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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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OPINION 15-0108

Mayor Marx A. Budden
Village of Palmetto
P.O. Box 220
Palmetto, LA 71358

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit the Fire Chief for the Palmetto Volunteer Fire Company from holding the part time positions of police deputy and certified gas and water operator for the Village of Palmetto.

Dear Mayor Budden:

Our office received your request for an opinion regarding whether the Fire Chief for the Palmetto Volunteer Fire Company ("Company") may also hold the part time positions of police deputy and certified gas and water operator for the Village of Palmetto ("Village").

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 our office, the Company is entirely comprised of volunteer firemen. The Fire Chief for the Company is appointed by the members of the Company. His services are provided on an as needed basis. Although the Fire Chief is not salaried and does not receive a per diem, he receives a nominal payment of \$200.00 a month from funds collected by the Village from water customers who are assessed an additional fifty cents on their monthly bill. Our office has consistently opined that the provisions of the Dual Officeholding and Dual Employment Law are not applicable to volunteer firemen or a volunteer Fire Chief.¹ Therefore, the provisions of the Dual Officeholding and Dual Employment Law do not apply to a volunteer fireman who holds the position of Fire Chief for the Company.

We now consider the other two positions at issue in this request.

¹ La. Atty. Gen. Op. Nos. 11-0249, 08-0031, 07-0113 and 04-002. These opinions base this conclusion on La. R.S. 42:62(3) which defines employment as any compensated job. These opinions also state that payment of nominal amount does not necessarily constitute "compensation" for the purposes of La. R.S. 42:62(3).

The Village is governed by the Lawrason Act, La. R.S. 33:361 *et seq.* The Village is a political subdivision of the state for the purposes of the Dual Officeholding Laws.² Your request indicates the Fire Chief is also employed by the Village as a part time police deputy. The position of police deputy for the Village is considered a position of "part time" "employment" for the purposes of the Dual Officeholding Laws.³

As stated in your request, the Village desires to employ the Fire Chief as a part time certified gas and water operator. You state that the regular work hours for this position will be Monday through Friday and that the regular work hours for position of police deputy are Saturday through Sunday. Absence some emergency situation, the work hours of these two positions will not conflict. The position of certified gas and water operator for the Village is considered a position of "part time" "employment" for the purposes of the Dual Officeholding Laws.

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

No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these.

The prohibition of La. R.S. 42:63(E) is inapplicable, as you have stated that the positions of employment with the Village are part time positions.⁴

Based on the applicable provisions of law and the information you provided, it is the opinion of this office that the Fire Chief for the Palmetto Volunteer Fire Company is not prohibited by the Dual Officeholding provisions from holding the part time positions of police deputy and certified gas and water operator for the Village of Palmetto.

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

² "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).

³ "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). "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 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.

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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