



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

October 15, 2015
OPINION 15-0125

Ms. Liz Webb Hebert
102 Foxglen Court
Lafayette, LA 70503

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law prohibit an employee of the Cajundome from holding the office of Council Member for the Lafayette City Parish Council.

Dear Ms. Hebert:

Our office received your request for an opinion regarding whether you, as the Sales Manager for the Cajundome Commission ("Commission"), are prohibited from holding the office of Council Member for the Lafayette City Parish Council ("Council").

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 council member 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 Lafayette City Parish Consolidated Government ("City Parish") operates under a home rule charter that provides for a president-council form of government. The President and the Council are the governing authority for the City Parish. The City Parish is considered a political subdivision of the state for the purposes of the Dual Officeholding Laws.¹ A member of the Council holds a "part time" "elective office" for the purposes of the Dual Officeholding Laws.²

¹ "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).

² "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

According to the information you provided to this office, the Commission was created as a joint commission between the University of Louisiana at Lafayette ("UL Lafayette") and the City Parish in accordance with the provisions of La. R.S. 33:1321 *et seq.*³ The Commission was created as a "body corporate" having the power to sue and be sued. The Commission operates the Cajundome which is a multi-purpose academic, civil and community assembly center. The Commission is comprised of five members who include the President of UL Lafayette or his assignee, an appointee of the President of UL Lafayette, an appointee of the Council and two appointees of the City Parish Mayor. The employees of the Commission are not considered employees of the City Parish for any purpose. Your position as the Convention Center Sales Manager for the Cajundome is classified as "full time" "employment" for purposes of the Dual Officeholding Laws.⁴

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 and employment in the same political subdivision. As you are an employee of the Commission, not an employee of the City Parish, you do not hold employment in the same political subdivision in which you seek to hold elected office.

However, we direct 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

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).

³ Second Intergovernmental Contract.

⁴ "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).

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.

The Commission, not the Council, has the sole authority to hire employees for the Commission. The Commission may employ a member of the Council without violating the "incompatible offices" provision of La. R.S. 42:64(1).

The Commission is required to submit its total annual budget and its annual audit to the Council and/or the City Parish. The Commission is also required to submit a quarterly financial report identifying the status of the budget and a mid-year report on the Cajundome operation as a whole. All funds and the operation of the Cajundome are subject to audit by the City Parish auditor to determine compliance with any restrictions placed on the expenditure of funds and to determine compliance with the interagency contract. The Commission is required to make periodic reports on the Cajundome's operation, its financial condition and its financial operations to the City Parish.

Additionally, the Commission receives an annual subsidy from the City Parish in the amount of \$500,000.00 to be used for utilities and other operational and maintenance expenses of the Cajundome. The Commission receives an additional annual subsidy from the City Parish in the amount of \$100,000.00, on an as needed basis, for capital expenditures. Our office has consistently opined that the "incompatible offices" provision of La. R.S. 42:64(A)(6) is applicable whenever funds received from one office or employment are turned over to the other office or employment.⁵ In particular, our office has opined that La. R.S. 42:64(A)(6) prohibits a member of the police jury from holding any salaried position with a program that is funded, even in part, by the police jury.⁶

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 employee of the Cajundome Commission is prohibited from holding the office of Council Member for the Lafayette City Parish Council pursuant to the "incompatible offices" provisions of La. R.S. 42:64(5) and La. R.S. 42:64(6).

Please note that our expressed opinion relative to state law is limited to an examination of the Dual Officeholding provisions. It is our understanding that you have requested

⁵ La. Atty. Gen. Op. Nos. 14-0022, 99-0029, 97-0037 and 96-0135.

⁶ La. Atty. Gen. Op. No. 02-0272.

and received an advisory opinion from the Louisiana State Board of Ethics stating that, under the facts presented to them, there are no provisions of the Louisiana Code of Governmental Ethics that prohibit you from serving as an elected member of the Lafayette Parish Council and being employed by the Cajundome Commission.⁷

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

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⁷ Louisiana Board of Ethics Docket No. 2015-715