



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

November 6, 2014
OPINION 14-0022

Ms. Abby Crosby
19866 Louisiana Highway 42
Livingston, Louisiana 70754

Dear Ms. Crosby:

78 DUAL OFFICEHOLDING

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

The Dual Officeholding and Dual Employment Law provisions prohibit a commissioner on the Recreation District Number 5 of Livingston Parish from simultaneously serving as an alderman of the Town of Livingston.

You have requested an opinion of the Attorney General as to whether an individual that serves as a commissioner on the Recreation District Number 5 of Livingston Parish (Recreation District) may also serve as an alderman of the Town of Livingston.

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

For purposes of dual officeholding, a commissioner of the Recreation District 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.¹ A review of the parish ordinances indicates that the commissioners serving on the Recreation District are appointed by the town council.²

For your reference, we note that a full-time position would require a commissioner to work at least seven hours per day of work and at least thirty-five hours per week,³ while a part-time position would require an appointed commissioner to work less than the number of hours of work defined as full-time.⁴ Based on the information you have provided our office, it is our understanding that the appointed position of commissioner of Recreation District is a part-time position.

¹ La. R.S. 42:62(2).

² Code of Ordinances of the Parish of Livingston, Louisiana, Ord. Sec. 12-90 (1-27-79, § 4).

³ La. R.S. 42:62(4).

⁴ La. R.S. 42:62(5).

With respect to the second position, you inquire about an alderman who serves the Town of Livingston. For purposes of dual officeholding, an alderman holds elective office in a political subdivision of the state.⁵

The most applicable aspect of the Dual Officeholding and Dual Employment Law is La. R.S. 42:63(D), which provides in pertinent part:

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.

La. R.S. 42:63(D) generally does not prohibit one from simultaneously holding an elective office and a part-time appointive office. However, our office directs your attention to La. R.S. 42:64, which establishes "incompatible offices." In particular, La. R.S. 42:64(A)(6) provides as follows:

A. In addition to the prohibitions otherwise provided in this Part, no other offices or employments shall be held by the same person in combination if any of the following conditions are found to pertain and these prohibitions shall exist whether or not the person affected by the prohibition exercises power in conjunction with other officers:

(6) Funds received by one office or employment are deposited with or turned over to the other office or position.

Based on the information you provided this office, it is our understanding that the Recreational District provides funds to the Town of Livingston. These facts alone would, in our opinion, invoke the incompatibility provisions of La. R.S. 42:64(A)(6) quoted above. For this reason, it is the opinion of this office that a commissioner on the Recreation District Number 5 of Livingston Parish may not simultaneously serve as an alderman of the Town of Livingston. If elected, the commissioner must resign before being sworn in as alderman to avoid violating the Dual Officeholding Law.

Please note that our expressed opinion relative to state law is limited to an examination of the dual officeholding provisions. Please note that it does not address the potential applicability of the provisions of the Louisiana Code of Governmental Ethics, La. R.S. 42:1111, *et seq.* Advisory rulings addressing questions under the Ethics Code are within the jurisdiction of the Louisiana State Board of Ethics. The Board may be

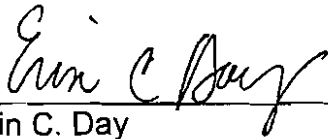
⁵ La. R.S. 42:62(1) defines "[e]lective office" as "any position which is established or authorized by the constitution or laws of this state or by the charter or ordinances of any political subdivision thereof, which is not a political party office, and which is filled by vote of the citizens of this state or of a political subdivision thereof."

contacted at the following address: P.O. Box 4368, Baton Rouge, LA 70821, phone: 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

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