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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 14-0189

Mr. Randall T. Hayes
Alderman
Village of Atlanta
220 Teal Street
Atlanta LA 71404

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law prohibit the governing authority of the Village of Atlanta from appointing the Mayor or a member of the Board of Aldermen to the Winn Parish Fire District No. 3 Board of Commissioners.

Dear Mr. Hayes:

Our office received your request for an opinion regarding whether the governing authority of the Village of Atlanta may appoint the Mayor or a member of the Board of Aldermen to the Winn Parish Fire District No. 3 Board of Commissioners.

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 Village of Atlanta is governed by the Lawrason Act, La. R.S. 33:1 *et seq.* Both the Mayor and Aldermen in a Lawrason Act form of government hold "elective office" for purposes of the dual officeholding laws.¹

Membership on the Winn Parish Fire District No. 3 Board of Commissioners is an "appointive office" for purposes of the dual officeholding laws.²

La. R.S. 40:1496(B)(4) provides for the appointment of members to the Winn Parish Fire District No. 3 Board of Commissioners, and it states, in pertinent part:

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).

² "Appointive 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, commission 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 of 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. La. R.S. 42:62(2).

In any case where three or more municipalities are included within the boundaries of a district lying within a single parish, the parish governing authority shall appoint two members and the government authority of each municipality shall appoint one member notwithstanding the provisions of Subsection A herein. The members so appointed shall elect the chairman of the board.

Under the Lawrason Act, both the Mayor and the Board of Aldermen are considered to be the governing authority of the Village of Atlanta. See La. R.S. 33:362. Therefore, both the Mayor and the Board of Aldermen would be the appointing authority for the Village of Atlanta's member of the Winn Parish Fire District No. 3 Board of Commissioners.

La. R.S. 42:64 sets forth incompatible offices under the dual officeholding laws and expressly prohibits dual officeholding or employment where the incumbent of one office appoints the incumbent in another office. La. R.S. 42:64(A)(1) provides, in pertinent part, as follows:

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 and commissions created by them and over which they exercise general powers as provided in Article VI, Section 15 of the Constitution of Louisiana. . . .

Based on the applicable provisions of law and the information you have provided, it is the opinion of this office that the governing authority of the Village of Atlanta is prohibited from appointing the Mayor or a member of the Board of Aldermen to the Winn Parish Fire District No. 3 Board of Commissioners pursuant to La. R.S. 42:64(A)(1).

However, La. R.S. 42:64(A)(1) does not prohibit the parish governing authority or the governing authority of another municipality from appointing the Mayor or a member of the Board of Alderman of the Village of Atlanta to the Winn Parish Fire District No. 3 Board of Commissioners. See La. Atty. Gen. Op. Nos. 04-0074, 02-0017 and 00-105.

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.

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,

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