



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

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OPINION 16-0137

Mr. H. Lynn Jones II
Calcasieu Parish Clerk of Court
P.O. Box 1030
Lake Charles, LA 70602

78 Dual Officeholding

La. R.S. 42:61 *et seq.*
La. C.C.P. art. 255

La. Const. art. V, § 28

The provisions of the Dual Officeholding and Dual Employment Law prohibit a full time Deputy Clerk of Court of Calcasieu Parish from serving as a member of the City of Lake Charles Council

Dear Mr. Jones:

Our office received your request for an opinion regarding whether a full time Deputy Clerk of Court of Calcasieu Parish (Deputy Clerk) may serve as a member of the City of Lake Charles Council ("Council").

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.

The Clerk of Court of Calcasieu Parish ("Clerk") is an elected official, who is authorized to appoint deputies as necessary.¹ The position of Deputy Clerk is specifically established by the laws of the state and filled by appointment by the Clerk. You indicated that the position is full time. The position of Deputy Clerk is classified as a "full time" "appointive office" for purposes of the Dual Officeholding Laws.²

The City of Lake Charles ("City") operates under a home rule charter that provides for a mayor-council form of government. The Mayor and the Council are the governing authority for the City. A member of the Council holds a "part time" "elective office" for the purposes of the Dual Officeholding Laws.³

¹ La. Const. art. V, § 28 and La. C.C.P. art. 255.

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). "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).

³ "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

The Clerk of Court and the Council are considered separate political subdivisions of the state for the purposes of the Dual Officeholding Laws.⁴

The most applicable provision of the Dual Officeholding and Dual Employment Law is La. R.S. 42:63(D), which provides in pertinent part:

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, 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.

La. R.S. 42:63(D) prohibits the simultaneously holding of an elected office in a political subdivision of the state and a full time appointive office in the government of a political subdivision. Therefore, this statute proscribes a person holding an elective position on a city council from being employed as a full time deputy clerk of court.

The Dual Officeholding and Dual Employment Law is applicable only when multiple public positions are held simultaneously. In the event that the deputy clerk in question is elected to the Council, he/she must resign from the Clerk's office prior to taking the oath of office to avoid violating the Dual Officeholding Laws.

Based on the applicable provisions of law and the information you provided, it is the opinion of this office that a full time Deputy Clerk of Court of Calcasieu Parish is prohibited from serving as a member of the City of Lake Charles Council pursuant to La. R.S. 42:63(D).

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

full time. La. R.S. 42:62(5). "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).

⁴ "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).

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,

JEFF LANDRY
ATTORNEY GENERAL

BY: Madeline S. Carbonette
Madeline S. Carbonette
Assistant Attorney General

JL: MSC