

June 14, 2011  
OPINION 11-0107

Honorable Carolyn Jones Ryland  
Rapides Parish Clerk of Court  
P.O. Box 952  
Alexandria, LA 71309

78 DUAL OFFICEHOLDING

La. R.S. 33:1433; La. R.S. 42:63(E); La. C.C.P. art. 255.

The Louisiana Dual Officeholding and Dual Employment Law, La. R.S. 42:61, *et seq.*, does not prohibit a full-time deputy clerk working for the Rapides Parish Clerk of Court from at the same time holding the position of deputy sheriff for the Rapides Parish Sheriff's Office, where the latter position is held on a part-time basis.

Dear Ms. Ryland:

You have asked this office to advise if a full-time deputy clerk working for the Rapides Parish Clerk of Court may at the same time hold the position of part-time deputy sheriff for the Rapides Parish Sheriff's Office. For the following reasons, more fully explained below, it is the opinion of this office that state law does not prohibit a full-time deputy clerk from at the same time serving as a part-time deputy sheriff.

Applicable to this matter are the provisions of the Louisiana Dual Officeholding and Dual Employment Law, La. R.S. 42:61, *et seq.* A legal analysis relative to the dual officeholding and employment provisions first requires a determination of the types of position 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.

The position of deputy clerk of court is considered an appointive office because it is an *office in any branch of government...which is specifically established or specifically authorized by the...laws of this state...and which is filled by appointment...by an elected...public official*.<sup>1</sup> This position is specifically authorized by law under La. C.C.P. art. 255<sup>2</sup> and persons filling this position are appointed by the clerk of court, an elected public official.<sup>3</sup>

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<sup>1</sup> La. R.S. 42:62(2).

<sup>2</sup> La. C.C.P. art. 255 establishes the position of deputy clerk of court and states:

Art. 255. Deputy clerks and other employees

Except as otherwise provided by law, a deputy clerk of a court possesses all of 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.

Deputy clerks and other employees of a clerk of 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

Similarly, the position of deputy sheriff is also considered an appointive office because the position is specifically authorized by law under La. R.S. 33:1433,<sup>4</sup> and persons filling this position are appointed by the sheriff, an elected public official.<sup>5</sup>

La. R.S. 42:63(E)<sup>6</sup> prohibits one from holding at the same time two positions of full-time employment and/or full-time appointive office, but does not prohibit the concurrent holding of both positions if at least one position is held on a part-time basis.<sup>7</sup> In the scenario you presented, because one appointive office here will be held on a part-time basis, the prohibition of La. R.S. 42:63(E) is inapplicable.

Thus, it is the opinion of this office that state law governing dual officeholding and dual employment does not prohibit a full-time deputy clerk of court from at the same time holding the appointive office of deputy sheriff, where the latter position is held on a part-time basis. Finally, we point out that a Clerk of Court could have a personnel policy preventing a deputy clerk from working for the sheriff's office, but we are advised that no such restriction is applicable in the instant matter.

Please note that the opinion of this office is limited to an examination of the dual officeholding provisions. Questions concerning the Louisiana Code of

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

<sup>3</sup> La. Const. art. 5 § 28(A) provides:

§ 28. Clerks of Court

Section 28. (A) Powers and Duties

In each parish a clerk of the district court shall be elected for a term of four years.

He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. 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.

<sup>4</sup> La. R.S. 33:1433(A)(1) states:

(A)(1) The sheriff of each parish and the civil and criminal sheriff's of the parish of Orleans may appoint as many deputies as necessary, but not more than authorized by law.

(2) In all parishes except the parish of Orleans, the deputies shall, before entering on their duties, take the oath of office. The appointment and oath must be entered on the records of the court.

<sup>5</sup> La. Const. art. V § 27.

<sup>6</sup> La. R.S. 42:63(E) provides:

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.

<sup>7</sup> La. R.S. 42:62(4) and (5) provide:

(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 number of hours defined in this Section as full-time.

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Governmental Ethics, La. R.S. 42:1111, *et seq.*, regarding this matter may be addressed by an advisory ruling of the Louisiana State Board of Ethics. Any such question may be directed to the Board at the following address: P.O. Box 4368, Baton Rouge, LA 70821, phone: 225-219-5600.

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:

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KERRY L. KILPATRICK  
ASSISTANT ATTORNEY GENERAL

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Date Received:

Date Released: June 14, 2011

KERRY L. KILPATRICK  
ASSISTANT ATTORNEY GENERAL