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STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
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OPINION 24-0015

Mr. Eric P. Duplantis
500 Main St.
Franklin, LA 70538

78 Dual Officeholding

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

La. R.S. 42:1

A member of the St. Mary Parish Personnel Board is prohibited from serving on St. Mary Parish boards and commissions or St. Mary Parish advisory boards pursuant to Article 5, Section 4-08, St. Mary Parish Home Rule Charter.

Dear Mr. Duplantis:

Our office received your request for an opinion regarding whether the St. Mary Parish Home Rule Charter prohibits a member of the St. Mary Parish Personnel Board from serving on St. Mary Parish boards and commissions or St. Mary Parish advisory boards.

We understand from your request that St. Mary Parish operates under a home rule charter authorized by La. Const. art. VI, § 5.¹ The charter provides for a president-council form of government.² The St. Mary Parish Personnel Board was established by the St. Mary Parish Home Rule Charter and consists of five members who are appointed by the Parish Council.³ The Charter expressly prohibits the members of the Personnel Board from holding an elected public office or a public position in St. Mary Parish.⁴ Through your office, the St. Mary Parish Council seeks guidance on the following questions:

- 1. Is a “public position” within the meaning of the St. Mary Parish Home Rule Charter a position held by a person that already serves on one of the parish Boards and Commissions? Relatedly, does a person who serves on the parish advisory board hold a “public position.”⁵**

A: A “public position” is one that meets the criteria established in the jurisprudence as further explained below.

The Charter does not define the term “public position,” and you express concerns as to whether a member of a parish board, parish commission or a parish advisory board

¹ Article 1, Section 1-01, St. Mary Parish Home Rule Charter.

² Article 1, Section 1-02, St. Mary Parish Home Rule Charter.

³ Article 5, Section 4-08, St. Mary Parish Home Rule Charter.

⁴ Article 5, Section 4-08, St. Mary Parish Home Rule Charter.

⁵ We combine Questions 1 and 2 of the opinion request since the same response answers both questions.

holds a “public position” and would therefore be prohibited from serving as a member of the Personnel Board.

There is no general definition of “public position” found in the Louisiana Revised Statutes. However, the term “public office” is defined in La. R.S. 42:1 to mean, “any state, district, parish or municipal office, elective or appointive, or any position as member on a board or commission, elective or appointive, when the office or position is established by the constitution or laws of this state.” Moreover, the courts have consistently held that an office is public if the entity in which the office is held is a public entity.⁶ An entity is public if (1) created by the legislature, (2) its powers were specifically defined by the legislature, (3) the property of the entity belongs to the public, and (4) the entity’s functions are exclusively of a public character and performed solely for the public benefit.

In order to determine if the parish boards, parish commissions, or parish advisory boards of concern are public entities, four factors must be met. For the purposes of this opinion, we will assume that the boards and commissions are (1) created by the St. Mary Parish Home Rule Charter, parish ordinance/resolution, the Louisiana Constitution or state statute, (2) the powers are specifically defined, (3) the property belongs to the public, and (4) the functions are of a public character and performed solely for the public benefit. A member of a parish board, parish commission, or parish advisory board, which is public entity as defined the jurisprudence, holds a “public office” or “public position”. We conclude that the Charter unambiguously prohibits service on any of the public boards you mention.

2. In Question 3 of the opinion request, you ask whether the prohibitions extend to the spouse of the prospective appointee.

A: This question is more properly addressed to the Board of Governmental Ethics.

You also express concerns regarding the application of the prohibition found in the Charter to the spouse of a member of the Personnel Board. Spouses are not expressly prohibited from service when the other spouse serves in a public position. To the extent ethics issues are implicated, we refer you to the Board of Ethics. The Board may be contacted at the following address: P.O. Box 4368, Baton Rouge, LA 70821, phone: 225-219-5600.

In conclusion, based on the applicable provisions of law and the information you provided, it is the opinion of this office that a member of the St. Mary Parish Personal Board is prohibited from serving on St. Mary Parish boards and commissions or St.

⁶ *Williams v. City of Baton Rouge*, 2023-0763 (La. App. 1 Cir. 1/11/24), 383 So.3d 251, 254; *Property Ins. Ass’n of Louisiana v. Theriot*, 09-1152 (La. 3/16/10), 31 So.3d 1012, 1014-15; and *State v. Smith*, 357 So.2d 505 (La. 1978).

Mary Parish advisory boards pursuant to Article 5, Section 4-08, St. Mary Parish Home Rule Charter. Spouses are not expressly prohibited by statute solely on the basis of the other spouse's service in a public position.

Please note that our expressed opinion is limited to an examination of the state law relating to Dual Officeholding and Employment Law. Further, as stated above, it does not address the potential applicability of the provisions of the Louisiana Code of Governmental Ethics.

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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BY:

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