



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

April 29, 2015
OPINION 14-0094

Honorable Michael Sigur
Council Member
City of Kenner
2201 Florida Ave.
Kenner, Louisiana 70062

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit a member of the Council for the City of Kenner from serving as a reserve police officer for the City of Kenner.

Dear Mr. Sigur:

Our office received your request for an opinion regarding whether you as a member of the Council for the City of Kenner are prohibited from serving as a reserve police officer for the Kenner Police Department.

The provisions of the Dual Officeholding and 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.

The City of Kenner is a local governmental subdivision operating under a home rule charter under the authority of Article VI, § 5 of the Louisiana Constitution of 1974. A member of the Council for the City of Kenner holds an "elective office" for the purposes of the dual officeholding laws.¹

La. R.S. 42:62(3) which defines "employment" as used in the dual officeholding laws provides in pertinent part:

"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 a political subdivision thereof.

In order for your service as a reserve police officer to be considered a position of "employment" for the purposes of the dual officeholding laws, you must be compensated on a salary or per diem basis by the City of Kenner. You indicate in your

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 for this state or of a political subdivision thereof. La. R.S. 42:62(1).

request that you receive no compensation from the City of Kenner for your volunteer services as a reserve police officer.²

In similar factual situations, this office opined that reserve police officers do not hold a position of "employment" as defined by La. R.S. 42:62(3) for the purposes of the dual officeholding laws. See La. Atty. Gen. Op. Nos. 13-0053, 07-0167, 06-0237, 02-0249 and 91-0323.

Also relevant is Article IX, Section 9.04 of the Kenner Home Rule, specific to dual officeholding, which provides "No elected official provided in the Charter may hold any other elected public office, nor may he hold any other compensated position with the City."

According to the information provided to this office, reserve police officers do not hold a compensated position with the City of Kenner. The prohibition in the charter is only applicable to compensated positions with the City of Kenner and is not applicable to the uncompensated position of reserve police officer.

Based on the applicable provisions of law, our prior opinions and the information you have provided, your position of reserve police officer with the City of Kenner is not a position of "employment" for the purposes of the dual officeholding laws. Therefore, it is the opinion of this office that the provisions of the Dual Officeholding and Dual Employment Law do not prohibit a member of the Council for the City of Kenner from serving as a reserve police officer for the Kenner Police Department.

Please note that our expressed opinion relative to state law is limited to an examination of the dual officeholding provisions. Further, 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 contacted at the following address: P.O. Box 4368, Baton Rouge, LA 70821, phone: 225-219-5600.

² We understand some concern has been expressed regarding the manner in which payment to reserve police officers is actually dispensed. Ben Myers, *Kenner councilman makes money off police work, despite conflicts*, The Times Picayune, March 24, 2015, <http://www.nola.com/politics/index.ssf/2015/03/conflicts_about_with_kenner_c.html>. However, the described arrangement of a reserve police officer receiving payment from a private company for performing off-duty services through the City of Kenner does not change the analysis for the limited purpose of determining whether a reserve police officer is an "employee" for the purposes of the Dual Officeholding Law, as there is no evidence that City dollars are appropriated or dispensed to reserve police officers.

We hope that this opinion adequately addresses 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: Madeline S. Carbonette
Madeline S. Carbonette
Assistant Attorney General

JDC: MSC:jr