



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

July 28, 2015
OPINION 15-0062

Ms. Ellen M. Creel
Attorney, Town of Franklinton
981 Cleveland Street
Franklinton, LA 70438

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit the manager of the Maintenance Department for the Town of Franklinton from running for councilman for the Washington Parish Council.

Dear Ms. Creel:

Our office received your request for an opinion regarding whether the manager of the Maintenance Department for the Town of Franklinton ("Town") is prohibited from running for councilman for the Washington Parish Council ("Council").

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. As an initial matter, your request notes that the manager of the Maintenance Department is "running" for the office of councilman and therefore is not currently holding both positions at the same time. The Dual Officeholding and Dual Employment Law is applicable only when both public positions are held simultaneously. See La. Atty. Gen. Op. 14-0086.

However, in the interest of assisting you, we proceed with the analysis as if both positions were simultaneously held by the same individual. Classifying the correct nature of the positions held is essential for the purposes of applying the dual officeholding provisions.

The Town, located in Washington Parish, operates under a Mayor and Board of Alderman form of government.¹ According to the information provided to this office, the position of manager for the Maintenance Department for the Town is a position of

¹ 1861 La. Acts No. 96, §1.

"employment".² The position of manager for the Maintenance Department for the Town is classified as "full time" employment for purposes of the dual officeholding laws.³

The Council is the legislative body of the Washington Parish government. The Council is comprised of one councilman from each of seven districts in Washington Parish. A councilman holds a "part time" "elective office" for the purposes of the dual officeholding laws.⁴

The Town and the Council are considered separate political subdivisions of the state for the purposes of the dual officeholding laws.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. . . .

La. R.S. 42:63(D) does not prohibit the simultaneous holding of an elected office and employment in different political subdivisions.⁶

This office has consistently opined that the Dual Officeholding and Dual Employment Law does not prohibit a local elected official from holding employment in a separate

² "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).

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).

⁴ "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).

⁵ "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).

⁶ Based on the information provided to our office, none of the specific "incompatible office" prohibitions contained in La. R.S. 42:64 are applicable to the factual scenario of your request.

political subdivision. See La. Atty. Gen. Op. Nos. 09-0126, 08-0032, 93-0201 and 92-0525.

Based on the applicable provisions of law, our prior opinions and the information you have provided, it is the opinion of this office that the provisions of the dual officeholding and dual employment laws do not prohibit the manager of the Maintenance Department for the Town of Franklinton from running for councilman for the Washington Parish Council.

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,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: Madeline S. Carbonette
Madeline S. Carbonette
Assistant Attorney General

JDC: MSC:jr