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DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
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OPINION 15-0143

Mr. Michael Habetz
210 Cypress St.
Iota, LA 70543

78 Dual Officeholding

La. R.S. 42:61 *et seq.*, La. R.S. 33:103

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit a full time employee for the Sixth Ward and Crowley Drainage District from holding an appointment to the Iota-Long Point Gravity District of the Parish of Acadia. Further, a full time employee for the Sixth Ward and Crowley Drainage District is not prohibited from holding an appointment to the Acadia Parish Planning Commission; however, an appointee to the Iota-Long Point Gravity District is prohibited from holding an appointment to the Acadia Parish Planning Commission pursuant to La. R.S. 33:103(C)(1) and Acadia Parish Police Jury Code Article II, Section 15-17(b).

Dear Mr. Habetz:

Our office received your request for an opinion regarding whether you, as a full time employee for the Sixth Ward and Crowley Drainage District ("Drainage District") and a part time appointed Commissioner for the Iota-Long Point Gravity District of the Parish of Acadia, Louisiana ("Gravity District"), may also hold the position of Commissioner for the Acadia Parish Planning Commission ("Commission").

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. Classifying the correct nature of the positions held is essential for the purposes of applying the Dual Officeholding provisions.

Acadia Parish operates under a police jury form of government. The Drainage District was created by the Police Jury for Acadia Parish ("Police Jury") as a political subdivision of the State pursuant to the provisions of La. R.S. 38:1602.¹ You indicated that you currently hold the position of full time supervisor for the Drainage District. Your position with the Drainage District is a position of "full time" "employment" for the purposes of the Dual Officeholding Laws.²

¹ Acadia Parish Police Jury Code Article II, Sec. 7-21-23.

² "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).

The Gravity District was created by the Police Jury as a political subdivision of the State pursuant to the provisions of La. R.S. 38:1751.³ The Gravity District is governed by a Commission whose members are appointed by the Police Jury. Your position with the Gravity District is considered a "part time" "appointive" office for the purposes of the Dual Officeholding Laws.⁴

The Commission was created by the Police Jury pursuant to the provisions of La. R.S. 33:101.⁵ The Commission consists of nine members who are appointed by the president of the Police Jury. A member for the Commission holds a "part time" "appointive" office for the purposes of the Dual Officeholding Laws.

La. R.S. 38:1758 specifically exempts members of the Gravity District from the Dual Officeholding and Employment Laws. La. R.S. 38:1758, in pertinent part, provides as follows:

A drainage commissioner may hold the position of drainage commissioner in two or more drainage districts and may hold these positions in addition to any other office that may be held by him, and the holding of position as drainage commissioner shall not be considered in contemplation of law as dual office holding.

Therefore, only the positions with the Drainage District and the Commission will be considered under the provisions of the Dual Officeholding and Dual Employment Law.

The most applicable provision of the Dual Officeholding and Dual Employment Law pertaining to the positions with the Drainage District and the Commission 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.

³ Acadia Parish Police Jury Code Article XI, Sec. 7-111-113.

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). "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 of 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 Acadia Parish Police Jury Code Article II, Sec. 15-16.

La. R.S. 42:63(E) generally does not prohibit simultaneously holding full time employment in a political subdivision of the state and part time appointive office in the government of a political subdivision. However, we direct your attention to La. R.S. 33:103(C)(1) which prohibits a member of a parish planning commission from holding another public office and states:

All members of a commission, whether a parish or a municipal planning commission, shall serve without compensation, except as otherwise provided by this Paragraph or as otherwise provided by law, and shall hold no other public office, except they may also serve as members of any duly constituted regional commission of which their parish or municipality forms a part.

Additionally, the Acadia Parish Police Jury Code Article II, Section 15-17(b) prohibits a member of the Commission from holding another public office. Article II, Section 15-17(b) states as follows:

All members of the Commission shall serve without compensation and shall hold no other public office.

In order for a position to be considered a "public office" for the purposes of the Dual Officeholding Laws, the position must be established by the constitution or the laws of this state.⁶ Based on the facts presented to our office, your position as supervisor for the Drainage District is not a "public office" as it is not a position established by the constitution or the laws of this state.

In similar factual situations, our office has opined that a person who holds a position of employment is not precluded by La. R.S. 33:103(C) from holding the office of commissioner for a municipal or parish planning commission.⁷ Therefore, we conclude the prohibition of La. R.S. 33:103(C)(1) is not applicable to your position of employment for the Drainage District. Similarly, the prohibition of Acadia Parish Police Jury Code Article II Section 15-17(b) is likewise not applicable to your position of employment for the Drainage District.

While your position as supervisor for the Drainage District is not a "public office", your position as a Commissioner for the Gravity District is a "public office" as it is a position established by the laws of this state. Our office has consistently opined that a member of a municipal planning commission is prohibited from holding any other "public office".⁸ Therefore we conclude the prohibition of La. R.S. 33:103(C)(1) is applicable to your

⁶ "Public office" means any state, district, parish or municipal office, elective or appointive, or any position as a member on a board or commission, elective or appointive, when the office or position is established by the constitution or laws of this state. La. R.S. 42:1.

⁷ La. Atty. Gen. Op. Nos. 07-0302, 05-0248 and 91-549.

⁸ La. Atty. Gen. Op. Nos. 12-0185, 07-0300 and 07-0109.

position as a Commissioner for the Gravity District. The prohibition of Acadia Parish Police Jury Code Article II Section 15-17(b) is also applicable to your position as a Commissioner for the Gravity District.

In conclusion, based on the applicable provisions of law, our prior opinions and the information you provided, it is the opinion of this office that a full time employee for the Drainage District is not prohibited by the Dual Officeholding provisions from holding an appointment to the Gravity District. Further, a full time employee for the Drainage District not prohibited from holding an appointment to the Planning Commission; however, an appointee to the Gravity District is prohibited from holding an appointment to the Planning Commission pursuant to La. R.S. 33:103(C)(1) and Acadia Parish Police Jury Code Article II Section 15-17(b).

Please note that our expressed opinion is limited to an examination of the state law relating to Dual Officeholding and Employment Law. 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

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