

May 16, 2006
OPINION 05-0434

Mr. Jeff Morrow
St. Landry Parish
Fire Protection District
P. O. Box 158
Krotz Springs, LA 70750

78 Dual Officeholding
R.S. 40:1496(A)(2); R.S. 42:62; R.S. 40:1498(A)
Volunteer, unpaid Fire Chief may serve as member of Fire
Protection District Board.

Dear Mr. Morrow:

You have submitted two questions to this office for our review and resolution. You first ask whether the Fire Chief may also be a member of the St. Landry Fire Protection District Number One governing board.

The Fire Chief is a volunteer chief; he receives no salary and is reimbursed for expenses such as meals and mileage when conducting fire department business.

The Louisiana Dual Officeholding and Dual Employment Law, R.S. 42:61, et seq., is invoked when a public official or employee holds two or more public offices or public employments. Applying those provisions in previous opinions, this office has stated that "the position of Fire Chief of a volunteer fire department is not a public office or employment", and the prohibitions of dual officeholding are inapplicable. Attorney General Opinions 80-1466 and 80-1525, copies attached.

In Attorney General Opinion 90-521 it was concluded the volunteer members of the Westwego Fire Department were not considered as having a public office within the provisions of the dual officeholding statute, insasmuch as members "do not have to take oaths, be bonded or publicly insured." See Attorney General Opinion 90-521, copy attached.

Further, we assume that the Fire Chief is elected from the membership of the fire department. For this reason, the Fire Chief is not an appointee as defined in R.S. 42:62 because the Fire Chief is selected by the membership, and does not have to be confirmed by the Board or any other public entity. An appointee is a position defined by law to be "specifically established or authorized by law" and filled by appointment by elected or appointed public officials or a governmental body comprised of such

officials.¹ In the instant matter, the selection process of the Fire Chief falls outside the definition of "appointive" office.

Further, the Fire Chief receives no compensation for his effort; he receives no salary or any per diem. R.S. 42:62(3) defines "employment" as any job compensated on a salary on a per diem basis in which the person is an employee of a political subdivision.² Since the Fire Chief is a volunteer, is not salaried or paid on a per diem basis, and is not an "appointee", we conclude there is no violation of the dual officeholding provisions, as there must be two public positions under review for such an occurrence. Thus, the Fire Chief here may serve as a member of the fire protection board.³

Your second question is whether the Chairman of the St. Landry Fire Protection District Number One Fire Board may also serve as the Secretary of the Board. R.S. 40:1496(A)(2) governs the appointment of board members and provides for the selection of chairman, stating:

§1496. Appointment of members of board; term; vacancies

A. The board of commissioners shall consist of five members

* * * *

(2) In the case where one municipality is included within the boundaries of a district lying within a single parish;

(a) Two members shall be appointed by the parish governing authority.

(b) Two members shall be appointed by the governing authority of the municipality; and

(c) One shall be selected by the other four members and shall serve as chairman of the board. (Emphasis added).

Further, R.S. 40:1498(A) provides for the compensation of the elected secretary or treasurer or secretary-treasurer of the board, and states:

§1498. Compensation of board members

¹ R.S. 42:62(2) states: "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.

² R.S. 42:63(3) states: "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.

³ See in contrast Attorney General Opinion 04-0074, in which we concluded that a paid Fire Chief may not serve as board member on the same board which employs him.

A. (1) 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, or 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.

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

While the holding of these two positions poses no specific violation of the dual officeholding law, we suggest you contact the Louisiana State Board of Ethics, 8401 United Plaza Blvd, Suite 200, Baton Rouge, LA, 70809, (225) 763-8777, for review of any potential questions under the Code of Governmental Ethics.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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