

January 8, 2016  
**OPINION 16-0002**

Senator Yvonne Dorsey-Colomb  
District 14  
1520 Thomas H. Delpit Drive  
Suite 226  
Baton Rouge, LA 70802

78 Dual Officeholding

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

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit a State Senator from holding the part time appointive office of Deputy Clerk of Court.

Dear Senator Dorsey-Colomb:

Our office received your request for an opinion regarding whether you, as State Senator for District 14, may hold the part time position of Deputy Clerk of Court (Deputy Clerk).

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 legislative branch of state government includes members of the Senate.<sup>1</sup> The position of State Senate is classified as a “part time” “elective office” for the purposes of the Dual Officeholding Laws.<sup>2</sup>

The Clerk of Court is an elected official, who is authorized to appoint deputies as necessary.<sup>3</sup> The position of Deputy Clerk is specifically established by the laws of the state and filled by appointment by the Clerk of Court. You have indicated that normal

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<sup>1</sup> 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. La. R.S. 42:62(7).

<sup>2</sup> “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). “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).

<sup>3</sup> La. Const. art. V, § 28 and La. C.C.P. Art. 255.

working hours for the position of Deputy Clerk will be less than seven hours per day of work and less than thirty-five hours per week of work. The position of Deputy Clerk is classified as a “part time” “appointive office” for purposes of the Dual Officeholding Laws.<sup>4</sup>

The Clerk of Court is considered a political subdivision of the state for the purposes of the Dual Officeholding Laws.<sup>5</sup>

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

No person holding an elective office in the government of the 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.

La. R.S. 42:63(C) prohibits the simultaneously holding of an elected office in the government of the state and a full time appointive office in the government of a political subdivision. Our office has consistently opined that a state legislator is prohibited by the Dual Officeholding provisions from holding a full time appointive office in a political subdivision of the state.<sup>6</sup> However, since the position of Deputy Clerk is a part time appointive office, the prohibition of La. R.S. 42:63(C) is not applicable.

Based on the applicable provisions of law, our prior opinions and the information you provided, it is the opinion of this office that a State Senator is not prohibited by the Dual Officeholding provisions from holding the part time appointive office of Deputy Clerk of Court.

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 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.

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<sup>4</sup> “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 of 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).

<sup>5</sup> “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).

<sup>6</sup> La. Atty. Gen. Op. Nos. 08-0331, 01-0448, and 99-0335.

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,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

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

JDC: MSC;jr