

June 27, 2008
OPINION 08-0154

57 - JUSTICES OF THE PEACE

Ms. Janice A. Gauthier
2292 Hwy. 362
Cottonport, LA 71351

Louisiana Code of Judicial Conduct
Canons 1, 2, 5

A deputy sheriff may not also serve as a Justice of the Peace since this dual service raises the appearance of impropriety and impartiality in violation of the Code of Judicial Conduct.

Dear Ms. Gauthier:

You advise this office that you currently work as a deputy sheriff and have an interest in running for the office of Justice of the Peace in Ward 9 of Avoyelles Parish. If elected, you ask if you may serve in both capacities.

The issue of whether a deputy sheriff may also serve as an elected Justice of the Peace has been addressed in Attorney General Opinions 00-295 and 96-356, copies attached. Both opinions conclude that a deputy sheriff may not also serve as a Justice of the Peace. These opinions are consistent with the interpretation of the Code of Judicial Conduct given by the Office of Special Counsel to the Judiciary Commission in correspondence directed to this office, stating that a Justice of the Peace violates the Code of Judicial Conduct by serving as a deputy sheriff. See attachments to Opinion 96-356.

The Code of Judicial Conduct is binding on all judges, including justices of the peace. In re Adams, 959 So.2d 474 (La. 2007). Violations of the Canons contained in the Code of Judicial Conduct may serve as a basis for disciplinary action by the Louisiana Supreme Court, on recommendation of the Judiciary Commission, as provided for by LSA-Const. Art. V, § 25(C) (1974)¹.

¹ LSA-Const. Art. 5 § 25(C) (1974) states:

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

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 I, 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 Conduct.² 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).

The ruling of the Court in McInnis, *supra*, is of particular interest to your facts. In McInnis, the Special Counsel had written Justice of the Peace McInnis, stating "it is impermissible for a justice of the peace to be employed, *even as a clerical employee*, in the sheriff's office, because such dual service raises the appearance of impropriety and the lack of impartiality". Mr. McInnis was further advised that if he wished to retain his position as a justice of the peace, he "should terminate [his] relationship with the sheriff's office altogether". See McInnis, at footnote 5; (emphasis added). The fact that your current duties as deputy sheriff are limited to record keeping would be insufficient, as per the McInnis case, to remove the restrictions imposed by the Code of Judicial Conduct.

While it remains the opinion of this office that a deputy sheriff may not also hold elected office as a Justice of the Peace, the Code of Judicial Conduct is within the authority of

² Canons 1, 2(A), and 5(C)(1) of the Code of Judicial Conduct provide:

CANON 1 A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

CANON 2 A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

CANON 5 Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

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the Judiciary Commission. For this reason, we suggest that you contact the Judiciary Commission, 601 St. Charles Avenue New Orleans, LA 70130, phone: (504) 568-8299 for a final resolution regarding your inquiry.

Very truly yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: _____
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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Kerry L. Kilpatrick
Assistant Attorney General