

January 20, 2012
OPINION 11-0240

Honorable Michael A. McNab
Justice of the Peace, Ward F
St. Bernard Parish
2003 Pelitere Drive
Chalmette, LA 70043

57 JUSTICES OF THE PEACE

78 DUAL OFFICEHOLDING

La. R.S. 42:63(D).

Under La. R.S. 42:63(D) of the Louisiana Dual Officeholding and Dual Employment Law, a full-time deputy clerk of court may not also hold elective office as a justice of the peace.

Dear Mr. McNab:

You have asked this office to advise whether you may continue to serve as Justice of the Peace for Ward F in St. Bernard Parish and at the same time hold full-time appointive office as a deputy clerk for the St. Bernard Parish Clerk of Court.

Applicable here is the Dual Officeholding and Dual Employment Law, La. R.S. 42:61, *et seq.*, the state law which sets forth certain prohibited combinations of public office and/or public employment. A legal analysis relative to the dual officeholding and dual employment provisions first requires a determination as to the types of positions held. This categorization is important because the statutory prohibitions contained in La. R.S. 42:63 apply only to a person holding certain combinations of *elective office*, *appointive office*, and *employment* as those terms are specifically defined by La. R.S. 42:62.

A deputy clerk of court holds an *appointive office* as defined by La. R.S. 42:62(2) because it is an “office...which is specifically established or specifically authorized by the constitution or laws of this state...which is filled by appointment...by an elected or appointed public official...” The position of deputy clerk is established by LSA-Const. Art. 5 § 28(A), which provides in part that “the clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.” See also LSA-C.C.P. Art 255, which further provides for the position of deputy clerk.¹

¹ La. C.C.P. Art. 255 is entitled “deputy clerks and other employees” and provides: Except as otherwise provided by law, a deputy clerk of a court possesses all the powers and authority granted by law to the clerk, and may perform any of the duties and exercise any of the functions of the clerk.

The position of justice of the peace is considered an *elective office* as defined by La. R.S. 42:62(1), providing:

(1) *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.

The prohibition of the dual officeholding law applicable in this matter is La. R.S. 42:63(D), providing in pertinent part:

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...*

[Emphasis added].

La. R.S. 42:63(D) prohibits the holding of both elective office and full-time appointive office. Accordingly, it is the opinion of this office that a full-time deputy clerk may not at the same time hold the elective office of justice of the peace.

However, please note that a part-time position is defined as working less than thirty-five hours per week.² Thus, if a deputy clerk of court reduces the hours worked to less than thirty-five hours per week, the deputy clerk of court position would be considered part-time. In that case, La. R.S. 42:63(D) would not prohibit a justice of the peace from at the same time holding the position of part-time deputy clerk of court.

Notwithstanding our conclusion that a justice of the peace would not violate the dual officeholding provisions by holding at the same time a position as part-time

Deputy clerks and other employees of a clerk or court are subject to his direction and supervision, and shall perform the duties assigned to them by law, the court, and the clerk.

The clerk of court is responsible for the performance or nonperformance of their official duties by his deputies and other employees.

² *Full-time* and *part-time* are terms defined by La. R.S. 42:62(4) and (5), stating:

(4) *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.

(5) *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 hours of work defined in this Section as full-time.

deputy clerk, be advised that Justices of the Peace are governed by the Code of Judicial Conduct, which is within the authority of the Judiciary Commission to administer. We suggest that you also contact the Judiciary Commission, 601 St. Charles Avenue, New Orleans, LA 70130, phone (504) 568-8299, regarding your inquiry as to whether you would violate the Canons of the Code of Judicial Conduct³ by accepting a position with the clerk's office.

We hope the foregoing is helpful to you. Should you have other questions with which we may provide assistance, please contact this office.

Very truly yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:arg

³ For instance, in the case of *In re McInnis*, 769 So.2d 1186 (La. 2000), upon recommendation of the Judiciary Commission, the Louisiana Supreme Court censured the Justice of the Peace of Ward 1, St. Bernard Parish, because he maintained a financial relationship with the sheriff's office--first as a full-time employee and commissioned deputy and then as an independent contractor--while a sitting justice of the peace, and after he was advised that such a relationship was a violation of Canons 1, 2(A), and 5(C)(1) of the Code of Judicial Conduct³. Under *McInnis*, employment with the sheriff's office tends to "involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves" in violation of Canon 5(C)(1).

SYLLABUS

OPINION 11-0240

57 JUSTICES OF THE PEACE

78 DUAL OFFICEHOLDING

La. R.S. 42:63(D).

Under La. R.S. 42:63(D) of the Louisiana Dual Officeholding and Dual Employment Law, a full-time deputy clerk of court may not also hold elective office as a justice of the peace.

Honorable Michael A. McNab
Justice of the Peace, Ward F
St. Bernard Parish
2003 Pelitere Drive
Chalmette, LA 70043

Date Received:

Date Released: January 20, 2012

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL