(1) "Elective office" means any position which is established or authorized by the constitution or laws of this state or by the charter or ordinances of any political subdivision thereof, which is not a political party office and which is filled by vote of the citizens of this state or of a political subdivision thereof.

which is filled by appointment or election by an elected or appointed public official . . .

The position of deputy clerk of court is created by LSA-Const. Art. V. Section 28 (1974), providing:

§28. Clerks of Court
Section 28. (A) Powers and Duties; Deputies

In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law. (Emphasis added).

The position of deputy clerk is a local appointive office under R.S. 42:62(2) because it is an office which is specifically established by the constitution of this state and which is filled by appointment by an elected public official. This position is a full-time job, as provided in R.S. 42:62(4).²

R.S. 42:63(D) prohibits the concurrent holding of local elective office and full-time appointive office. Thus, you may not legally hold both positions concurrently.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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² (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.

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Date Received:
Date Released:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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