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ATTORNEY GENERAL

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

August 19, 2013  
OPINION 13-0084

Honorable Joey Miller  
Chief of Police  
Town of Coushatta  
166 Esperanza Road  
Coushatta, Louisiana 71019

78 DUAL OFFICEHOLDING

La. R.S. 42:62; La. R.S. 42:63

The Louisiana Dual Officeholding and Dual Employment Law, La. R.S. 42:61, *et seq.*, does not prohibit the Chief of Police of the Town of Coushatta, a full-time appointive position, from simultaneously being employed as a full-time school teacher with the Red River Parish School Board.

Dear Chief Miller:

You have requested an opinion of the Attorney General as to whether you, as the appointed Chief of Police of the Town of Coushatta ("Coushatta"), may also simultaneously hold employment as a full-time school teacher with the Red River Parish School Board. 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.

For purposes of dual officeholding, the Chief of Police of Coushatta holds "appointive office" as defined by La. R.S. 42:62(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.<sup>1</sup> Coushatta is governed by the provisions of a special legislative charter. A review of the special legislative charter indicates that the chief of police is appointed by the town council.<sup>2</sup>

For your reference, note that a full-time position would require an appointed chief of police to work at least seven hours per day of work and at least thirty-five hours per week,<sup>3</sup> while a part-time position would require an appointed chief of police to work less than the number of hours of work defined as full-time.<sup>4</sup> Based on information you have provided our office, it is our understanding that the appointed position of Chief of Police of Coushatta is a full-time position.

With respect to the second position, you hold full-time employment as a school teacher with the Red River Parish School Board. La. R.S. 42:62(3) defines employment as "any job compensated on a salary or per diem basis, other than an elective or appointive

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<sup>1</sup> La. R.S. 42:62(2).

<sup>2</sup> Act 29 of the 1872 Regular Session of the Louisiana Legislature.

<sup>3</sup> La. R.S. 42:62(4).

<sup>4</sup> La. R.S. 42:62(5).

office, in which a person is an employee of the state government or of a political subdivision thereof." As defined by La. R.S. 42:62(9), the term "political subdivision" means and includes a school board for purposes of applying the dual officeholding and dual employment provisions.

La. R.S. 42:63(E) specifically prohibits a person from simultaneously holding any combination of two full-time appointive or full-time employment positions within the state or local government. La. R.S. 42:63(E) provides as follows:

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.

(Emphasis added).

Accordingly, La. R.S. 42:63(E) prohibits one from holding at the same time two positions of full-time employment and/or appointive office, but does not prohibit the concurrent holding if one position is held on a part-time basis. Application of La. R.S. 42:63(E) would initially prohibit a full-time appointed chief of police from simultaneously holding a full-time employment position as a school teacher with a local school board. However, there is an exemption in the law permitting one who is employed in a *professional educational capacity* to also hold an appointive office. La. R.S. 42:66(B) provides:

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, other educational institution, parish or city school board from holding at the same time an elective or appointive office.

There is no statutory definition of the *phrase professional educational capacity* found within the dual officeholding provisions. However, this office has previously determined that if an individual is required to teach, such requirement automatically places him within the framework of a professional educator.<sup>5</sup>

Based upon the foregoing, it is the opinion of this office that you are considered to be employed in a professional educational capacity with the Red River Parish School Board. For this reason, the exemption of La. R.S. 42:66(B) applicable to you, and it is the opinion of this office that the Louisiana Dual Officeholding and Dual Employment Law do not prohibit you from holding the full-time appointive office of Chief of Police of Coshatta while at the same time holding a full-time employment position as a school teacher with the Red River Parish School Board.

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<sup>5</sup> See La. Atty. Gen. Op. Nos. 11-0160 and 97-131.

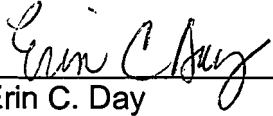
However, please be advised this opinion does not address the difficulty of performing two full-time jobs simultaneously, nor does it opinion address the potential for violating other state laws when holding two full-time positions. For example, the holding of two full-time positions could raise the application La. R.S. 14:138, which prohibits public payroll fraud.<sup>6</sup> We are mindful as well that the failure of a public official to perform a duty lawfully required of him or the performance of such duty in an unlawful manner may be considered malfeasance in office, the provisions of which are contained in La. R.S. 14:134.<sup>7</sup>

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.

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

BY:   
Erin C. Day  
Assistant Attorney General

JDC: ECD

<sup>6</sup> La. R.S. 14:138 provides, in pertinent part:

A. Public payroll fraud is committed when:

(1) Any person shall knowingly receive any payment or compensation, or knowingly permit his name to be carried on any employment list or payroll for any payment or compensation from the state, for services not actually rendered by himself, or for services grossly inadequate for the payment or compensation received or to be received according to such employment list or payroll; or

(2) Any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.

<sup>7</sup> Whether a public official or employee may be subject to a criminal charge of malfeasance is a factual consideration that rests solely with the district attorney, who has broad discretion in both the institution and handling of such prosecutions. La. Atty. Gen. Op. Nos. 12-0074, 03-0296 and 00-51.