



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

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OPINION 15-0091

Secretary Robert J. Barham
Department of Wildlife and Fisheries
P.O. Box 98000
Baton Rouge, LA 70898-9000

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law prohibit a member of the Wildlife and Fisheries Commission from holding an appointment to the Gulf of Mexico Marine Fishery Management Council. However, a member of the Wildlife and Fisheries Commission is not prohibited from holding an appointment to the Gulf States Marine Fisheries Commission and a member of the Gulf States Marine Fisheries Commission is not prohibited from an appointment with the Gulf of Mexico Marine Fishery Management Council.

Dear Secretary Barham:

Our office received your request for an opinion regarding whether a member of the Louisiana Wildlife and Fisheries Commission ("WLF Commission") is prohibited from holding an appointment to the Gulf of Mexico Marine Fishery Management Council ("Gulf Council") or an appointment to the Gulf States Marine Fisheries Commission ("Gulf States Commission").

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.

According to the information provided to this office, the three positions in question are considered "part time" positions for the purposes of the Dual Officeholding Laws.¹

The WLF Commission was created and established within the Louisiana Department of Wildlife and Fisheries.² The WLF Commission consists of seven members who are appointed by the governor, subject to confirmation by the Senate.³ A member of the WLF Commission holds a "part time" "appointive office" for the purposes of the Dual Officeholding Laws.⁴

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).

² La. Const. art. IX, 7; La. R.S. 56:1; La. R.S. 36:601 and La. R.S. 36:610.

³ La. R.S. 56:1(B) and La. R.S. 36:601(A).

⁴ "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

The Gulf Council was created and established in the National Oceanic and Atmospheric Administration of the United States Department of Commerce by the Magnuson-Stevens Fishery Conservation Management Act of 1976.⁵ The Gulf Council is one of eight Regional Fishery Management Councils and includes the states of Texas, Louisiana, Mississippi, Alabama and Florida. The Gulf Council consists of seventeen voting members, including eleven members who are appointed by the Secretary of the Department of Commerce ("Secretary"). The Secretary must appoint at least one member from each state. A member of the Gulf Council holds a "part time" "appointive office" for the purposes of the Dual Officeholding Laws.

The Gulf States Commission is a compact between the states of Texas, Louisiana, Mississippi, Alabama and Florida, which was established following an act of Congress in 1949.⁶ The Louisiana Legislature expressly authorized the governor to execute the compact.⁷ Each state joining the compact is authorized to appoint three members to the Gulf States Commission.⁸ One shall be the head of the administrative agency of the state charged with the conservation of the fishery resources to which the compact pertain or if there is more than one, it is the official named by the governor. The second shall be a member of the legislature appointed by the governor. The third shall be a citizen who shall have knowledge of and interest in the marine fisheries.⁹ A member of the Gulf States Commission holds a "part time" "appointive office" for the purposes of the Dual Officeholding Laws.

The WLF Commission is part of the executive branch of government of the state.¹⁰ The Gulf Council is part of the executive branch of the government of the United States.¹¹

The most applicable provision of the Dual Officeholding and Dual Employment Law is La. R.S. 42:63(A)(1) which provides in pertinent part:

Except as otherwise provided in this Subsection, no person holding an elective office, appointive office, or employment in any of the branches of state government or of a political subdivision thereof shall at the same time hold another elective office, appointive office, or employment in the

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).

⁵ 16 U.S.C.A. § 1852.

⁶ Public Law 81-66 and La. R.S. 56:71 *et seq.*

⁷ La. R.S. 56:71.

⁸ La. R.S. 56:74.

⁹ *Id.*

¹⁰ 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).

¹¹ United States Constitution Article II, § 2 and 15 U.S.C.A. § 1501.

government of a foreign country, in the government of the United States, or in the government of another state.

La. R.S. 42:63(A)(1) prohibits the simultaneously holding of an appointive office in the government of the state and holding an appointive office in the government of the United States. Based on the applicable provisions of law and the information you have provided, it is the opinion of this office that a member of the WLF Commission is prohibited from holding an appointment to the Gulf Council pursuant to La. R.S. 42:63(A)(1).

La. R.S. 56:1(F) contains an additional limitation specific to members of the WLF Commission, providing:

No commissioner may be a member of the legislature or hold any salaried public office or employment for compensation, other than per diem, existing under or created by the laws of the United States, the state of Louisiana or by any subdivision thereof.

A member of the WLF Commission may hold another public office as long as the office is not salaried and he only receives per diem compensation. A member of the Gulf States Commission does not hold a salaried public office and only receives travel costs and necessary expenses.¹² Therefore, La. R.S. 56:1(F) does not prohibit a member of the WLF Commission from holding an appointment to the Gulf States Commission.

Based on the applicable provisions of law and the information you have provided, it is the opinion of this office that a member of the WLF Commission is not prohibited from holding an appointment to the Gulf States Commission.

It should be noted that La. R.S. 42:66 establishes exemptions to the Dual Officeholding Laws. In particular, La. R.S. 42:66(A)(5) specifically exempts from the Dual Officeholding provisions persons serving on any board, commission or committee which is solely advisory in nature. According to the information provided to this office, the Gulf States Commission makes recommendations to the governors and legislatures of the participating states regarding management of the fisheries. Additionally, the Gulf States Commission advises the United States Congress and serves as a forum for the discussion of various problems, issues and programs concerning marine management. Due to the advisory nature of the Gulf States Commission, the exemption of La. R.S. 42:66(A)(5) would apply to a member of the Gulf States Commission. Therefore, a member of the Gulf States Commission is not prohibited from holding an appointment to the Gulf Council pursuant to the exemption of La. R.S. 42:66(A)(5).

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

¹² Public Law 81-66, Article XII.

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