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DEPARTMENT OF JUSTICE

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BATON ROUGE

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OPINION 06-0166

Honorable C. J. Fultz
Mayor
Post Office Box 156
Tangipahoa, LA 70465

78 Dual Officeholding

R.S. 42:62(2); R.S. 33:1433; LSA-R.S. 42:63(E); R.S. 42:62(3)

The prohibition contained in the dual officeholding laws prevents the concurrent holding of two full-time appointive offices and/or employments, but does not prohibit the holding of said positions should one be held on a part-time basis. Thus, a full-time municipal police officer may hold the part-time appointive office of deputy sheriff.

Dear Mayor Fultz:

You have asked this office to advise you whether a full-time police officer employed by the Village of Tangipahoa may also be a full-time deputy for the Tangipahoa Parish Sheriff's Office.

Note first that R.S. 33:1435.1 allows a sheriff to commission a municipal law enforcement officer to have parish wide law enforcement jurisdiction. The statute provides as follows:

§ 1435.1. Sheriff's commissions for municipal law enforcement officers;
issuance

A. Notwithstanding any other provision of law to the contrary, the sheriff of each parish may issue to a municipal policeman a sheriff's commission permitting such officer to have parish wide law enforcement jurisdiction or jurisdiction within such limited area of the parish as the sheriff shall designate. Application for such commission shall be made only by the chief law enforcement officer of a municipality or other political subdivision. A sheriff's commission may empower a local or municipal law enforcement officer to enforce any state law throughout the parish or may be limited in such manner as the sheriff shall determine. Such power may include the authority to arrest law violators both with and without a warrant or may be for the limited purpose of permitting such officer to enforce certain designated state or local laws or perform only those functions designated by the sheriff, and he may determine whether or not the officer shall be permitted to carry a handgun.

B. Municipal policemen, commissioned as herein provided, shall not be considered a deputy for any other purpose, and shall be treated for all purposes as a municipal policeman when acting pursuant to said commission; and any bond, insurance coverage, or professional liability

for any municipal policeman commissioned hereunder shall be paid by the municipality for which he is a municipal policeman.

Thus, a municipal police officer may be commissioned as a deputy sheriff within such area as the sheriff designates. A municipal police officer who is commissioned pursuant to R.S. 33:1435.1 *shall not be considered a deputy for any other purpose, and shall be treated for all purposes as a municipal policeman when acting pursuant to said commission.*

In contrast to the above scenario contemplated by R.S. 33:1435.1, the question you pose is whether an individual may be a full-time municipal police officer on the city payroll and be a full-time deputy sheriff on the sheriff's payroll. For the following reasons, this situation is prohibited by law.

A municipal police officer holds a position of employment,¹ while the position of deputy sheriff is considered an appointive office under R.S. 42:62(2) because it is an "office in any branch of government . . . which is specifically established or specifically authorized by the . . . laws of this state. . . and which is filled by appointment. . . by an elected . . . public official."² The position of deputy sheriff is specifically provided or authorized by law, as R.S. 33:1433 provides in part:

- A. (1) The sheriff of each parish and the civil and criminal sheriffs of the parish of Orleans may appoint as many deputies as necessary, but not more than authorized by law.
- (2) In all parishes except the parish of Orleans, the deputies shall, before entering on their duties, take the oath of office. The appointment and oath must be entered on the records of the court.

In regard to dual officeholding, LSA-R.S. 42:63(E) provides as follows:

E. No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these.

¹ R.S. 42:62(3) states:

(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.

² R.S. 42:62(2) states:

(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.

The prohibitory language of LSA-R.S. 42:63(E) would prevent simultaneous holding of these offices *where both are held on a full-time basis*, as defined within the Dual Officeholding and Dual Employment Law:

(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.

(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.

If one of the foregoing positions is held on a part-time basis, the prohibition of R.S. 42:63(E) would be inapplicable. Thus, a full-time municipal police officer may work part-time as a deputy sheriff.

Similarly, a full-time deputy sheriff may work part-time for the municipal police department. This office has recently addressed this issue in Opinion 05-0221 (copy attached) and we adopt the analysis of that author as stated:

The Dual Officeholding and Dual Employment Laws contained within LSA-R.S. 42:61, et seq., do not prohibit a person from holding an appointive office while being simultaneously employed by a separate political subdivision. La. Atty. Gen. Op. No. 02- 375. This similar issue was addressed in La. Atty. Gen. Op. No. 90-408, where this Office stated that it was allowable for an elected chief of police to concurrently serve as a full-time deputy sheriff. LSA-R.S. 42:63(D) prohibits dual employment within the same political subdivision; however, this Office is of the opinion that the municipality and the parish government were two separate political subdivisions and, thus, not subject to this prohibition. La. Atty. Gen. Op. No. 90-408. This Office has stated that the only real considerations are whether the individual can properly carry out the duties required for each position. La. Atty. Gen. Op. No. 90-408, 87-121. The duties of each position cannot require the person to fulfill them simultaneously. Therefore, there must be no conflict in duties and compensation, and there should be no question, if law enforcement action is required, as to what official is acting.

This Office has previously issued opinions on whether a law enforcement officer may hold dual employment in different law enforcement agencies, and the general rule is that the officer may do so as long as the law enforcement agencies are within different political subdivisions. La. Atty. Gen. Op. No. 02-375 (Individual may serve as elected chief of police in

one political subdivision and hold employment as a police officer in another political subdivision.); La. Atty. Gen. Op. No. 96-332 (Elected chief of police may hold part-time appointive office of deputy sheriff because the municipality and the parish are considered different political subdivisions.); La. Atty. Gen. Op. No. 94-46 (Individual may be the elected police chief in one political subdivision and hold employment as a police officer in another political subdivision.); La. Atty. Gen. Op. No. 87-121 (Elected police chief may serve as a police officer in another town because the two towns were separate political subdivisions). See Attorney General Opinion 05-0221.

Accordingly, it is permissible for a full-time sheriff deputy to work part-time for the municipal police department because the parish and municipality are two different political subdivisions and, thus, they are exempted from the prohibitions against dual employment in LSA-R.S. 42:63. Similarly, it is permissible for a full-time municipal police officer to hold the part-time position of deputy sheriff.

We hope the foregoing is helpful to you. Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

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ATTORNEY GENERAL

BY:


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