

LOUISIANA'S DUAL OFFICEHOLDING AND DUAL EMPLOYMENT LAW



Attorney General Jeff Landry



A Message from Attorney General Jeff Landry

President John F. Kennedy challenged all Americans to “ask not what your country can do for you, ask what you can do for your country.”

Your willingness to serve the public is an answer to that call. And as your Attorney General, I am committed to helping public officials properly execute their obligations.

In that light, my office has compiled this booklet to assist you in your official duties as public servants.

Please read carefully the enclosed Louisiana laws on public officials or employees holding two or more public offices or jobs.

If you would like more information or would like to ask any questions, please visit www.AGJeffLandry.com or call 225-326-6705.

I take seriously my oath to uphold the Constitution and rule of law. And I will work closely with you to ensure the dual officeholding laws are followed.

Together – let’s make Louisiana an even better place to live, work, and raise a family.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Landry".

Jeff Landry
Attorney General

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It is essential to the maintenance of a democratic society that public officials and employees perform the public business in a manner which serves to promote and maintain in the general citizenry a high level of confidence and trust in public officials, public employees, and governmental decisions. The attainment of this end is impaired when a public official or employee holds two or more public offices or public jobs which by their particular nature conflict with the duties and interest of each other. The attainment of a high level of confidence and trust by the general citizenry in public officials, employees, and governmental decisions is further impaired by the excessive accumulation of governmental power which may result from public officials or employees holding two or more public offices or public jobs. La. R.S. 42:61(A).

A. PURPOSE

The purpose of the Dual Officeholding and Dual Employment Law is to maintain a high level of trust and confidence by the citizens of this state in our public officials, employees, and their decisions by defining and regulating dual officeholding and dual employment. La. R.S. 42:61(B).

B. DEFINITIONS

The Dual Officeholding and Dual Employment Law sets forth certain prohibitions relevant to a person holding particular combinations of public employment and/or public office. In a dual officeholding analysis, the positions proposed to be held must first be categorized pursuant to La. R.S. 42:62, which provide the dual officeholding definitions as follows:

Elective Office is any position established or authorized by the constitution, state law, local charter or ordinance, filled by a vote of the citizens of the state or a political subdivision. It is not a political party office.

Appointive office is any office established or authorized by the constitution, state law, local charter or ordinance, filled by appointment or election by an elected or appointed public official or governmental body.

Employment is any paid job, compensated on a salary or per diem basis, with the state government or a political subdivision that is not an elective or appointive office.

Full time is at least seven hours per day and at least thirty-five hours per week of work in an appointive office or employment.

Part time is anything less than full time.

Political subdivision is 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. 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 are separate political subdivisions.

Executive Branch of State Government includes the governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, members of the State Civil Service Commission, the Public Service Commission, the Board of Regents, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the State Board of Elementary and Secondary Education, the Board of Trustees for State Colleges and Universities, and the State Bond Commission. It includes officers, members, agents, employees, of any department, office, agency, instrumentality, board, commission or other entity created by constitution or by law whose functions are not primarily legislative, judicial, or local in nature or operation.

Legislative Branch of State Government includes the members of the State Legislature, officers, agents, and employees of the State Legislature, the legislative auditor, the 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.

Judicial Branch of State Government includes all judges, employees, and agents of the supreme court, the judicial administrator, courts of appeal, district courts, including the civil and criminal district courts of Orleans Parish, city courts, juvenile courts, family courts, and any other judicial offices and instrumentalities of the state. It does not include judges or employees of courts not enumerated in the Dual Officeholding and Dual Employment Law.

C. PROHIBITIONS

The legislature has set forth specific prohibitions, including provisions governing incompatible offices, in the Dual Officeholding and Dual Employment Law. La. R.S. 42:63. In general, no individual may hold two full time positions. A person cannot hold positions in two separate branches of state government. A part time position and a full

time position will generally not constitute a dual officeholding violation, nor will the holding of two part time positions.

General questions regarding the holding of two public positions may be answered by the charts included herein. If you have specific questions, please contact our office or request an attorney general opinion.

D. ENFORCEMENT AND PENALTIES

The attorney general, district attorney, or any citizen of the state may file suit for a declaratory judgment against a person alleged to hold a combination of positions prohibited by the Dual Officeholding and Dual Employment Law. La. R.S. 42:65. Before filing suit, the attorney general or district attorney must send written notice by certified mail to the person explaining the alleged violation.

If the person is found in violation of the Dual Officeholding and Dual Employment Law, the court can declare the office with the term first to expire or one of the employments vacant and enjoin the person from carrying out the duties of that office or employment. A person holding elective office, however, is required to continue to serve and perform the duties of his office until his successor has qualified.

If a court determines that a person has violated the Dual Officeholding and Dual Employment Law, it may order that the person pay back all compensation received from the vacated position (up to six months before the court filing). However, if the person obtained an opinion of the attorney general that was issued before the filing of the suit stating the positions are not in violation of the dual officeholding laws, no reimbursement may be ordered. Additionally, if the person leaves the office or position within 14 days after written notice of the violation is sent, he will not be required to pay back his compensation.

E. ATTORNEY GENERAL OPINION REQUESTS

If a person would like an opinion from the attorney general concerning Dual Officeholding and Dual Employment Law, he should provide the following information:

- 1) Name, address and phone number of the requestor;
- 2) A description of each of the positions;
- 3) The number of hours worked per week;
- 4) What branch of government the positions are within; and
- 5) Any other information the attorney general deems necessary.

Requests for an opinion may be submitted to the Attorney General's Office, as follows:

**Attorney General Jeff Landry
Louisiana Department of Justice
Post Office Box 94005
Baton Rouge, LA 70804
Facsimile: 225-326-6098**

Questions raising ethical concerns under the Louisiana Code of Governmental Ethics, La. R.S. 42:1111, *et seq.*, should be submitted to the Louisiana State Board of Ethics (www.ethics.state.la.us), as follows:

Ethics Administration Program
P.O. Box 4368
Baton Rouge, LA 70821

F. EXEMPTIONS

There are several specific exemptions to the Dual Officeholding and Dual Employment Law which allow a person to simultaneously hold a combination of positions that are otherwise prohibited under the general provisions. Below is a list of the most common exemptions:

1. A teacher may simultaneously hold an elective or appointive office.
2. Any official who holds another office by virtue of the office to which he is elected or appointed.
3. A municipal officer may hold another municipal office if authorized under La. R.S. 33:381(C).
4. A deputy sheriff can serve as the mayor or alderman in a municipality of 2,500 or less.
5. A chief of police of a municipality with a population of less than 5,000 can also be a deputy sheriff.
6. A coroner can hold another physician position in a governmental entity.
7. A state employee can hold elective office in a municipality of less than 6,500, unless incompatible or against public policy.
8. A municipal and/or parochial officer or employee may hold another municipal and/or parochial office or employment if authorized by a legislative or home rule charter.

For a complete listing of the exemptions to the Dual Officeholding and Dual Employment Law see La. R.S. 42:66.

Dual Officeholding and Dual Employment Prohibited and Regulated Relationships in
Federal and State Government (La. R.S. 42:61-66)

This chart represents a quick reference guide to frequently cited Dual Officeholding and Dual Employment provisions. It is not meant to substitute for a legal opinion, and it is not applicable to all inquiries. There are certain factual scenarios that may require consideration of additional federal, state or local laws. Note the provisions of a special state law, legislative charter, or home rule charter are controlling over the more general provisions of the Dual Officeholding and Dual Employment Law.

This chart does not contain all prohibitions and exemptions. Prohibitions and exemptions are listed in La. R.S. 42:63 and La. R.S. 42:66 and may also exist in the statutes and laws creating the positions at issue in the inquiry.

DUAL OFFICEHOLDING AND DUAL EMPLOYMENT	FEDERAL OFFICE OR EMPLOYMENT	STATE ELECTIVE OFFICE	STATE FULL-TIME APPOINTIVE OFFICE	STATE PART-TIME APPOINTIVE OFFICE	STATE FULL-TIME EMPLOYMENT	STATE PART-TIME EMPLOYMENT
STATE ELECTIVE OFFICE	PROHIBITED §63A	PROHIBITED §63C	PROHIBITED §63C	PROHIBITED §63B ^{2,4}	PROHIBITED §63C ²	PROHIBITED §63C ²
LOCAL ELECTIVE OFFICE	PART-TIME ALLOWED §63A(3)(a)	PROHIBITED §63C&D	PROHIBITED §63D	ALLOWED	PROHIBITED §63D ²	PROHIBITED §63D ²
STATE FULL-TIME APPOINTIVE OFFICE	PROHIBITED §63A	PROHIBITED §63C	PROHIBITED §63E	PROHIBITED §63B ^{2,4}	PROHIBITED §63E ²	PROHIBITED §63B ^{2,4}
STATE PART-TIME APPOINTIVE OFFICE	PROHIBITED §63A	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ⁴	PROHIBITED §63B ⁴	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ^{2,4}
LOCAL FULL-TIME APPOINTIVE OFFICE	ALLOWED §63A(2)	PROHIBITED §63C	PROHIBITED §63E	ALLOWED §63E	PROHIBITED §63E ²	ALLOWED §63E
LOCAL PART-TIME APPOINTIVE OFFICE	ALLOWED §63A(2)	ALLOWED §63C	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
STATE FULL-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	PROHIBITED §63E ²	PROHIBITED §63B ^{2,4}	PROHIBITED §63E	PROHIBITED §63B ^{2,4}
STATE PART-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ⁴	PROHIBITED §63B ⁴
LOCAL FULL-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	PROHIBITED §63E ²	ALLOWED §63E	PROHIBITED §63E	ALLOWED §63E
LOCAL PART-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E

1. Sheriffs, assessors, and clerks of court are prohibited from holding any office or employment under a parish governing authority or school board and vice versa. La. R.S. 42:63(D)
2. A school teacher or other persons employed by a professional educational capacity in an educational institution or in a parish or city school board may at the same time hold an appointive or elective office. La. R.S. 42:66(B)
3. A municipal and/or parochial officer or employee may hold another municipal and/or parochial office or employment as authorized by legislative or home-rule charter. If home-rule charter prohibits, such holding is prohibited. La. R.S. 42:66(D)
4. Allowed in the same branch of state government.

Dual Officeholding and Dual Employment Prohibited and Regulated Relationships in
Local Government (La. R.S. 42:61-66)

This chart represents a quick reference guide to frequently cited Dual Officeholding and Dual Employment provisions. It is not meant to substitute for a legal opinion, and it is not applicable to all inquiries. There are certain factual scenarios that may require consideration of additional federal, state or local laws. Note the provisions of a special state law, legislative charter, or home rule charter are controlling over the more general provisions of the Dual Officeholding and Dual Employment Law.

This chart does not contain all prohibitions and exemptions. Prohibitions and exemptions are listed in La. R.S. 42:63 and La. R.S. 42:66 and may also exist in the statutes and laws creating the positions at issue in the inquiry.

DUAL OFFICEHOLDING AND DUAL EMPLOYMENT	LOCAL ELECTIVE OFFICE	LOCAL FULL TIME APPOINTIVE OFFICE	LOCAL PART-TIME APPOINTIVE OFFICE	LOCAL FULL-TIME EMPLOYMENT	LOCAL PART-TIME EMPLOYMENT
STATE ELECTIVE OFFICE	PROHIBITED §63C&D	PROHIBITED §63C	ALLOWED §63C	PROHIBITED §63C ²	PROHIBITED §63C ²
LOCAL ELECTIVE OFFICE	PROHIBITED §63D ³	PROHIBITED §63D ³	ALLOWED §63D	ALLOWED §63D ^{1,2,3,5}	ALLOWED §63D ^{1,2,3,5}
STATE FULL-TIME APPOINTIVE OFFICE	PROHIBITED §63D	PROHIBITED §63E	ALLOWED §63E	PROHIBITED §63E ²	ALLOWED §63E
STATE PART-TIME APPOINTIVE OFFICE	ALLOWED §63C, 63D, 63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
LOCAL FULL-TIME APPOINTIVE OFFICE	PROHIBITED §63D ³	PROHIBITED §63E ³	ALLOWED §63E	PROHIBITED §63E ^{3,3}	ALLOWED §63E
LOCAL PART-TIME APPOINTIVE OFFICE	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
STATE FULL-TIME EMPLOYMENT	PROHIBITED §63D ²	PROHIBITED §63E ²	ALLOWED §63E	PROHIBITED §63E	ALLOWED §63E
STATE PART-TIME EMPLOYMENT	PROHIBITED §63C ²	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
LOCAL FULL-TIME EMPLOYMENT	ALLOWED §63D ^{1,2,3,5}	PROHIBITED §63E ^{2,3}	ALLOWED §63E	PROHIBITED §63E ³	ALLOWED §63E
LOCAL PART-TIME EMPLOYMENT	ALLOWED §63D ^{1,2,3,5}	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E

1. Sheriffs, assessors, and clerks of court are prohibited from holding any office or employment under a parish governing authority or school board and vice versa. 42:63(D)
2. A school teacher or other persons employed by a professional educational capacity in an educational institution or in a parish or city school board may at the same time hold an appointive or elective office. 42:66(B)
3. A municipal and/or parochial officer or employee may hold another municipal and/or parochial office or employment as authorized by legislative or home-rule charter. If home-rule charter prohibits, such holding is prohibited. 42:66(D)
4. Allowed in the same branch of state government.
5. Prohibited in the same political subdivision.

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