

April 11, 2013  
OPINION 13-0041

78 DUAL OFFICEHOLDING

Chester R. Cedars  
Assistant District Attorney  
16<sup>th</sup> Judicial District  
Courthouse Building  
St. Martinville, Louisiana 70582

La. Const. art. V, § 28 La. R.S. 42:61, *et seq.*

The provisions of the Dual Officeholding and Dual Employment Law do not prohibit a full time employee of the District Attorney's Office from being appointed as a part time deputy clerk.

Dear Mr. Cedars:

You have requested an opinion of the Attorney General as to whether the Dual Officeholding Laws prevent a member of the District Attorney's support staff from being deputized by the Clerk of the Court to sign subpoenas. Your request has been assigned to me for research and reply.

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 positions is essential for the purposes of applying the dual officeholding provisions.

To begin, the District Attorney's Office and the Clerk of Court are considered separate political subdivisions of the state.<sup>1</sup> Based on the information you provided, the member of the District Attorney's support staff would be considered full time,<sup>2</sup> local employment.<sup>3</sup> Additionally, you are seeking to have that person become a deputy clerk. The Clerk of the Court, an elected position, is authorized by the Louisiana Constitution to appoint deputy clerks with the duties and powers provided by law. La. Const. art. V, § 28.

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<sup>1</sup> The dual officeholding law defines "political subdivision" as 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. La. R.S. 42:62(9).

<sup>2</sup> The dual officeholding law defines "full time" as 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).

<sup>3</sup> The dual officeholding law defines "employment" as any job compensated on a salary or per diem basis, other than an elective or appointive office or employment. La. R.S. 42:62(3).

Based on the specific nature of this deputy clerk position, deputized for subpoena signing only, this person would be considered a part time<sup>4</sup> local appointive position.<sup>5</sup>

The most applicable provisions of the Dual Officeholding and Dual Employment Law are La. R.S. 42:63 (D)(E), which state, in pertinent part:

D. ... no sheriff, assessor, or clerk of the 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.

E. 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 District Attorney's Office is not the parish governing authority, therefore La. R.S. 42:63(D) is not violated. Further, since the appointive position as a deputy clerk would not be full time La. R.S. 42:63(E) does not prohibit a person from holding both of these positions simultaneously.

Please note that our expressed opinion relative to state law is limited to an examination of the dual officeholding provisions. However, we note that there may be a conflict of interest for a person to hold both of these positions and we therefore recommend that you address any concerns regarding a conflict of interest or an ethical issue to the Louisiana State Board of Ethics. The Board may be contacted at P.O. Box 4368, Baton Rouge, Louisiana 70821, or by phone at 225-219-5600.

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<sup>4</sup> The dual officeholding law defines "part time" as 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).

<sup>5</sup> The dual officeholding law defines "appointive office" as 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).

We hope that this opinion has adequately addressed 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: \_\_\_\_\_  
Jessica MP Thornhill  
Assistant Attorney General

JDC: JMPT

SYLLABUS

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Chester R. Cedars  
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Date Assigned: 26MAR13

Date Released: April 11, 2013

Jessica MP Thornhill  
Assistant Attorney General