

Dual Employment/Dual Office Holding FAQs

[R.S. 42:61 et seq.](#)

Overview:

The following is a summary of the general principles and guidelines concerning dual employment and dual office holding. This document is presented in a frequently asked questions (FAQ) format. While fairly detailed, it is important to remember that every situation is unique and as a result each situation deserves careful individual review.

There are numerous links within the document directing your attention to areas within the document and to other related documents posted on the Louisiana Legislative Auditor's website and on external websites to facilitate your use of this document. For example, under the index section, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, there are several links to direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number it will bring you back up to the index to allow you to select another question to view.

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DUAL EMPLOYMENT/DUAL OFFICE HOLDING

Q.1. What law defines and regulates dual employment and dual officeholding?

[R.S. 42:61 et seq.](#)
[LSA-Const. Art. 10, § 22](#)

- A.1.** La. [R.S. 42:61 et seq.](#) is the statute governing both dual employment and dual office holding in Louisiana. [LSA-Const. Art. 10, § 22](#) gives the legislature the power to enact laws defining and regulating dual employment, and defining, regulating, and prohibiting dual officeholding in state and local government.

Q.2. What is the purpose of [R.S. 42:61 et seq.](#)?

- A.2.** In [R.S. 42:61](#), the Legislature stated in its declaration of policy, that it is essential to the maintenance of a democratic society that public officials and employees perform the public business in a manner which serves to promote and maintain in the general citizenry a high level of confidence and trust in public officials, public employees, and governmental decisions. The attainment of this end is impaired when a public official or employee holds two or more public offices or public jobs which by their particular nature conflict with the duties and interests of each other. The attainment of a high level of confidence and trust by the general citizenry in public officials, employees, and governmental decisions is further impaired by the excessive accumulation of governmental power which may result from public officials or employees holding two or more public offices or public jobs.

The Legislature also stated that it is the purpose of the dual employment/dual office law to implement a policy which will serve to maintain a high level of trust and confidence by the general citizenry in public officials, employees, and governmental decisions of the government of this state and of its political subdivisions by defining and regulating dual employment and by defining, regulating, and prohibiting dual officeholding.

Q.3. To whom does [R.S. 42:61, et seq.](#) apply?

- A.3.** [R.S. 42:61, et seq.](#), as stated in the Declaration of Policy, applies to:

- All public officials; and
- public employees

A list of public employees and officers in the executive, legislative, and judicial branches, as well as political subdivisions, is found in the definitions at [R.S. 42:62](#).

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Q.4. What are some terms defined under R.S. 42:61, et seq.?

R.S. 42:62

A.4. ■ "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 of this state or of a political subdivision thereof.

■ "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.

■ "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 thereof.

◇ The payment of a nominal fee to a volunteer firefighter does not change his status as a volunteer to that of a public employee. Because an uncompensated volunteer firefighter is not a public employee, he may serve on the board governing the fire protection district. **AG Op. No. 08-0031.** The determination of what is a nominal fee is a fact specific question. **AG Op. No. 10-0053**

■ "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.

■ "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 as full time.

■ The executive branch of state government includes the following named officers and all other officers, agents, employees, or other persons holding or exercising an employment with them, namely, the governor; lieutenant governor; secretary of state; attorney general; treasurer; commissioner of agriculture; commissioner of insurance; superintendent of education; members of the State Civil Service Commission, the Public Service Commission, the Board of Regents, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the State Board of Elementary and Secondary Education, the Board of Trustees for State Colleges and Universities, and the State Bond Commission.

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The executive branch shall also include the officers, members, agents, and employees of any department, office, agency, instrumentality, board, commission, or other entity created by the constitution or by law whose functions are not primarily legislative, judicial, or local in nature or operation.

■The legislative branch of state government includes the members of the Senate and the House of Representatives, the officers, agents, and employees of the legislature of either house or of a committee of either house thereof, the legislative auditor, legislative fiscal officer, or any other agency created by law which is primarily legislative in nature, and any other legislative officer, office, or instrumentality of the state.

■The judicial branch of state government includes all judges, employees, and agents of the supreme court, the judicial administrator, courts of appeal, district courts, including the civil and criminal district courts of Orleans Parish, parish courts, city courts, juvenile and family courts, and any other judicial offices and instrumentalities of the state, but does not include judges or employees of courts not enumerated in R.S. 42:62.

■"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, mayor's courts, justice of the peace courts, district attorneys, sheriffs, clerks of court, coroners, tax assessors, registrars of voters, and all other elected parochial officials are separate political subdivisions.

Q.5. What are some specific prohibitions under the dual employment/dual office holding law? [R.S. 42:63](#)

A.5. ■ No person holding an elective office, appointive office, or employment in any of the branches of state government or of a political subdivision thereof shall at the same time hold another elective office, appointive office, or employment in the government of a foreign country, in the government of the United States, or in the government of another state.

■ A person holding employment in the government of the United States and at the same time holding an appointive office in a political subdivision of the state shall not be in violation, unless the particular nature of his employment in combination with the duties and interests of his appointive office in a political subdivision of this state is otherwise prohibited or is found to be adverse to the public interest as set forth in R.S. 42:61.

■ A person holding employment in the government of the United States and at the same time holding part-time elective office shall not be in violation, unless the particular nature of his employment in combination with the duties and interests

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of his elective office is otherwise prohibited or is found to be adverse to the public interest as set forth in R.S. 42:61. "Part-time elective office" means an elective office the holder of which is deemed to be a part-time public servant pursuant to Article X, Section 29.1(A) of the Constitution of Louisiana. (This was changed in 2009 with the addition of the term "part-time").

■ Except as otherwise provided by the Louisiana constitution, no person holding office or employment in one branch of the state government shall at the same time hold another office or employment in any other branch of the state government.

■ No person holding an elective office in the government of this state shall at the same time hold another elective office, a full-time appointive office, or employment in the government of this state or in the government of a political subdivision thereof.

■ 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. In addition, no sheriff, assessor, or clerk of court shall hold any office or employment under a parish governing authority or school board, nor shall any member of any parish governing authority or school board hold any office or employment with any sheriff, assessor, or clerk of court.

■ 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.

■ No person holding an elective office in any branch of state government shall contract, on a full-time basis, to provide health or health-related services for any agency of state government. No person engaged in a contract on a full-time basis, with any agency of state government to provide health or health-related services shall hold an elective office in any branch of state government.

Q.6. What kinds of situations indicate incompatible offices that otherwise might be allowed under the dual employment/dual office holding laws? [R.S. 42:64](#)

A.6. ■ 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.

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A board or commission so created may elect officers from its own membership, and if a joint commission of two parishes, except a joint commission that has as its function the operation and maintenance of a causeway and its related roadways, may also appoint a member of one of such parish's governing body to be its general superintendent.

■ The incumbent of one office, whether or not in conjunction with fellow officers or employment, receives the oath and/or bond of the incumbent of the other.

■ The incumbent of one office, whether or not in conjunction with fellow officers or employment, is charged by law with instituting actions for penalties against the incumbent of the other office or employment.

■ The incumbent of one office, whether or not in conjunction with fellow officers or employment, is required by law to execute orders and follow directions given by the incumbent of the other office or employment.

■ 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.

■ Funds received by one office or employment are deposited with or turned over to the other office or position.

■ A joint commission that has as its function the operation and maintenance of a causeway and its related roadways, created by two or more parishes, shall not appoint a member of the governing authority of any of the parishes or an employee thereof to the joint commission. No member of a parish governing authority or employee thereof shall serve as a member of a joint commission that has as its function the operation and maintenance of a causeway and its related roadways, created by the parish by agreement with one or more other parishes.

■ No other combination of offices or employments shall be deemed to be incompatible unless the powers, functions, or duties are found to be adverse to the public interest as set forth in 42:61.

Q.7. Are there any civil remedies and/or penalties associated with the holding of dual employment or dual offices? [R.S. 42:65](#)

A.7. Yes. The attorney general, a district attorney, or any citizen of the state may by summary process petition for a declaratory judgment against a person alleged to be holding or to have held incompatible offices or employments or holding or have held a combination of offices or employments prohibited under this law. Venue for the suit for a declaratory judgment shall be at the domicile of the

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defendant who is or was employed or at the official domicile of any office held by the defendant.

Prior to filing a petition, the attorney general or district attorney shall send written notice by certified mail to the person detailing the alleged violation.

Whether a person has vacated an incompatible or prohibited office or employment prior to the filing of the suit for declaratory judgment or prior to issuance of a final judgment in the suit shall not prohibit the court from declaring that the person has held incompatible offices or employments or a combination of offices or prohibited employments and ordering reimbursement.

If the court declares that the person is holding offices or employments in violation of this law, the court shall declare the office with the term first to expire or one of the employments vacant and shall enjoin the person from further carrying out the duties of that office or employment; however, a person holding an elective office shall continue to serve and perform the duties of that office until his successor has qualified.

The court may order the reimbursement to the appropriate governmental body of all pay or other compensation and all allowances, including all allowances and payments for travel and other expenses which have been received by the official or employee in the position vacated, during a period of time not to exceed six months preceding the filing of suit for declaratory judgment.

If the person vacates the position or office to remedy a violation within fourteen days after written notice of the violation is sent by the attorney general or a district attorney, such person shall not be subject to the reimbursement provided for in this Subsection.

If, however, the person against whom a declaratory judgment is rendered has obtained an opinion of the attorney general issued prior to the filing of the suit for a declaratory judgment stating that the combination of offices or employments are not incompatible, and are not in violation of this law, the court shall still declare the office with the term first to expire or one of the employments vacant and shall enjoin the person from further carrying out the duties of that office or employment; however, the person against whom the declaratory judgment was rendered shall not be required to return any portion of the compensation or allowances received by him prior to the date on which the declaratory judgment becomes final.

Whenever any person requests an opinion of the attorney general concerning the offices or employments covered hereby, he shall at the same time provide to the attorney general information describing each of the employments or offices concerning which he requests the opinion, the number of hours worked or

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normally expected to be worked by him per each day of work for each of such employments or offices, the number of hours worked by him per week for such employments or offices, and shall thereafter furnish any other information the attorney general deems necessary for the issuance of the opinion.

◇Until declaratory judgment is issued and until issuance of subsequent opinion, reliance upon Opinion of Attorney General prevented recovery of compensation for violation of dual officeholding statute. **AG Op. No. 96-218(B)**.

Q. 8. Are there any exemptions that would allow for dual employment/dual office holding? [R.S. 42:66](#)

A.8. Yes. The following classes of officials or employees are by statute specifically allowed to serve in other offices or employments:

- Notaries public.
- Officers in the military service of the United States detailed to educational institutions in the state and persons serving in the National Guard or reserve military forces of the United States or of the State of Louisiana.
- Delegates to and employees of any constitutional convention or any charter commission.
- Presidential electors.
- Persons serving on any board, commission, or committee which is solely advisory in nature.
- The governor or his designee, when serving as a member of a state agency, commission, or other state entity in accordance with a provision of the constitution, laws, resolution, or executive order of this state.
- Any official who holds another office by virtue of the office to which he is elected or appointed.
- A board member of a community action agency.
- Persons serving as district or state soil and water conservation committee members.
- The current administrator of the Jefferson pre-trial release program.
 - A school teacher or person employed in a professional educational capacity in a grade school, high school, other educational institution,

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parish or city school board may hold an elective or appointive office at the same time.

- A municipal and/or parochial officer or employee may hold another municipal and/or parochial office or employment as specifically authorized by a legislative or home rule charter, but may not do so when prohibited by a home rule charter.
 - A coroner may hold another appointive office or employment in any governmental entity in the capacity of a physician.
- The following class of persons may also hold the position of assistant United States attorney when so designated for cooperative efforts in criminal prosecutions and without additional compensation:
- The attorney general.
 - Assistant attorneys general.
 - District attorneys.
 - Assistant district attorneys.
 - City attorneys.
 - Assistant city attorneys.
- A member of a board of a health care facility of the state, or a political subdivision thereof, may also serve as an employee of a health care facility of the United States government.
- An employee of the United States Postal Service may also hold at the same time a local elective office in a village or town, provided such village or town has a population of five thousand or less, according to the latest federal decennial census.
- A person employed in the state classified civil service as a toll collector, whether full time or part time, may at the same time be employed as an emergency rural carrier with the United States Postal Service, provided that such person was employed as a toll collector as of January 1, 1999.
- An elected school board member may also hold employment as a juvenile probation officer in a district court, as a parish prison warden, or as a deputy sheriff provided that such person, on September 7, 1979, held elective office as a school board member and at the same time held elective or appointive office in

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juvenile services of the district court, or held elective office as a school board member and at the same time held employment as a parish prison warden or as a deputy sheriff and has continued to so serve as a school board member and in juvenile services of the district court, or as a school board member and as a parish prison warden or a deputy sheriff. However, this provision relative to parish prison wardens and deputy sheriffs shall not be applicable in **Orleans Parish, Jefferson Parish, or East Baton Rouge Parish** *.

■ A mayor of a municipality with a population of not more than five thousand who is a licensed physician may also be employed in or appointed to any position for which a physician is required at the Lallie Kemp Regional Medical Center.

■ A deputy sheriff may also hold the office of either mayor or alderman of a municipality, provided such municipality has a population of two thousand five hundred or less, according to the latest federal decennial census.

■ A deputy sheriff may also hold the office of part-time constable of a justice of the peace court whose jurisdiction has a population of fifteen thousand or fewer persons according to the 1990 federal decennial census, or from holding the office of part-time constable or part-time marshal of a city court in a municipality with a population of ten thousand or fewer persons according to the 1990 federal decennial census, provided such person held both the office of deputy sheriff and the office of constable or marshal prior to January 1, 1997.

■ A chief of police of a municipality with a population of less than five thousand according to the 1990 federal decennial census may also hold the office of deputy sheriff.

■ A person holding employment in the government of the state may also hold at the same time an elective office in the government of a municipality of this state with a population of less than six thousand five hundred according to the 1990 federal decennial census, unless the particular nature of such employment in combination with the duties and interests of such elective office is incompatible or is found to be adverse to the public interest as set forth in R.S. 42:61.

■ The clerk of court of Jefferson Parish may also hold the clerk of court position provided in [R.S. 13:2590.2](#).

Q.9. Are there any special rules for members of a planning commission?

[R.S. 33:103\(C\)\(1\)](#)

A.9. Yes. All members of a commission, whether a parish or a municipal planning commission, must serve without compensation, except as otherwise provided, and may not hold any other public office, except they may also serve as members of

* Amended by Act 35 of 2011 1st Extraordinary Session

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any duly constituted regional commission of which their parish or municipality forms a part.

Q.10. Are there any special rules for Judges?

[R.S. 42:39](#)

A.10. Yes. After July 31, 1968, no person serving in or elected or appointed to the office of judge of any court, justices of the peace excepted, shall be eligible to hold or become a candidate for any national, state or local elective office of any kind whatsoever, including any national, state or local office in any political party organization, other than a candidate for the office of judge for the same or any other court.

■ The provisions above do not prohibit any person from resigning from office as judge of any court for the purpose of becoming a candidate for nomination or election to any national, state or local elective office for which he is qualified and eligible; provided, however, that the resignation of any such person shall be and is made not less than twenty-four hours prior to the date on which he qualifies as a candidate for nomination or election to the office to which he seeks nomination or election.

■ If any judge elected or appointed, justice of the peace excepted, qualifies for any other elective position, other than those allowed by the provisions of this section, without complying with the provisions set forth above, his qualification as a candidate for the other office shall *ipso facto* be null and void.

◇**However, see; *In re Freeman***, released by the Louisiana Supreme Court in December 2008, eliminating this exception for Justice of the Peace.

◇Canon in Code of Judicial Conduct that prohibits judges, including justices of the peace, from becoming candidates for non-judicial offices prior to resigning their judicial offices controls over conflicting legislative enactment that purports to except justices of the peace from a similar statutory rule; Code of Judicial Conduct is exclusive means by which judges' conduct is measured. *In re Freeman* 995 So.2d 1197, 2008-1820 (La. 12/2/08).

Q.11. Are there any special rules for members of the Legislature?

[R.S. 36:960](#)

A.11. Yes. No member of the legislature shall hold office or serve in any of the departments or agencies of the executive branch of state government as enumerated and contained in Title 36 of the Revised Statutes.

Q.12. Are there any other special dual employment/dual office holding rules?

A.12. Yes. Certain entities, as shown in the statutes provided below, have extra rules applicable to them on dual employment/dual office holding.

[R.S. 34:2303.1](#)

Red River Waterway District Commission

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No member of the commission may simultaneously serve on any port commission within the jurisdiction of the waterway. Membership on the commission shall terminate thirty days after July 7, 1989 for any person not in compliance herewith and the vacancy shall be filled for the unexpired portion of the term in accordance with R.S. 34:2304.

Aldermen

[R.S. 33:385C](#)

No member of the board of aldermen shall hold any other office or employment under the municipal government while he is a member of the board, except as is provided for in [R.S. 33:381](#) and [R.S. 33:386](#). No member of the board of aldermen, or any other officer of the corporation, shall be directly or indirectly interested in any work, business, or contract the consideration of which is to be paid from the treasury of the municipality, nor be surety for any person having a contract, work, or business with the municipality, for the performance of which security may be required, nor be surety for any officer or employee, except that the aldermen of the town of Erath shall be permitted to enter into contracts with said town for services or supplies where such services or supplies are available only by aldermen and there has been public notice of such and full compliance with the public bid law.

Q.13. What are some dual employment/dual office holding situations that have been discussed by the Attorney General's Office?

A.13. This section on Attorney General opinions, in some instances, contains quotes from the actual opinion to illustrate the logic used in applying the relevant statutes to the facts at hand.

Independent Contractor Status

◇ Employee of the legislature may hold the position of university instructor if the latter position is that of an independent contractor. **AG Op. No. 03-0301.**

◇ A person under contract to deliver mail for the United States is an independent contractor and not a federal employee; thus, the prohibition of law preventing a local elected official from holding employment with the federal government is inapplicable. **AG Op. No. 01-0219.**

◇ Where an individual enters into a professional services contract, such is not considered to be a job compensated on a salary or per diem basis, and does not constitute employment within the dual officeholding prohibition. **AG Op. No. 00-324.**

Part Time Status

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◇ ...the law prohibits the simultaneous holding of local elective office (here, the position of councilman), and another appointive office held on a full time basis. The position of traffic officer, created under the authority of LSA-R.S. 13:2562.21 and the language therein, constitutes an appointive office. However, the prohibition of LSA-R.S. 42:63 is applicable only in the instance where an appointive position is held on a full time basis, and as this is not the case, it is permissible for both positions to be held simultaneously. **AG Op. No. 97-101.**

◇ Detention center correctional officers who are paid by the sheriff's department may also work part-time as deputy sheriffs if they meet the requirements set out in La. ...In your situation as long as at least one of the positions is part-time, there is no dual office holding. **AG Op. No. 02-0218.**

◇ The prohibition contained in the dual officeholding laws prevents the concurrent holding of two full-time appointive offices and/or employments, but does not prohibit the holding of said positions should one be held on a part-time basis. Thus, a full-time municipal police officer may hold the part-time appointive office of deputy sheriff. **AG Op. No. 06-0166.**

Appointed and Elected Positions

◇ Individual is prohibited from holding both full time appointed office as parish finance director and the local elected office of parish school board member.

“You asked this office to advise whether the Finance Director of Iberville Parish may also hold an elected office as member of the Iberville Parish School Board.

R.S. 42:63(D) governs our response and provides:

D. 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. In addition no sheriff, assessor, or clerk of court shall hold any office or employment under a parish governing authority or school board, nor shall any member of any parish governing authority or school board hold any office or employment with any sheriff, assessor, or clerk of court. (Emphasis added).

The Finance Director holds “appointive office” as defined by R.S. 42:62(2) because the position is one that is “specifically established...by the charter...of any political subdivision...which is filled by appointment...by an elected or appointed public official or by a governmental body composed of such officials...” **AG Op. No. 06-0218.**

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◇ State law prohibits one from holding local elective office and full-time appointive office. Thus, elected parish president may not also hold city full-time appointed position of utilities director.

“In 1991 this office released Attorney General Opinion 91-458 to Mr. William Cefalu in which the author concluded that an employee of the utilities department could hold employment with the city while holding an elective office of the parish council. As noted above, the facts herein contemplate that Mr. Cefalu would become an appointed officer of the utilities department versus his original status as employee of the utilities department. The opinion is distinguishable in that R.S. 42:63(D) does not prohibit one from holding employment and local elective office in separate political subdivisions [(i.e., the parish and the municipality, see R.S. 42:62(9)]; however, R.S. 42:63(D) does prohibit one from holding full-time appointive office and local elective office.” **AG Op. No. 05-0327.**

Separate Political Subdivisions

◇ Lafayette City-Parish Councilman may also be employed by the District Attorney for the Fifteenth Judicial District in his Vermilion Parish office.

“... for purposes of the dual officeholding law, the parish and the district attorney's office are separate political subdivisions. R.S. 42:62(9) states:

(9) ‘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 the 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. (Emphasis added).

R.S. 42:63 does not prohibit one from holding the local elective office of police juror and employment in a separate political subdivision such as the district attorney's office.

You advise that your employment with the parish would be entirely funded by the Vermilion Parish Police Jury. Thus, the incompatibility concerns raised by R.S. 42:64 [and discussed in Opinions 07-0311, 07-0311 (A) and 07-0311 (B) issued to you] become inapplicable.” **AG Op. No. 07-0311C.**

◇ School board member for Terrebonne Parish may continue in employment with the Terrebonne Parish Government.

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“Since your position with the Terrebonne Parish Consolidated Government is defined as employment, the prohibition under LSA-R.S. 42:63D would apply only if both offices are within the same ‘political subdivision.’ A ‘political subdivision’ is defined in LSA-R.S. 42:62(9) and states:

‘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.” (Emphasis added).

Under this definition a school board would be a separate political subdivision from the parish. The prohibition concerning the simultaneous holding of both offices within the same political subdivision is therefore inapplicable.” **AG Op. No. 96-220.**

Professional Educational Capacity

◇ An elected mayor of a municipality who holds employment as an instructor at a state-sponsored technical college is employed in a professional educational capacity and is exempt from the prohibitions of law which generally prohibit one from holding local elected office and employment in the government of the state.

“While LSA-R.S. 42:63(D) initially prohibits you from holding both positions, there is an exemption in the law which permits a “person employed in a professional educational capacity” to hold “an elective or appointive office.” R.S. 42:66(B) states:

B. Nothing in this Part shall be construed to prevent a school teacher or person employed in a professional educational capacity in a grade school, high school, other educational institution, parish or city school board from holding at the same time an elective or appointive office.

Because you will be employed as an instructor at the technical college, you are considered to be employed in a “professional educational capacity”; as such, the exemption is directly applicable to you. The law does not prohibit you from accepting this employment and continuing to serve as the elected mayor of the Village of Baskin.” **AG Op. No. 08-0142.**

◇ The law permits the Dean of Career and Professional Programs at Elaine P. Nunez Community College to hold the elective office of member of the St. Bernard Parish School Board.

“The law allows you to continue in your state employment as the full-time Dean of the Career and Professional Programs at Elaine P. Nunez Community College

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while serving as member of the St. Bernard Parish School Board, a part-time local elective office. LSA-R.S. 42:66(B) permits the concurrent holding of these positions, and states:

B. Nothing in this Part shall be construed to prevent a school teacher or person employed in a professional educational capacity in a grade school, high school, other educational institution, parish or city school board from holding at the same time an elective or appointive office.” **AG Op. No. 95-11.**

◇ The law permits an individual to hold state employment as a faculty member of Nicholls State University and the local elective office of member of the Assumption Parish School Board. **AG Op. No. 95-8.**

Planning Commission

◇ A member of the Covington Zoning and Planning Commission may also hold employment with the Covington Recreation Department.

“However, R.S. 33:103(C)(1) pertaining to parish and municipal planning commissions is of potential concern and states:

C. (1) *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. (Emphasis added).

“Public office” is defined by R.S. 42:1 as: 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.

“Public officer” is any person holding a public office in this state.

Because the position with the municipality is an employment and not a public office, R.S. 33:103 would not preclude one from holding both positions. In accord are Attorney General Opinions 05-248 and 91-549”. **AG Op. No. 07-0302.**

Federal Employment

◇ Elected constable may not also hold federal employment, absent the applicability of exemptions provided by law.

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“The provisions of the Louisiana Dual Officeholding and Dual Employment Laws, R.S. 42:61, *et seq.*, govern our response to your question. R.S. 42:63(A)(1) is dispositive of the issue, and states:

A. (1) Except as otherwise provided in this Subsection, *no person holding an elective office*, appointive office, or employment in any of the branches of state government or of a political subdivision thereof *shall at the same time hold* another elective office, appointive office, or *employment* in the government of a foreign country, *in the government of the United States*, or in the government of another state. (Emphasis added).

R.S. 42:63(A)(1) prohibits one from holding local elective office and employment with the federal government. Further, the exemptions from this rule provided in R.S. 42:66 are inapplicable to this matter. Therefore, we advise that state law prohibits you from holding federal employment should you be elected constable.” **AG Op. No. 08-0238.**

Status in General

◇ State law permits the method of delivery of public defender services for each judicial district to include appointment, contract, and employment as alternative methods for providing counsel to indigent defendants. Thus, whether an assistant public defender is prohibited from holding local elective office under the dual officeholding provisions is dependent upon the method used to select assistant public defenders within each judicial district.

“The answer to your question is fact-sensitive. A Thibodaux city councilman is not prohibited by the dual officeholding provisions from holding full-time or part-time employment as an assistant public defender; neither is he prohibited by the dual officeholding provisions from working as an assistant public defender under a professional services contract. He is not prohibited by the dual officeholding provisions from holding part-time appointive office as an assistant public defender. The only scenario in which the dual officeholding provisions are violated is if a Thibodaux city councilman holds full-time appointive office as an assistant public defender.” **AG Op. No. 08-0206.**

◇ “Plaintiff also has raised the issue of whether Louisiana's law against dual office holding has been violated. Under the pertinent provisions of LRS 14:63(C), no person holding an elective office in the government of this state shall at the same time hold another elective office, a full-time appointive office, or employment in the government of this state or in the government of a political subdivision thereof. Thus, Judge Kostelka could not simultaneously hold the office of district judge and hold the office of appellate judge. However, plaintiff stated during argument in the district court that plaintiff did not contend Judge Kostelka was holding office on the 2nd Circuit Court of Appeal; we agree. Thus,

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unless and until such time as Judge Kostelka is to be sworn in as a judge on the 2nd Circuit Court of Appeal, the possibility of a violation of Louisiana's prohibition against dual office holding will not arise. We further observe that a very analogous situation arises every time a judge currently serving on one court runs for and is elected to another court. No dual office holding occurs as long as the first judgeship is resigned prior to the judge's taking office for the second judgeship.”

Braddock v. Kostelka 568 So.2d. 248, 252 (La.App. 2 Cir.,1990)

Alderman

◇ The Clerk of the Village of Wilson may not simultaneously hold the position of alderman of that village.

“The dual officeholding laws, LA R.S. 42:61, *et seq.*, apply in general to a person holding two positions at the same time. Nevertheless, the statutes pertaining to the selection of municipal officers, found at LA R.S. 33:381, *et seq.*, are more on point to your inquiry. More specifically, LA R.S. 33:385(C) states in pertinent part:

No member of the board of alderman shall hold any other office or employment under the municipal government while he [or she] is a member of the board, except as is provided for in R.S. 33:381 and R.S. 33:386.

LA R.S. 33:381 had at one time explicitly permitted an alderman to also serve as the town clerk. However, LA R.S. 33:381 has been amended numerous times, and through the amendment process, this exception has been deleted. A reading of the statute at present will confirm that the exception is provided for no longer. Similarly, no such exception is authorized by LA R.S. 33:386.

Therefore, it is the opinion of this office that the Clerk of the Village of Wilson may not simultaneously hold the position of alderman of that village. Doing so would constitute a violation of LA R.S. 33:385(C).” **AG Op. No. 01-142.**

◇ A person is legally permitted to hold the office of city alderman and be simultaneously employed as an investigator in the Jefferson Parish District Attorney's Office.

“The former position constitutes local elective office, while the latter position is one of employment within the parish, which is a separate political subdivision from the municipality. Such combination of positions is impermissible only where both positions fall within the same political subdivision as LSA-R.S. 42:63(D) provides:

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D. 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. (Emphasis added).” **AG Op. No. 97-147.**

Exceptions in R.S. 42:66

◇ A deputy sheriff may at the same time hold the office of part-time constable of a justice of the peace court whose jurisdiction has a population of fifteen thousand or fewer persons according to the 1990 federal decennial census. **AG Op. No. 08-0131; R.S. 42:66(L)(2)(a).**

◇ A deputy sheriff may at the same time hold the office of part-time constable of a justice of a peace court whose jurisdiction has a population of fifteen thousand or fewer persons according to the 1990 federal decennial census.

“A constable holds local elective office. R.S. 42:63(D) generally prohibits a person holding an elective office in a political subdivision of the state from holding at the same time a full-time appointive office. Because you work as a full-time deputy sheriff, R.S. 42:63(D) would initially prevent you from holding at the same time any elective office.

However, the law provides an exemption from the prohibition of R.S. 42:63(D) which is applicable in your case. R.S. 42:66(L)(2)(a) states:

(2)(a) Nothing in this Part shall be construed to prohibit a deputy sheriff from holding the office of part-time constable of a justice of the peace court whose jurisdiction has a population of fifteen thousand or fewer persons according to the 1990 federal decennial census, or from holding the office of part-time constable or part-time marshal of a city court in a municipality with a population of ten thousand or fewer persons according to the 1990 federal decennial census, provided such person held both the office of deputy sheriff and the office of constable or marshal prior to January 1, 1997.

If you are in fact elected to the office of a part-time constable of a justice of the peace court whose jurisdiction has a population of fifteen thousand of fewer persons according to the 1990 federal decennial census, you would be allowed to continue to serve as a full-time deputy sheriff.” **AG Op. No. 08-0182.**

◇ The dual officeholding provisions do not prevent a deputy sheriff from holding the elected office of mayor of a municipality which has a population of two thousand five hundred or less according to the latest federal decennial census.

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“You have asked this office to advise if you may maintain your position as deputy sheriff in Tensas Parish should you be elected Mayor of the municipality of Newellton.

The population of Newellton is less than two thousand five hundred, according to the latest federal decennial census. For this reason, the exemption contained in R.S. 42:66(L)(1) is applicable to your circumstances and states:

L. (1) Nothing in this Part shall be construed to prevent a deputy sheriff from holding the office of either mayor or alderman of a municipality, provided such municipality has a population of two thousand five hundred or less, according to the latest federal decennial census.

R.S. 42:66(L)(1) exempts you from the prohibitions of the Dual Officeholding and Dual Employment Laws, R.S. 42:61, *et seq.* Thus, you may continue in your position as deputy sheriff if you are elected the Mayor of Newellton.” **AG Op. No. 07-0234.**

◇ Exemption in the state law permits an elected alderman to maintain state employment.

“While R.S. 42:63(D) prohibits one from holding local elective office and state employment, R.S. 42:66(N) provides an exemption applicable in the instant matter:

(N) Nothing in the Part shall be construed to prohibit a person holding employment in the government of the state from holding at the same time an elective office in the government of a municipality of this state with a population of less than six thousand five hundred according to the 1990 federal decennial census, unless the particular nature of such employment in combination with the duties and interest of such elective office is incompatible as provided in this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

The Town of Gibsland is a municipality with a population of less than six thousand. Because of the exemption of R.S. 42:66(N), the person of interest here may serve as elected alderman while maintaining her state employment with DHH.” **AG Op. No. 06-0290, [R.S. 42:66\(N\)](#)**

Incompatible Offices

◇ It constitutes an impermissible conflict for a police officer to simultaneously serve as a member of the indigent defender board.

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“Here it is important to note that the placement of a law enforcement officer on the indigent defender board would constitute a conflict under LSA-R.S. 42:61. Law enforcement officers work to find and ultimately help convict criminals. It would pose a conflict of interest to require such a person to take part in the defense of a suspect, possibly causing the destruction of his own work. The other obvious danger is that the officer would, in general, be biased and therefore unable to provide assistance to the indigent.

Further support for this argument is found in LSA-R.S. 42:64 concerning incompatible offices:

C. No other combination of offices or employments shall be deemed to be incompatible unless the powers, functions, or duties are found to be adverse to the public interest as set forth in Section 61 of this Part. (Emphasis added).” **AG Op. No. 95-289.**

◇ Elected councilman for the City of Westwego may not at the same time hold the position of municipal department head.

“The distinction between an appointive office and an employment is that the appointive office is a position that is established or specifically authorized by the constitution, statutes, home rule charter provisions or ordinances of a municipality or parish. While R.S. 42:63 does not prohibit a local elected official from holding a *part-time* appointive office in the same political subdivision in which he is elected, the positions may still be deemed incompatible under the provisions of R.S. 42:64:

§ 64. Incompatible offices

A. In addition to the prohibitions otherwise provided in this Part, no other offices or employments shall be held by the same person in combination if any of the following conditions are found to pertain and these prohibitions shall exist whether or not the person affected by the prohibition exercises power in conjunction with other officers:

* * *

(4) The incumbent of one office, whether or not in conjunction with fellow officers, or employment is required by law to execute orders and follow directions given by the incumbent of the other office or employment.

(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.

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(6) Funds received by one office or employment are deposited with or turned over to the other office or position.

Under R.S. 42:64, a Westwego councilman may not hold a position as Westwego department head, because he would be charged with approving the budget of the department head position in his capacity as councilman.” **AG Op. No. 08-0106.**

◇ The discretionary funds allocated the district attorney by R.S. 15:157.11 provide supplemental sources of funding in addition to the primary funding provided by the parish under R.S. 16:6 for employees of the district attorney's office. A police juror is prohibited from holding employment with the district attorney's office because he votes on the funding provided by R.S. 16:6 for his position of employment, rendering the positions incompatible under the dual-officeholding provisions. **AG Op. No. 07-0311B.**

◇ Elected official of municipality could not also hold full-time appointed position as fire chief within the municipality; full-time fire chief was appointed by governing body of municipality, on which he also served, and governing body also funded and approved the budget of the fire department. *Ieyoub v. Polito* 712 So.2d. 692, 1997-0796 (La.App. 1 Cir.,1998)

Remedies and Penalties

◇ Once employee, who worked for both state and federal government, resigned from her state position, she was no longer “holding” incompatible employments, under Dual Officeholding and Dual Employment Law (DODEL), and could not be required to reimburse her former employer.

“Because of her February 15, 2006 resignation, any cause of action the state may have had under LSA-R.S. 42:65(B) to have Holliday ordered to vacate her employment with the 19th JDC and to enjoin her from further carrying out the duties of that employment no longer existed when suit was filed on March 31, 2006. Subsection C of this statute only authorizes the court to order reimbursement with respect to the allowances and payments for travel and other expenses which have been received by the official or employee in the position vacated as provided in Subsection B. Having failed to allege that Holliday was holding incompatible offices or employments or holding a combination of offices or employments prohibited by the DODEL at the time suit was filed, we conclude that the state failed to state a cause of action against Holliday under any of the provisions of LSA-R.S. 42:65.”

Foti v. Holliday (La.App. 1 Cir.,2008) not released for publication. Cited as 2008 WL 4922793 (La.App. 1 Cir.), 2008-0055 (La.App. 1 Cir. 11/18/08)

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Q.14. 2010 Repeal of the form of government known as Commission or City Manager Plan

A.14. Certain statutes, such as R.S. 33:713, were aimed at restricting the dual employment of Commissioners, officers and other employees of a commission or city manager form of government. Act 39 of the 2010 Regular Session repealed the form of government known as the commission or city manager plan, comprised of R.S. 33:501 through 571, and R.S. 33:611 through 851. It is unclear at this time, but in all likelihood these forms of government would have the same restrictions on dual employment and officeholding as other forms of government.

Q.15. Examples

1. Mayor Green, elected by the citizens of Greenville, also teaches a gardening class at State University on a full time basis. May he continue holding both his elected office and a full time teaching employment with a state university? Is he required to resign one or the other?

While LSA-R.S. 42:63(D) initially prohibits Mayor Green from holding both positions, there is an exemption in the law which permits a “person employed in a professional educational capacity” to hold “an elective or appointive office.” R.S. 42:66(B) states:

Nothing in this Part shall be construed to prevent a school teacher or person employed in a professional educational capacity in a grade school, high school, other educational institution, parish or city school board from holding at the same time an elective or appointive office.

2. Councilperson Blue of the City of Bluesville was recently elected to the Bluesville City Council. Her current full time employment is as head of the Sanitation Department of the City of Bluesville. May she hold both positions since the position with the City Council is an elected part time position?

Under the incompatible offices provision, R.S. 42:64, a Bluesville councilperson may not hold a position as Bluesville department head, because she would be charged with approving the budget of the department head position in her capacity as councilperson.

3. Deputy Sheriff Red works full time for the Red River Sheriff’s Office. He wants to run for election as constable for a district in Red River Parish. He asks you if he can hold both positions. You know that R.S. 42:63(D) generally prohibits a person holding an elective office in a political subdivision of the state from holding at the same time a full-time appointive office. What question do you ask him to give him the right answer? What is the right answer?

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The law provides an exemption from the prohibition of R.S. 42:63(D) which is applicable here. R.S. 42:66(L)(2)(a) states:

(2)(a) Nothing in this Part shall be construed to prohibit a deputy sheriff from holding the office of part-time constable of a justice of the peace court whose jurisdiction has a population of fifteen thousand or fewer persons according to the 1990 federal decennial census, or from holding the office of part-time constable or part-time marshal of a city court in a municipality with a population of ten thousand or fewer persons according to the 1990 federal decennial census, provided such person held both the office of deputy sheriff and the office of constable or marshal prior to January 1, 1997.

If Deputy Red is elected to the office of a part-time constable of a justice of the peace court whose jurisdiction has a population of fifteen thousand or fewer persons according to the 1990 federal decennial census, or the office of part-time constable or part-time marshal of a city court in a municipality with a population of ten thousand or fewer he would be allowed to continue to serve as a full-time deputy sheriff.

4. Alderman Violet of Purpleton City wishes to give back more to her community than she already is and decides to serve as Town Clerk for Purpleton. May she do so?

The dual officeholding laws, LA R.S. 42:61, *et seq.*, apply in general to a person holding two positions at the same time. Nevertheless, the statutes pertaining to the selection of municipal officers, found at LA R.S. 33:381, *et seq.*, are more on point. More specifically, LA R.S. 33:385(C) states in pertinent part:

No member of the board of alderman shall hold any other office or employment under the municipal government while he [or she] is a member of the board, except as is provided for in R.S. 33:381 and R.S. 33:386.

LA R.S. 33:381 had at one time explicitly permitted an alderman to also serve as the town clerk. However, LA R.S. 33:381 has been amended numerous times, and through the amendment process, this exception has been deleted. A reading of the statute at present will confirm that the exception is no longer provided. Similarly, no such exception is authorized by LA R.S. 33:386.

5. Rebuffed and sad she cannot be both Alderman and Town Clerk for Purpleton City, Alderman Violet decides she will take the job of Town Clerk in Brownie, a town in the next Parish over. May she do so?

She is legally permitted to hold the office of city alderman and be simultaneously employed as Town Clerk in Brownie. The former position constitutes local

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elective office, while the latter position is one of employment in another city, which is a separate political subdivision from the municipality. Such combination of positions is impermissible only where both positions fall within the same political subdivision as LSA-R.S. 42:63(D) provides:

D. 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. (Emphasis added). La. Atty. Gen. Op. No. 97-147

6. Mayor Beryl Cerulean, elected by the voters of Azuretown, went to work for FEMA shortly after the big hurricanes destroyed Azuretown in 2005. May she continue to hold both her elected office, and FEMA employment?

A person holding elective office may not also hold federal employment, absent the applicability of exemptions provided by law. La. Atty. Gen. Op. No. 08-0238

7. After Mayor Cerulean resigns her cherry FEMA job, she takes the open job of mail carrier posted by the United States Post Office after the previous mail person for Azuretown left to work for FEMA. May she continue to hold both positions?

A person under contract to deliver mail for the United States is an independent contractor and not a federal employee; thus, the prohibition of law preventing a local elected official from holding employment with the federal government is inapplicable.

8. Amber Saffron holds full time employment with the Tawny Parish Communications District. She decides to get a part-time position with the Tawny Parish Sheriff's Office as a dispatcher. May she hold both positions?

While state law prohibits the holding of two or more full-time positions of public appointive office and/or employment, the prohibition is inapplicable where one position is held on a part-time basis; thus, a full-time secretary-treasurer employed by a communications district may also work as a part-time dispatcher for the sheriff's office.

9. Deputy Blanco, an uncompensated reserve deputy in Pearl Parish, decides to run for Justice of the Peace for Pearl Parish. May he hold both offices?

A reserve deputy sheriff may not also hold office as a justice of the peace since this dual service raises the appearance of impropriety and lack of impartiality in violation of the Canons of the Code of Judicial Conduct which govern the conduct of justices of the peace

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However, the Attorney General opinion discussing this issue also advised seeking the opinion of the Judiciary Committee, since the Code of Judicial Conduct is within the authority of the Judiciary Commission to administer. See AG Opinion No. 08-0265

10. Big Pinky Blush is a City Councilman for Coral Parish. He just finished getting his J.D. and was recently sworn in to the Bar. He now wishes to defend the poor for a living and applies for a job with the Coral Parish Public Defender's Office to be an Assistant Public Defender. May he hold both positions?

In the instant matter, the type of position an assistant public defender holds for purposes of dual officeholding depends upon the method of selection chosen for public defender services under R.S. 15:165. An assistant public defender could hold an *appointive office* by virtue of his appointment by the district public defender under 15:165(B)(1)(a); he could hold *employment* under R.S.15:165(B)(4); and he could hold his position pursuant to *contract*, as provided by R.S. 15:165(B)(3).

The answer to the question is fact-sensitive. A city councilman is not prohibited by the dual officeholding provisions from holding full-time or part-time employment as an assistant public defender; neither is he prohibited by the dual officeholding provisions from working as an assistant public defender under a professional services contract. He is not prohibited by the dual officeholding provisions from holding part-time appointive office as an assistant public defender. The only scenario in which the dual officeholding provisions are violated is if a city councilman holds a full-time appointive office as an assistant public defender.