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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

SEP 12 2013
OPINION 13-0053

78 DUAL OFFICEHOLDING

La. R.S. 42:1

La. R.S. 42:61, *et seq*

Honorable Robert Owens
Welsh Board of Alderman
303 Goodwin Street
Welsh, Louisiana 70591

An elected member of the Board of Aldermen for the Town of Welsh may serve as a reserve police officer for the Welsh police department without violating the dual officeholding statutes as he receives no compensation in the latter position.

Dear Mr. Owens:

Our office received your opinion request regarding whether an elected alderman for the Town of Welsh may also serve as an unpaid reserve police officer for the municipality.

Specifically, you have asked this office to render a legal opinion regarding whether the provisions of the Louisiana Dual Officeholding and Dual Employment Law, La. R.S. 42:61, *et seq.*, would prohibit you from holding these positions concurrently.

It is necessary to characterize your position as an unpaid reserve police officer to determine if a conflict exists.¹ La. R.S. 42:1 defines public office to "mean[s] any state, district, parish or municipal office, elective or appointive, or any position as member on a board or commission, elective or appointive, when the office or position is established by the constitution or laws of this state." La. R.S. 42:62 provides the definitions of the terminology used within the dual officeholding law. The applicable sections state, in pertinent part:

(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.

...

¹ An alderman for the Town of Walsh clearly meets the definition of elective office as defined within La. R.S. 42:62(1), which states:

'[e]lective office' means any position which is established or authorized by the constitution or laws of the state or by the charter ordinance 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.

In your request letter you stated that as a reserve police officer you are not compensated. An individual who does not receive any compensation is not considered "employed" by the dual officeholding law. Based on the above statutes and the information you have provided our office with your position as a reserve police officer would not be considered employment or public office.²

The most applicable aspects of the dual officeholding law, La. R.S. 42:63(D) and La. R.S. 42:64(A)(1), provide 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....

A. (1) The incumbent of one of the offices, whether or not in conjunction with fellow officers, or employment has the power to appoint or remove the incumbent of the other, except that local governmental subdivisions may appoint members of the governing body to boards or commissions created by them and over which they exercise general powers as provided in Article VI, Section 15 of the Constitution of Louisiana....

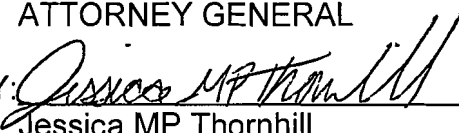
La. R.S. 42:63(D) and La. R.S. 42:64(A)(1) prohibit an aldermen from being employed as a police officer by that same municipality. Yet, an individual who does not receive any compensation is not considered "employed" by La. R.S. 42:62(3) or La. R.S. 42:64(A)(1). Further, a police officer is not considered an office for purposes of La. R.S. 42:64(A)(1) characterization. Therefore, the dual officeholding laws do not prohibit you from holding both positions simultaneously.

² Our office has previously concluded that a police officer is not a public office. La. Atty. Gen. Op. No. 02-0213.

As an aside, our expressed opinion relative to state law is limited to an examination of the dual officeholding provisions. 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,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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