

August 8, 2006
OPINION 06-0221

Ms. Barbara Reich Freiberg
224 Amherst Avenue
Baton Rouge, LA 70808

78 DUAL OFFICEHOLDING
R.S. 42:62; R.S. 42:63; R.S. 42:66
An employee of the State Board of Elementary and Secondary Education (BESE) holds employment in the executive branch of state government and is prohibited from holding the local elective office of school board member.

Dear Ms. Freiberg:

You advise this office that you are currently employed as a member of the staff of the State Board of Elementary and Secondary Education (BESE). You ask if you may also hold the local elective office of school board member.

An employee of the BESE board holds employment in the executive branch of government of this state pursuant to R.S. 42:62(3) and R.S.42:62(6), providing:

(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.

(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; 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. (Emphasis added).

A school board member holds local elective office in a political subdivision of this state, as defined by R.S. 42:62(1):

(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.

R.S. 42:63(D) prohibits one from holding state employment and the local elective office of school board member, as that statute provides, in pertinent part.

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.... (Emphasis added).

There is an exemption in the law which permits one who is employed in a "professional educational capacity in a grade school, high school, or other educational institution" to also hold local elective office. R.S. 42:66(B) states:

B. Nothing in this Part shall be construed to prevent a school teacher or person employed in a professional educational capacity in a grade school, high school, or other educational institution, parish or city school board from holding at the same time an elective or appointive office.

In order for the exemption above to be applicable to you, *you must be employed in a professional educational capacity by an educational institution*. While the dual-officeholding laws do not specifically define "educational institution", we interpret that phrase to mean a school of learning accredited by the state. There are definitions elsewhere in the laws which prove instructive. For instance, R.S. 42:55(2) provides:

"Student in a public educational institution" shall mean and include every student enrolled in any public school of the State, or in any state-supported trade school, vocational school, college, or university.

Further, R.S. 51:211(l) provides the following definition:

The term "educational institution" as used herein means any institution licensed, approved, or funded by the state to perform educational services.

You are not employed by an educational institution; rather, you are employed by the entity which is charged with regulatory authority over educational institutions.¹ For this reason alone, the exemption is inapplicable to you. A determination that your employer is not an educational institution would necessarily lead us to conclude that you are not employed in a professional educational capacity as contemplated by the statute. Compensation, or lack thereof, is not relevant to this determination. See Attorney General Opinions 02-292 and 90-521, copies attached.

We refrain from addressing the other general dual-officeholding questions raised in your correspondence as these questions are not relevant to your particular situation. This opinion is limited to the facts related to your personal proposed combinations of offices/employments.

We conclude that state law prohibits you in your full-time employment as a state employee from holding the local elective office of school board member. Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams

¹ LSA-Const. Art. 8, § 3 (1974) provides in pertinent part:

§ 3. State Board of Elementary and Secondary Education

Section 3. (A) Creation; Functions. The State Board of Elementary and Secondary Education is created as a body corporate. It shall supervise and control the public elementary and secondary schools and special schools under its jurisdiction and shall have budgetary responsibility for all funds appropriated or allocated by the state for those schools, all as provided by law. The board shall have other powers, duties, and responsibilities as provided by this constitution or by law, but shall have no control over the business affairs of a city, parish, or other local public school board or the selection or removal of its officers and employees; however, the board shall have the power to supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing, including the power to receive, control, and expend state funds appropriated and allocated pursuant to Section 13(B) of this Article, any local contribution required by Section 13 of this Article, and any other local revenue available to a school board with responsibility for a school determined to be failing in amounts that are calculated based on the number of students in attendance in such a school, all in the manner provided by and in accordance with law.

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Date Received:
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Kerry L. Kilpatrick
Assistant Attorney General