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ATTORNEY GENERAL

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

October 14, 2015
OPINION 15-0093

Ms. Linda Curtis-Sparks
269 Sparks Lane
Many, LA 71449

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law prohibit the full time Executive Director of the Sabine Parish Tourist and Recreation Commission from also serving as Police Juror for the Sabine Parish Police Jury. However, the provisions of the Dual Officeholding and Dual Employment Law do not prohibit a part time Executive Director of the Sabine Parish Tourist and Recreation Commission from also serving as Police Juror for the Sabine Parish Police Jury or serving as a member of the Sabine Parish Long Range Planning Advisory Committee.

Dear Ms. Curtis-Sparks:

Our office received your request for an opinion regarding whether you, as the Executive Director of the Sabine Parish Tourist and Recreation Commission ("Commission"), are prohibited from running for the office of Police Juror ("Juror") for the Sabine Parish Police Jury ("Police Jury").

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. As an initial matter, your request notes that you are considering "running" for the office of Juror and therefore are not currently holding both positions at the same time. The Dual Officeholding and Dual Employment Law is applicable only when multiple public positions are held simultaneously.

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

The Commission was created in 1974 as a political subdivision of the State.¹ The members of the Commission are appointed by the Police Jury. The Commission has the authority to employ an Executive Director for the Commission on a contract basis.² The position of Executive Director for the Commission is an executive office which is specifically established by the laws of the state and filled by appointment by the Commission. According the information provided to this office, at this time the position of Executive Director is a considered a "full time" position, but the position may be

¹ La. R.S. 33:4574(B)(23).

² La. R.S. 33:4574(J).

changed to a "part time" position.³ The position of Executive Director for the Commission is classified as an "appointive office" for purposes of the Dual Officeholding Laws.⁴

Sabine Parish operates under a police jury form of government. The Police Jury is the governing authority of Sabine Parish. A Juror holds a "part time" "elective office" for the purposes of the Dual Officeholding Laws.⁵

The Police Jury and the Commission are considered separate political subdivisions of the state for the purposes of the Dual Officeholding Laws.⁶

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) prohibits the simultaneously holding of an elected office in a political subdivision of the state and a full time appointive office in the government of a political subdivision. However, La. R.S. 42:63(D) does not prohibit the simultaneously holding of an elected office in a political subdivision of the state and a part time appointive office in the government of a political subdivision.

In the event that the position of Executive Director for the Commission becomes a part

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). "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).

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 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 "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).

⁶ "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. La. R.S. 42:62(9).

time position, 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), La. R.S. 42:64(A)(5) 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. . . .

. . .

(5) One office, whether or not in conjunction with fellow officers, or employment is charged with auditing the accounts of or approving the budget of the other position.

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

Based on the information provided, you have indicated your concern relative to serving on the Police Jury and the authority of the Police Jury to appoint the Commissioners. However, you currently serve as the Executive Director and not as appointed Commissioner. The Commission, not the Police Jury, has the sole authority to employ necessary personnel for the Commission including the position of Executive Director. The Commission may employ a Juror in the position of part time Executive Director for the Commission without violating the "incompatible offices" provision of La. R.S. 42:64(1).

The Commission is a political subdivision of the state separate and apart from the Police Jury. The Police Jury does not audit the accounts of the Commission or approve the budget of the Commission.⁷ The operations of the Commission are funded by an occupancy tax on hotel rooms, motel rooms and overnight camping facilities.⁸ Therefore, the "incompatible offices" provisions of La. R.S. 42:64(5) and La. R.S. 42:64(6) are not applicable to the position of part time Executive Direction for the Commission.

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 full time Executive Director for the Commission is prohibited by the Dual Officeholding Laws from also holding the office of Police Juror for the Sabine Parish Police Jury. However, the part time Executive

⁷ La. R.S. 33:4574.3, La. Atty. Gen. Op. No. 10-0160 and La. Atty. Gen. Op. No. 08-0333.

⁸ La. R.S. 33:4574.1.1.

Director for the Commission is not prohibited by the Dual Officeholding Laws from also holding the office of Police Juror for the Sabine Parish Police Jury.

According to the information provided to this office, you were appointed to the Sabine Parish Long Range Planning Advisory Committee ("Committee") in 2009 by the Police Jury and have expressed concern over your ability to remain on the Committee in the event that you are elected as Juror. The Committee was formed in 2009, upon recommendation by Senator Gerald Long, by the Police Jury as an unofficial advisory committee.⁹

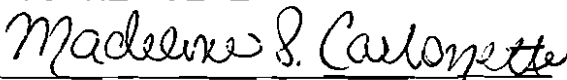
La. R.S. 42:64(A) provides an exception to the Dual Officeholding Laws and permits local government authorities to appoint their members to boards and commissions created by them and over which they exercise general powers. Additionally, La. R.S. 42:66(A)(5) specifically exempts persons serving on any board, commission or committee which is solely advisory in nature from the Dual Officeholding Laws. Based on the applicable provisions of law and the information you have provided, it is the opinion of this office that in the event that you are elected to the position of Police Juror, you would not be prohibited from continuing to serve on the Committee pursuant to the exemptions of La. R.S. 42:64(A) and La. R.S. 42:66(A)(5).

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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ATTORNEY GENERAL

BY: 
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⁹ Sabine Parish Police Jury Resolution No. 6609.