



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

July 17, 2015
OPINION 15-0060

Mr. Cecil Knotts
Director of Human Resources
Northwestern State
University of Louisiana
1047 Family Drive
Natchitoches, LA 71497

78 Dual Officeholding

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

A member of the Board of Aldermen for the Town of Hornbeck is not prohibited from holding a position of full time employment with Northwestern State University pursuant to the exemption of La. R.S. 42:63(D) that applies to a municipality with a population of 6,500 or less according to the 1990 federal decennial census.

Dear Mr. Knotts:

Our office received your request for an opinion regarding whether a member of the Board of Aldermen ("Board") for the Town of Hornbeck is prohibited from holding full time employment with Northwestern State University ("University").

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.

The Town of Hornbeck is a Lawrason Act municipality. A member of the Board holds a "part time" "elective office" for the purposes of the dual officeholding laws.¹

The National Center for Preservation Technology and Training ("NCPTT") is part of the National Park Service, United States Department of the Interior. The NCPTT is located on the campus of the University. Your request states that, pursuant to a cooperative endeavor agreement, the position in question is 100% funded by the NCPTT through the National Park Service and the person who holds the position is an employee of the University. You further indicate the employee is paid through the University payroll system and receives the same benefits as other University employees, including participation in the Teacher's Retirement System Plan and insurance through the Office of Group Benefits. According to the additional information provided to this office, 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).

employee who holds this position works at least seven hours per day and at least thirty-five hours per week.

Based on the facts presented to our office and our prior opinion, the employee is question is considered a state employee and not a federal employee.² Further, the employee holds a position of "full time" "employment" for purposes of the Dual Officeholding Laws.³

For the purposes of the Dual Officeholding Laws, the Town of Hornbeck is a political subdivision of the state⁴ and the University is part of the executive branch of the state government.⁵

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. . . .

² In accord is La. Atty. Gen. Op. No. 80-0852, wherein we stated an employee of a state university whose salary was paid completely with funds from a federal grant was a state employee for the purposes of La. R.S. 42:421(B).

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).

⁵ The executive branch of state government includes the following named officers and all other officers, agents, employees, or other persons holding or exercising an employment with them, namely, the governor; lieutenant governor; secretary of state; attorney general; treasurer; commissioner of agriculture; commissioner of insurance; superintendent of education; members of the State Civil Service Commission, the Public Service Commission, the Board of Regents, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the State Board of Elementary and Secondary Education, the Board of Trustees for State Colleges and Universities, and the State Bond Commission. The executive branch shall also include the officers, members, agents, and employees of any department, office, agency, instrumentality, board, commission, or other entity created by the constitution or by law whose functions are not primarily legislative, judicial, or local in nature or operation. La. R.S. 42:62(6).

La. R.S. 42:63(D) generally prohibits the simultaneously holding of an elected office in a political subdivision and employment in the government of the state. However, La. R.S. 42:66 establishes exemptions to the Dual Officeholding Laws. In particular, La. R.S. 42:66(N) provides as follows:

Nothing in this Part shall be construed to prohibit a person holding employment in the government of the state from holding at the same time an elective office in the government of a municipality of this state with a population of less than six thousand five hundred according to the 1990 federal decennial census, unless the particular nature of such employment in combination with the duties and interests of such elective office is incompatible as provided in this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

This office has consistently applied La. R.S. 42:66(N) to conclude that an elected official of a municipality with a population of 6,500 or less is not prohibited by the Dual Officeholding Laws from also holding state employment. See La. Atty. Gen. Op. Nos. 12-0237, 10-0149A and 06-0290.

According to the 1990 federal decennial census, the population of the Town was 415, significantly less than 6,500.⁶ The exemption of La. R.S. 42:66(N) permits an elected member of Board for the Town to hold state employment.

Based on the applicable provisions of law, our prior opinions and the information you have provided, it is the opinion of this office that an Alderman for the Town of Hornbeck is not prohibited from holding a position of employment with Northwestern State University.

Please note that our expressed opinion is limited to an examination of the state law relating to Dual Officeholding. 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.

⁶ United States Census Bureau (visited June 18, 2015)<<http://www.census.gov>>. La. R.S. 42:66(N) specifically references population according to the 1990 Census. However the population of Hornbeck according to the 2010 Census is 480 which is still less than six thousand five hundred.

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