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State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
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June 6, 2023
OPINION 23-0047

Mr. Avery M. Riley, Jr.
126 Forest Drive
Belle Chasse, LA 70037

78 Dual Officeholding

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

La. R.S. 15:146, *et seq.*

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit an assistant public defender employed by the 25th Judicial District Public Defender from serving as special counsel to the Plaquemines Parish Council.

Dear Mr. Riley:

Our office received your request for an opinion regarding whether an assistant public defender employed by the 25th Judicial District Public Defender may serve as special counsel to the Plaquemines Parish Special Council.

Pursuant to La. Const. art. X, § 22, the legislature has enacted laws regulating dual employment and defining, regulating, and prohibiting dual office holding in state and local government. 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 respective positions held is essential for the purposes of applying the Dual Officeholding and Dual Employment Law.

The Louisiana Public Defender Board provides for the supervision, administration, and delivery of a statewide public defender system.¹ The Louisiana Public Defender Board may employ or contract with a district public defender to provide for the delivery and management of public defender services in each judicial district.² A district public defender provides public defender services by contract, appointment, or employment.³ According to the information provided to our office, you are employed by the 25th Judicial District Public Defender as a full time assistant public defender which is classified as “full time” “employment” for the purposes of the Dual Officeholding and Dual Employment Law.⁴

¹ La. R.S. 15:146(A)(1).

² La. R.S. 15:161.

³ La. R.S. 15:165.

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).

Plaquemines Parish operates under a home rule charter that provides for a president-council form of government.⁵ The parish council may by majority vote of its membership employ special counsel for itself.⁶ The position of special counsel is specifically established by the Plaquemines' Parish Charter and filled by the parish council, who are elected officials. According to the information provided to this office, the position of special counsel is part time which is classified as a "part time" "appointive office" for the purposes of the Dual Officeholding and Dual Employment Law.⁷

The 25th Judicial District Public Defender and Plaquemines Parish are considered separate political subdivisions of the state for the purposes of the Dual Officeholding and Dual Employment Law.⁸

The most relevant 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 not applicable because the position of special counsel is part time.

Based on the applicable provisions of law and the information you provided, it is the opinion of this office that the provisions of the Dual Officeholding and Dual Employment Law do not prohibit an assistant public defender employed by the 25th Judicial District Public Defender from serving as special counsel to the Plaquemines Parish Council.

⁵ Sec. 1.01, Charter for Plaquemines Parish.

⁶ Sec. 5.02(C), Charter for Plaquemines Parish.

⁷ "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 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).

⁸ "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. In addition for the purposes of this Part, mayor's courts, justice of peace courts, district attorneys, sheriffs, clerks of court, coroners, tax assessors, registrars of voters, and all other elected parochial officials shall be separate political subdivisions. La. R.S. 42:62(9).

Please note that our expressed opinion is limited to an examination of the state law relating to Dual Officeholding and Dual Employment. 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. Nor does this opinion address the application of the Rules of Professional Conduct of the Louisiana State Bar Association, State Bar Articles of Incorporation, Art. 14, Rules of Prof. Conduct.

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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