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DEPARTMENT OF JUSTICE
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OPINION 14-0206

Mr. Kevin Veillon
Police Jury
Evangeline Parish
1047 Family Drive
Ville Platte, LA 70586

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 Evangeline Parish Police Jury from applying for the position of Executive Director for Evangeline Parish Solid Waste Disposal District.

Dear Mr. Veillon:

Our office received your request for an opinion regarding whether you as a member of the Evangeline Parish Police Jury ("Police Jury") are prohibited from applying for the position of Executive Director for the Evangeline Parish Solid Waste Disposal District ("District").

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.

Evangeline Parish operates under a police jury form of government. The Police Jury is the governing authority of Evangeline Parish. A member of the Police Jury holds a "part time" "elective office" for the purposes of the dual officeholding laws.¹

The District was created in 1984 as a political subdivision of the State.² The members of the Evangeline Parish Solid Waste Disposal Commission ("Commission") are appointed by the governing authority of the Parish of Evangeline. The Commission has the authority to employ necessary personnel, including an Executive Director. The

¹ "Part time" means the period of time which a person normally works or is expected to work in an appointive office or employment which is less than the number of hours of work defined in this Section as full time. La. R.S. 42:62(5). "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 1984 La. Acts No. 710.

position of Executive Director for the District is classified as "full time" "employment" for purposes of the dual officeholding laws.³

The Police Jury and the District are considered separate political subdivisions of the state for the purposes of the dual officeholding laws.⁴

The most applicable provision 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. No such person 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) generally does not prohibit the simultaneously holding of an elected office and employment in different political subdivisions. However, our office directs your attention to La. R.S. 42:64 which prohibits the holding of "incompatible offices." In particular, La. R.S. 42:64(A)(1) and La. R.S. 42:64(A)(6) provide as follows:

(1) 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. . . .

. . .

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

³ "Full time" means the period of time which a person normally works or is expected to work in an appointive office or employment and which is at least seven hours per day of work and at least thirty-five hours per week of work. La. R.S. 42:62(4). "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 of a political subdivision. La. R.S. 42:62(3).

⁴ "Political subdivision" means 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. In addition for the purposes of this Part, mayor's courts, justice of the peace courts, district attorneys, sheriffs, clerks of court, coroners, tax assessors, registrars of voters, and all other elected parochial officials shall be separate political subdivisions. La. R.S. 42:62(9).

The Commission, not the Police Jury, has the sole authority to employ necessary personnel for the District including the position of Executive Director. The Commission may employ a member of the Police Jury in the position of Executive Director without violating the "incompatible offices" provision of La. R.S. 42:64(1).

In similar factual situations, this office opined that the offices are considered "incompatible offices" if one office transfers, allocates, donates or approves substantial funds to the other office or directs the expenditure of the funds to the other office. See La. Atty. Gen. Op. Nos. 05-0129, 99-0029 and 92-0185.

According to the information provided to this office, the District does not receive any funds from the Police Jury and the operations of the District are funded by a 1% parish wide sales tax. The Police Jury pays the District for the rental of a dumpster at Crooked Creek Recreational Park. However, this payment does not violate the "incompatible offices" provision of La. R.S. 42:64(6).

Based on the applicable provisions of law, our prior opinions and the information you have provided, it is the opinion of this office that a member of the Police Jury is not prohibited from applying for the position of the Executive Director for the District as these offices are not incompatible offices pursuant to La. R.S. 42:64(6).

According to the information in your request, the member of the Police Jury is only "applying" for the position of Executive Director of the District and therefore is not currently holding both positions at the same time. The Dual Officeholding and Dual Employment Laws, La. R.S. 42:61 *et seq.*, are applicable only when both public positions are held simultaneously. See La. Atty. Gen. Op. No. 14-0086. In the event that a member of the Police Jury is offered the position of Executive Director for the District, he may remain on the Police Jury and accept the offer of employment.

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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