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State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

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OPINION 15-0170

Mr. John B. Slattery, Jr.
P.O. Box 94005
Springhill, LA 71075-0887

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 Board of Aldermen for the Town of Cotton Valley from serving as the Town's appointee to the Board of Commissioners for the North Webster Parish Industrial District.

Dear Mr. Slattery:

Our office received your request for an opinion regarding whether a member of the Board of Aldermen ("Board") for the Town of Cotton Valley ("Town") may serve as the Town's appointee to the Board of Commissioners for the North Webster Parish Industrial District ("District").

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.

The Town is governed by the Lawrason Act, La. R.S. 33:321 *et seq.* A member of the Board holds an "elective office" for purposes of the Dual Officeholding Laws.¹

The District was created as a political subdivision of the State pursuant to the provisions of La. R.S. 39:551.5. The District is governed by a Board of Commissioners comprised of seven members, two of which are appointed by the governing authority of the City of Springhill, one each appointed by the governing authorities of the municipalities of Cullen, Sarepta, Shongaloo and Cotton Valley, and one appointed by the governing authority of Webster Parish. A member of the Board of Commissioners for the District holds a "part time" "appointive office" for the purposes of the Dual Officeholding Laws.²

¹ "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).

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). "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

Under the Lawrason Act, the Board and the Mayor are considered to be the governing authority for the Town.³ Therefore, the Board, in conjunction with the Mayor, would be the appointing authority for the Town's member to the District.

La. R.S. 42:64 sets forth incompatible offices under the Dual Officeholding and Dual Employment Laws and expressly prohibits dual officeholding where the incumbent of one office appoints the incumbent in another office. La. R.S. 42:64(A)(1) provides, in pertinent part, as follows:

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. . . .

In a similar factual situation our office opined that the "incompatible offices" provision of La. R.S. 42:64(A)(1) prohibits a member of the Board of Aldermen for Town of Sarepta from serving as the Town's appointee to the Board of Commissioners for the North Webster Parish Industrial District.⁴

Based on the applicable provisions of law, our prior opinion and the information you have provided, it is the opinion of this office that a member of the Board of Aldermen for the Town of Cotton Valley is prohibited from serving as the Town's appointee to the Board of Commissioners for the North Webster Industrial District pursuant to La. R.S. 42:64(A)(1).

However, La. R.S. 42:64(A)(1) does not prohibit the governing authority of Webster Parish or the governing authority of another municipality from appointing a member of the Board of Alderman for the Town of Cotton Valley to the North Webster Industrial District.

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.

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).

³ La. R.S. 33:362.

⁴ La. Atty. Gen. Op. No. 08-0205.

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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