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State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

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OPINION 13-0032

Honorable H. Todd Nesom
District Attorney
33rd Judicial District
P.O. Box 839
Oberlin, Louisiana 70655

78 DUAL OFFICEHOLDING

La. Const. art. V, § 26; La. R.S. 16:51; La. R.S. 42:62; La. R.S. 42:63

An elected school board member may simultaneously hold a part time appointive office with the district attorney's office.

Dear Mr. Nesom:

You have requested an opinion of the Attorney General as to whether an elected school board member of the local parish school board may also simultaneously serve as a part time assistant district attorney.¹ Your request has been assigned to me for research and reply.

The provisions of the Dual Officeholding and Dual Employment Law, found at La. R.S. 42:61 *et seq.*, govern questions concerning the holding of two or more public offices and/or employments. Identifying the correct nature of the positions held is essential for purposes of applying the dual officeholding provisions.

A school board member holds "elective office in a political subdivision of this state" as defined by La. R.S. 42:62(1) and (9) as follows:

(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.

(9) "Political subdivision" means a parish, municipality, and any other unit of local government, *including a school board* and a special district, authorized by law to perform governmental functions. In addition for the purposes of this Part, mayor's courts, justice of the peace courts, district attorneys, sheriffs, clerks of court, coroners, tax assessors, registrars of voters, and all other elected parochial officials shall be separate political subdivisions.

¹ The definitions of full time and part time are found in La. R.S. 42:62(4) and (5). "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. "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 as full time.

(Emphasis added).

For purposes of dual officeholding, an assistant district attorney holds "appointive office" as defined by La. R.S. 42:62(2).² An individual holds an appointive office where the position is established by the constitution, statutes, home rule charter provisions or ordinances of a municipality or parish, and the position is appointed by another elected or appointed official, or a body of officials.³ La. Const. Art. V, §26(A) states that "a district attorney may select assistants as authorized by law..." La. R.S. 16:51(A) states that "the district attorney of each judicial district and the parish of Orleans shall appoint a first assistant district attorney and such other assistant district attorneys for his respective judicial district or the parish of Orleans as may be necessary..." Further, La. R.S. 16:51(B) provides that "assistant district attorneys serve at the pleasure of and may be removed at the discretion of the district attorney."

La. R.S. 42:63(D) prohibits one who holds "an elective office in a political subdivision of this state" from simultaneously holding at the same time "full-time appointive office in the government of this state." However, the statute does not prohibit a local elected official from simultaneously holding a part time appointive office. Thus, it is the opinion of this office that an individual serving on the parish school board may serve simultaneously as a part time assistant district attorney.⁴

Finally, note that our expressed opinion relative to state law is limited to an examination of the dual officeholding provisions. Any potential ethical questions concerning this matter arising under the Code of Governmental Ethics, La. R.S. 42:1111, et seq., must be addressed by advisory ruling of the Louisiana State Board of Ethics. The Board may be contacted at P.O. Box 4368, Baton Rouge, LA 70821 or by phone at 225-219-5600.

² La. R.S. 42:62(2) states, "[a]ppointive 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 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.

³ La. R.S. 42:62(2).

⁴ Note La. R.S. 42:261 makes the district attorney the legal counsel for the parish and city school boards within his district. The sole representative of the school board under La. R.S. 42:261 is the district attorney himself. Thus, La. R.S. 42:261 does not preclude an assistant district attorney from simultaneously serving as an elected school board member. See La. Atty. Gen. Op. No. 05-0195. However, the assistant district attorney should not be directed by the district attorney to provide legal services to the school board while serving as an elected member.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

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