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ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

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OPINION 14-0196

78 DUAL OFFICEHOLDING

La. Const. art. V, § 27

La. R.S. 13:5537

La. R.S. 33:321

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

Mayor Danny Olden
4418 Hwy. 500
Georgetown, LA 71432

Dear Mayor Olden:

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit the Chief of Police for the Village of Georgetown from serving as a deputy sheriff or holding full time employment with a separate political subdivision.

Your request for an opinion of the Attorney General has been forwarded to me for research and reply. Your request involves two questions related to the state's dual employment restrictions. You want to know whether a person can serve as the Chief of Police for the Village of Georgetown and simultaneously hold the position of full time deputy for the LaSalle Parish Sheriff's Office. Alternatively, you want to know if a person can serve as the Chief of Police for the Village of Georgetown and hold the position of full time police officer for the Town of Ball Police Department.

The provisions of the Louisiana 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.

The Village of Georgetown is a political subdivision of the State of Louisiana,¹ operating under and governed by the Lawrason Act, La. R.S. 33:321 *et seq.* Georgetown is located within Grant Parish, and it has a population of 327 according to the latest decennial census. The Chief of Police for Georgetown holds an elective office for purposes of the dual officeholding law.²

The LaSalle Parish Sheriff's Office is its own independent political subdivision. The position of deputy sheriff is specifically authorized by law, as La. R.S. 13:5537 provides that "the sheriff of each parish . . . may appoint as many deputies as necessary. . . ." La. R.S. 13:5537 also provides that a deputy's "appointment and oath must be entered on the records of the court." The sheriff is the appointing authority and is an elected

¹ The dual officeholding law defines "political subdivision" as 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. La. R.S. 42:62(9).

² The dual officeholding law defines "elective office" as any position which is established or authorized by the constitution or laws of this state or by the charter or ordinances 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. La. R.S. 42:42(1).

public official pursuant to La. Const. art. V, § 27. The position of deputy sheriff is considered an appointive position under the dual officeholding law.³ You indicated that the position of deputy sheriff is held on a full time basis.

The Town of Ball Police Department is also a separate local political subdivision from the Village of Georgetown and/or the sheriff's office. A municipal police officer holds a position of employment under the dual officeholding law.⁴ You indicated that the position of police officer is held on a full time basis.

As it relates to your first inquiry, La. R.S. 42:63(D) generally prohibits one from simultaneously holding an elective office and a full time appointive office. However, La. R.S. 42:66(M) sets forth an exemption to this dual officeholding prohibition. Specifically, La. R.S. 42:66 provides that:

M. Nothing in this Part shall be construed to prohibit a chief of police of a municipality with a population of less than five thousand according to the 1990 decennial census from holding the office of deputy sheriff.

Based on the applicable provisions of law and the information you have provided, the Dual Officeholding and Dual Employment Law do not prohibit the elected Chief of Police for the Village of Georgetown from working as a deputy sheriff in LaSalle Parish, as the population of Georgetown according to the 1990 decennial census was significantly less than five thousand.

As it relates to your second inquiry, the dual officeholding law provides in pertinent part that "[n]o person holding an elective office in a political subdivision of this state . . . 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." La. R.S. 42:63(D). Because the Village of Georgetown and the City of Ball are two separate political subdivisions and the position of police officer is considered employment and not an appointive office, it is permissible under the dual officeholding laws for the elected Chief of Police for the Village of Georgetown to work full time as police officer for the Town of Ball.

We are also of the opinion that neither scenario you raised would implicate the "incompatible offices" provision of the dual employment law found at La. R.S. 42:64. Those restrictions are limited to specific facts and circumstances not present here.

³ The dual officeholding law defines "appointive office" as 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 or 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).

⁴ The dual officeholding law defines "employment" as "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." La. R.S. 42:62(3); See La. Atty. Gen. Op. No. 06-0166 which classifies a municipal police officer's position as employment.

Although the simultaneous holding of these positions is not prohibited by the dual officeholding law, this Office has stated that there remain practical considerations as to whether the individual can properly carry out the duties required for each position. La. Atty. Gen. Op. Nos. 06-0166, 05-0221, 90-408, and 87-121. We have observed that the duties of each position cannot require the person to fulfill them simultaneously. We also have noted that the individual cannot simultaneously be called upon to perform the duties of the two offices and cannot be paid for two positions when performing the duties of only one. La. Atty. Gen. Op. NO. 87-121. There must be no conflict in duties and compensation, and there should be no question, if law enforcement action is required, as to which authority the official is exercising at any given time.

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 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: 
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JDC/ADF