

**LOUISIANA DEPARTMENT OF STATE**

**LEGISLATIVE OVERSIGHT REPORT**

**NOTICE OF INTENT**

**REGISTRARS OF VOTERS**

**PROHIBITION OF ACCUMULATION OF ANNUAL, SICK AND COMPENSATORY  
LEAVE FOR REGISTRARS OF VOTERS**

**(LAC 31:II.CHAPTER 1 §117)**

**SUMMARY OF TESTIMONY FROM THIS PUBLIC HEARING**

A Notice of Intent was published in the May 20, 2013 issue of the *Louisiana Register* regarding the prohibition of accumulation of annual, sick and compensatory leave for Registrars of Voters. A public hearing was held on Thursday, June 27, 2013. The public hearing was attended by representatives from the Department of State (Department) and various Registrars of Voters (Registrars) and their employees. Attached is a copy of the minutes from the public hearing.

In summary, a discussion was held on both the Notice of Intent and Policy No. 46 which is the leave policy for the Registrars that was adopted by the Secretary of State on March 4, 2013. Policy No. 46 was posted on the Department's internal website and sent by electronic mail to all Registrars. The main issue related to the Secretary of State's authority to adopt a leave policy for the Registrars who are unclassified employees. It was noted that Policy No. 46 was adopted based upon previous Attorney General Opinions (La. Atty. Gen Op. Nos. 85-355, 88-118 and 89-216).

A request was made at the public hearing to submit the Notice of Intent to the Retirement Committees of the Louisiana Legislature.

**SUMMARY OF COMMENTS RECEIVED**

Following the publication of the Notice of Intent in the May 20, 2013 issue of the *Louisiana Register*, the Department received two written comments from the following prior to the public hearing:

1. Written comment was received from Lawanna Green with the Office of State Uniform Payroll who was inquiring as to the impact the rule will have on LaGov HCM processes. (See attached comment.)
2. Written comment was received from Sandra Thomas, Morehouse Parish Registrar of Voters. (See attached comment.)

The Department also received comments on Policy No. 46 from the following:

1. Debbie Ainsworth, Caldwell Parish Registrar of Voters;
2. Mildred L. Adams, Iberia Parish Registrar of Voters;
3. Debbie Waskom, Natchitoches Parish Registrar of Voters;

4. Brian J. Champagne, St. Charles Parish Registrar of Voters;
5. Lisa Granier Medine, St. James Parish Registrar of Voters;
6. Jolene Holcombe, St. Mary Parish Registrar of Voters; and
7. Dwayne Wall, St. Tammany Parish Registrar of Voters. (See attached comments.)

At the public hearing, Mr. Champagne presented the Department various documents, including a copy of his letter dated June 12, 2013 requesting an Attorney General Opinion regarding this matter. (See attached.)

Prior to the June 28, 2013 deadline for comments, the Department also received the following: 1) an email from Pat Guidry, St. Martin Parish Registrar of Voters, relating to the time and attendance policy; 2) comments on the proposed Rule from Sandra Thomas, Morehouse Parish Registrar of Voters; and 3) a copy of the request for an Attorney General Opinion from Debbie Waskom, Natchitoches Parish Registrar of Voters. (See attached.)

#### **COPY OF RESPONSES TO COMMENTS PREPARED BY THE DEPARTMENT**

The following responses to comments are attached: 1) response to Lawanna Green with the Office of Uniform Payroll dated May 29, 2013; 2) response to Sandra Sims, Morehouse Parish Registrar of Voters dated November 25, 2013; 3) response to Pat Guidry, St. Martin Parish Registrar of Voters dated November 25, 2013; and 4) responses to comments on Policy No. 46 dated November 25, 2013.

#### **STATEMENT OF TENTATIVE/PROPOSED ACTION BY THE DEPARTMENT ON ORAL AND WRITTEN COMMENTS RECEIVED**

The Department proposes to submit the attached Rule to the Office of State Register for inclusion in the next issue of the *Louisiana Register*.

#### **REVISION OF PROPOSED RULE OR STATEMENT THAT NO CHANGES HAVE BEEN MADE**

It is the intention of the Department to make the following technical changes to the original Notice of Intent:

- add a new Paragraph A before former Paragraph A to include the definition of “duty status”;
- renumber former Paragraphs A through G to be B through H, respectively;
- change the text of Paragraph E (former Paragraph D) to clarify that the current balances of accrued leave for registrars that were frozen pursuant to Policy No. 46 will remain frozen pursuant thereto, and no further leave will accrue after the effective date of this rule; and
- change the text of Paragraph E (previously Paragraph D) to clarify that upon retirement or separation from the state each registrar of voters will be eligible to be paid for up to a combined total of 300 hours of accumulated annual and compensatory leave previously earned under Policy No. 2.

The Legislative Fiscal Office has determined that the changes to the proposed rule are purely technical in nature. (See attached letter from John Carpenter, Legislative Fiscal Officer, dated November 15, 2013.)

**CONCISE STATEMENT OF REASONS FOR OR AGAINST ADOPTION OR  
AMENDMENT OF CHANGES SUGGESTED**

Based upon the Attorney General Opinions cited, La. Atty. Gen. Op. Nos. 85-355, 88-118 and 89-216, the Registrars are subject to the personnel policies established by the Secretary of State, and the Department has the authority to promulgate rules regarding the earning of annual, sick and compensatory leave by the Registrars. Therefore, the Department is adopting the attached Rule.

**PUBLIC HEARING**

**JUNE 27, 2013**



**DEPARTMENT OF STATE  
PUBLIC MEETING**

**NOTICE OF INTENT**

**TITLE 31  
ELECTIONS**

**PART II. VOTER REGISTRATION AND VOTER EDUCATION**

**CHAPTER 1. REGISTRAR OF VOTERS**

**§117. PROHIBITION ON ACCUMULATION OF ANNUAL, SICK AND  
COMPENSATORY LEAVE FOR REGISTRARS OF VOTERS**

**State Archives Building  
Auditorium  
3851 Essen Lane  
Baton Rouge, Louisiana**

**JUNE 27, 2013  
10:00 AM**

**Introduction**

- I. Discussion of legislation and the legislative requirement for the adoption of rules and regulations**
- II. Presentation of Notice of Intent**
- III. Presentation of the Fiscal and Economic Impact Statement for Administrative Rules**
- IV. Receive oral comments from interested parties**
- V. Acknowledge the receipt of comments received as of June 26, 2013**
- VI. Announcement of the deadline for written comments**
- VII. Open discussion**
- VIII. Timetable for the adoption of the rule**
- IX. Closing Comments**

## **NOTICE OF INTENT**

**Department of State**

**Elections Division**

### **Prohibition On Accumulation Of Annual, Sick and Compensatory Leave For Registrars Of Voters**

**(LAC 31:II.Chapter 1)**

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and under the authority of R.S. 18:18, R.S. 18:134, R.S. 18:1400.8 and R.S. 36:742, the Secretary of State hereby gives notice of his intent to adopt this Rule to amend LAC 31:II.Chapter 1 to implement a uniform time and attendance policy for the registrars of voters. The registrars of voters, who are the agency heads for their offices, in 53 of the 64 parishes have adopted a uniform time and attendance policy which has been accepted by the Department of State. This Rule serves to implement this time and attendance policy statewide, thus requiring all registrars of voters to adopt, implement and comply with this policy. Additionally, statewide implementation of this policy will provide for consistency in the human resources functions statutorily required of the Department of State for and on behalf of the registrars of voters.

#### **Title 31**

#### **ELECTIONS**

#### **Part II. Voter Registration and Voter Education**

#### **Chapter 1. Registrar of Voters**

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#### **§117. Prohibition on Accumulation of Annual, Sick and Compensatory Leave for Registrars of Voters**

A. The registrar of voters of each parish shall not be eligible to earn or accrue any type of annual or sick leave or paid time off, including compensatory leave, during his/her tenure as the registrar of voters.

B. Registrars of voters shall be considered in "duty status" at all times and therefore will not be required to report absences from the office, take leave for time away from the office or report hours worked to the Department of State for purposes of payroll processing, except for those overtime hours actually worked during early voting for which payment is required and authorized by R.S. 18:1400.8. Each registrar of voters will be solely responsible for the performance of the mandated duties of his/her office. Variances in time and attendance shall not affect the provision of duties and services mandated for each registrar of voters by the Louisiana Constitution and Title 18 of the Louisiana Revised Statutes.

C. Registrars of voters will remain eligible to receive pay for overtime hours actually worked during early voting as authorized by R.S. 18:1400.8.

D. The current balances of accrued annual, sick and compensatory leave for each registrar of voters shall be frozen as of March 4, 2013. Upon retirement or separation from service, each registrar of voters will be eligible to be paid for up to a combined total of 300 hours of accumulated annual and compensatory leave. The leave balances (annual, sick and compensatory) remaining will be reported by the Human Resources Division of the Department of State to the Registrars of Voters Employees' Retirement System for purposes of certification for retirement credit and calculation of retirement benefits, as allowed by the laws and rules governing that system.

E. Any annual, sick and compensatory leave accrued by an employee appointed as registrar of voters in the future shall be carried forward and frozen as of the date of the appointment as the registrar of voters. Upon retirement or separation from service, the registrar of voters will be eligible to be paid for up to a combined total of 300 hours of accumulated annual and compensatory leave. The leave balances (annual, sick and compensatory) remaining will be reported by the Human Resources Division of the Department of State to the Registrar of Voters Employees' Retirement System for purposes of certification for retirement credit and calculation of retirement benefits, as allowed by the laws and rules governing that system.

F. The provisions of this rule shall not be applied in violation of any provision of the Fair Labor Standards Act. Any application of such is strictly prohibited and shall render the applicable portion of the rule null and void.

G. The provisions of this rule apply to all 64 registrars of voters in the State of Louisiana and all registrars of voters that may be appointed in the future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:134, R.S. 18:1400.8 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, LR 39:

### **Family Impact Statement**

The proposed Rule amending LAC 31:II Chapter 1 regarding implementing a uniform time and attendance policy for the registrars of voters should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

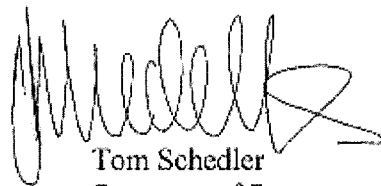
### **Poverty Impact Statement**

The proposed Rule amending LAC 31:II Chapter 1 regarding implementing a uniform time and attendance policy for the registrars of voters should not have any known or foreseeable

impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Interested persons may submit written comments to Ashley Gautreaux, Human Resources Director, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding the proposed Rule. A public hearing on the proposed Rule is scheduled for Thursday, June 27, 2013 at 10:00 a.m. in the Auditorium at the State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views or arguments either orally or in writing. The deadline for the Department of State to receive written comments is 4:30 p.m. on Friday, June 28, 2013 after the public hearing.

A handwritten signature in black ink, appearing to read 'Tom Schedler', with a stylized flourish at the end.

Tom Schedler  
Secretary of State



FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person Preparing Statement: Carol H. Guidry Dept.: State  
Phone: (225) 362-5142 Office: Elections Division  
Return Address: P.O. Box 94125 Rule Title: Prohibition of Accumulation of Annual, Sick & Compensatory Leave for ROV  
Baton Rouge, LA  
Date Rule Takes Effect: August 20, 2013

SUMMARY  
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to result in an indeterminable savings in future costs to the Registrar of Voters Employees' Retirement System. No effect on local governmental units is anticipated. The proposed rule change prohibits registrar of voters from earning any type of annual, sick or compensatory leave or paid time off. Prohibiting the accumulation of annual or sick leave by registrar of voters will eventually lead to the elimination of increased retirement benefits resulting from the conversion of unused sick or annual leave to service credit. The proposed rule change states that registrar of voters shall be considered in "duty status" at all times and therefore will not be required to report absences from the office, take leave for time away from the office or report hours worked, except for overtime hours actually worked during early voting for which payment is required. The proposal provides that the current balances of accrued annual, sick and compensatory leave for each registrar shall be frozen as of March 4, 2013. Upon retirement or separation from service, registrars will be eligible to be paid by the local governing authority for up to a combined total of 300 hours of accumulated annual and compensatory leave. The balance of annual and sick leave remaining (after the 300 hours) will be reported to the Registrar of Voters Employees' Retirement System for calculation of retirement benefits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

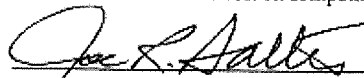
There is no anticipated effect on revenue collections of state or local governmental units as a result of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

For current registrar of voters, prohibiting the accumulation of additional leave after March 4, 2013 will reduce the amount of annual or sick leave available for conversion to service credit and will lead to a reduction in retirement benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

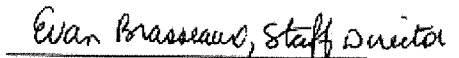
There is no estimated effect on competition and employment as a result of this rule change.

  
Signature of Agency Head or Designee  
Joe R. Salter, Undersecretary of Management & Finance

Typed Name & Title of Agency Head or Designee

05/09/2013

Date of Signature

  
Legislative Fiscal Officer or Designee

5/9/13

Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed policy will result in the prohibition of annual, sick, and compensatory leave for registrars of voters, who are the agency heads for their offices. On March 4, 2013, the Department of State Implemented Policy #46 regarding the prohibition on the accumulation of annual and sick leave and compensatory time for the registrars of voters. As a result, all balances of accrued annual, sick and compensatory leave were frozen. This Rule serves to implement a time and attendance policy statewide requiring all registrars of voters to adopt, implement and comply with this policy. This policy will provide for consistency in the human resource functions statutorily of the Department for and on behalf of the registrars of voters.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation

See A above.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) \_\_\_\_\_ Yes, if yes, attach documentation.

(b) \_\_\_\_\_ NO. If no, provide justification as to why this rule change should be published at this time

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 12-13	FY 13-14	FY 14-15
Personal Services			
Operating Expenses			
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>POSITIONS (#)</b>			

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed policy will have no effect on implementation costs or savings for the state.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 12-13	FY 13-14	FY 14-15
State General Fund			
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

N/A

II. B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed policy will have no effect on cost or savings for local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

N/A

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 12-13	FY 13-14	FY 14-15
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds			
Local Funds			
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The proposed policy will have no effect on revenue collections.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed policy will not result in any estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

N/A

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed policy will have no effect on competition and employments.

Sign - in Sheets/Public Hearing/Notice of Intent/ROV Leave

Name	E-mail	Phone Number
1 Willie Johnson	wjohnson@tary.paloalto.ca	985-748-3215
2 Debbie Waskom	ds.waskom@kernal.com	318 357 2261
3 Julie Holcomb	johelholcomb@att.net	985 519-1536
4 Sandra L. Spinner	morehouse.rov@sos.la.gov (office) duwandsandra@yahoo.com (home)	318-281-1434
5 Joni Ronsonet	jronsonet@yahoo.com	(337) 578-2487
6 DuWayne Ware	duwayne@stpgov.org	985-809-5500
7 Debbie Answorth	ardaw@rov@sos.la.gov (office) randyanddebbie@dishmail.net	318 649-2364 318 237-9030
8 Pat Geidrey	st.marten.rov@sos.la.gov pattherist@aol.com	337-394-2204
9 Liza Medini	stjames.rov@sos.la.gov	225-562-2445
10 MICHAEL J. BOGARD	vermilionrov@sos.la.gov	337-898-4324
11 Zany Chengye	st.charles.rov@sos.la.gov	985-783-5120

12 Joanne C Reed joanne.reed@sos.la 225-922-0900

13 Ashley Gautreaux ashley.gautreaux@<sup>sn.</sup>sos.la.gov 225-925-4696

14 John Russell Tang. ROV 985-748-3215

15 Carol Dix <sup>(225)</sup>caudry@sos.louisiana.gov 362-5142

16 Patricia Chesne Patricia.Chesne@sos.la.gov. 225 281-7477

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DEPARTMENT OF STATE, SECRETARY OF STATE  
PUBLIC HEARING, NOTICE OF INTENT, ROV LEAVE  
MINUTES OF HEARING HELD 6/27/13

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The Public Hearing was held at the State Archives Building Auditorium, 3851 Essen Lane, Baton Rouge and was called to order at 10:00 a.m. by Carol Guidry.

**PRESENT:**

Patricia Chesne, Secretary of State's Office  
Ashley Gautreaux (AG) Secretary of State's Office  
Carol Guidry (CG) Secretary of State's Office  
Merietta Norton (MN) Secretary of State's Office  
Joanne Reed (JR) Secretary of State's Office  
Debbie Ainsworth, Caldwell Parish Registrar of Voters  
Sandra Thomas (ST) Morehouse Parish Registrar of Voters  
Debbie Waskom, Natchitoches Parish Registrar of Voters  
Brian Champagne (BC) St. Charles Parish Registrar of Voters  
Lisa Medine, St. James Parish Registrar of Voters  
Pat Guidry, St. Martin Parish Registrar of Voters  
Jolene Holcombe, St. Mary Parish Registrar of Voters  
Joni Ronsonet, St. Mary Parish Registrar of Voters' Office  
Dwayne Wall (DW) St. Tammany Parish Registrar of Voters  
Willie Johnson, Tangipahoa Parish Registrar of Voters' Office  
John Russell (JR) Tangipahoa Parish Registrar of Voters  
Michael J. Bertrand, Vermilion Parish Registrar of Voters

Carol Guidry presented the Notice of Intent and discussed the legislative requirements for adoption of rules and regulations, as well as, the Fiscal and Economic Impact Statement for Administrative Rules. She also discussed the Notice of Intent, as well as, Policy #46.

CG: We were asked to do a rule. We are only going to amend one section of the current rule and that would be for the prohibition of accumulation of annual, sick and compensatory leave for the Registrars of Voters. This only applies to Registrar of Voters. It does not apply to any of the employees within their department. What we are going to do today is to discuss the Notice of Intent and also policy #46 which basically does what this Notice of Intent does. So we have drafted this Notice of Intent. It is not in effect yet. We will have discussion today on the Notice of Intent and we are going to accept any comments from anyone that wants to come up here and just make sure that you say your name so that we can have that information. We will send a copy of this information to the legislature. It will go to the oversight committees on both sides and it will go to



the Speaker of the House and the President of the Senate. The fiscal economic impact for the State of Louisiana is none for the Department of State; however, there is an impact for the Registrar of Voters' retirement system. Basically what the rule does is all of the Registrars of Voters will be considered just like a regular department head and will be considered in "duty status" for the entire time. What happened, I think it was in March, the annual and sick leaves were suspended and I don't know if you noticed but no leave has been placed on there. That is in accordance with the policy that we have. This policy, what it does to the retirement system is if you have any leave it will add to your years of service. I think everyone has had a chance to go over the policy and the notice of intent. I am going to allow anyone who wishes to speak to do so now. Any comments that we do receive will be sent to the legislature with a copy of the report.

Mrs. Guidry introduced the following: Ashley Gautreaux, Director of Human Resources; Joanne Reed, Director of Voter Registration; Merietta Norton, General Counsel; and Tricia Chesne all employees of the Secretary of State's Office.

CG: The comments/objections that have been received thus far were from Sandra Thomas, Morehouse Registrar of Voters, she just sent hers in. Hers was sent in after the Notice of Intent was published. However, we are going to allow the other objections that we have received. Okay. These were all done prior to the Notice of Intent being published and we are going to accept these. Let me go ahead and read Sandra's.

The letter received from Sandra Thomas, Morehouse, Registrar of Voters, was read aloud by Carol Guidry.

CG: We have Policy #2 of the Department of State is available on LASOSNET. That applies to classified and unclassified employees. Like I said, we have opted out of executive order for employees so we have our own policies. Also, Policy #46 which was signed on March 4, 2013.

ST: And what about Policy #2?

CG: Policy #2. I can get that information and send it out.

BC: The copy that I have says November 10, 2006.

CG: 2006 and it is in our records so if you need to go in and look at it...

JR: Is it important that the affected class, that being the Registrars are not employees of the Secretary of State?

CG: Well currently you are classified under, you receive your funding from and you have been placed under the Department of State. So under our parameters, we have the legislation but there are also Attorney General Opinions in the past that have reflected that the Registrar of Voters are employees of the Department of State. Well, it was Commissioner of Elections, but once the two departments merged. We have copies of those Attorney General Opinions that say that Registrars are under the Department of State.

JR: Can I get a copy of those?

CG: John Russell has asked for a copy of the opinions that stipulate that the Registrars are employees of the Department of State which would have been Commissioner of Elections in the past, but since then the departments have merged. After we get our comments through tomorrow afternoon we are going to be sending out a copy of the legislative report. Besides John Russell is there anybody that would like a copy of the AG Opinion?

ST: Could you refresh my memory as to when the Commissioner of Elections was merged with the Secretary of State's office?

CG: 2004.

The statement received from Caldwell Parish Registrar of Voters was read aloud.

CG: Comments were also received from Iberia, Natchitoches, St. Charles, St. James, and St. Mary using the same language.

JR: Excuse me. Is this being recorded?

CG: Yes it is.

John Russell requested of a copy of the meeting minutes.

BC: Good morning. I am Brian Champagne, the Registrar of Voters, St. Charles Parish. As Mrs. Guidry read I sent in a letter of objection to the implementation of Policy #46 in regards to my accumulation of leave, comp, and sick. I believe first of all that this rule is not following the correct procedure. The policy has not officially been adopted. The 100 day process has not gone through and I believe at this time our leave should still be counted. Myself and several other ROV's have submitted a request for an Attorney General's opinion and we are requesting whether the rule making process is following the correct policy of Title 49, and questioning whether this policy violates our rights under the

Louisiana Constitution, revised statutes and Federal Statutes, whether it is a contract once you are appointed as Registrar of Voters, when you are receiving those benefits whether they can or cannot be taken away by implementation of a rule, what entity, the Governor, the Legislature, the Secretary of State, or the trustees of the Registrar of Voters, and the employee retirement system. Who has the authority to adjust our leave? As appointing authority of our office can we set the policy? Can any Registrar of Voters or any unclassified employee sign a statement giving up their right to accumulate leave? I became Registrar in 2007 and had discussion with Pam Rainey, Ken Landry, and Angie Rogers and received a copy of Policy #2 and signed that policy in 2010. I ask that in addition to House and Senate & Governmental Affairs Committees that this information also be provided to the Retirement Committees.

CG: The Notice of Intent will first be provided to H&GA and S&GA and they can refer it to another committee.

JR: We request that it be sent to the Retirement Committees or any committees overseeing anything to do with Policy 46.

CG: This request will be noted in the report to the Legislature.

Brian Champagne had documents to submit and provided them to Carol Guidry.

BC: I have looked and tried to find the definition for on duty status.

AG: The term is not defined in any policy and that it is a nebulous term that means available for work.

BC: It needs a legal definition. I would appreciate a clarification from the Secretary of State for the legal definition of "on duty status".

DW: I am Dewayne Wall, St. Tammany Parish ROV. I just wanted to make sure that it went on the record, I know that you didn't mention my letter but I emailed my letter to Kyle Ardoin and cc'd Tom Schedler and Ken Landry and my letter of opposition and it basically just states that as Registrar of Voters for St. Tammany Parish I object to implementation of Policy #46. Registrars of Voters are appointed authorities under the state constitution. Please reinstate Registrars time and attendance reporting in ISIS for accumulation of sick, annual and compensatory leave for St. Tammany Parish. I am not sure how that letter did not get to the appropriate people but it was emailed on June ---

CG: That is why we read the comments to make sure they are received.

ST: I am Sandra Thomas the Registrar of Voters for Morehouse Parish. I have several things I want to bring out. This Policy #2 was implemented November 10, 2006, but what policy were we operating under from 2004-2006? I always operated under the executive orders of the governor and I have not received notification that we were put under Policy #2. I want to know why we were not notified that we were operating under Policy #2. I do object to my letter not being included. I don't know if there is a deadline didn't see that but my objection was filed prior to the actual hearing so I would like to object to my letter not being included.

CG: We have opted to include all comments. Before we get ready to go with the legislature, I will get with Kyle to make sure that I have received all of them.

JR: Excuse me that confused me. Since this is a rule under the Administrative Procedures Act, and it has prescribed policies and guidance on how the timelines are and the chronology of events.

DW: I want to stop you I am sorry. Can that mic pick him up?

JR: Since this is a process that is highly regulated by procedure, can you make arbitrary adjustments to that here to accept this comment or that comment and have that be admissible in the process? Meaning today can you today say well we didn't receive your comment or if one of our hands didn't give it to the other get it in to us by 4:30 tomorrow and we will accept it? How are we to know that will be bonified and binding and illustrating of our comments? That is a concern to me.

CG: Okay, I will answer that one too. Before we proceed let me go ahead and answer the questions that we had by Sandra and John.

JR: We posed them to the Attorney General.

CG: Hmm?

JR: Those are questions we have sent to the Attorney General.

CG: Correct.

JR: You are going to answer them for the Attorney General?

CG: No.

JR: Okay. Excuse me.

CG: What I am going to do is respond to some of the information that was requested. Okay let's go back to what was in place for the employees the classified and unclassified employees. During 2004-2006 an executive order was in place. My recollection was that there was an Attorney General's Opinion. They were going to come in and remove annual, sick and comp. at one time and so we sent a request for an opinion whether or not the Registrars of Voters were part of the Commissioner of Elections. The AG Opinion also asked if we could make a decision on whether or not we would follow it. So what we did we opted out of using the regular annual and sick leave one that was done by the executive order? The AG Opinion came back and from what I can recall it said that the AG stipulated that the Registrars of Voters were in the Department of State and they were classified as state employees and that the Department could do any policies in regard to leave. So when we opted to use the executive order that is what we used. Now with Suzie Terrell she opted to use executive orders. We followed civil service for time and attendance reporting. When we came over to the Department of State, the Secretary of State has the option to establish policies for individual sections. The merger took quite a bit of time to actually go into effect. So they opted to continue doing leave as it was. Now with the current opinion by Bobby Jindal it states that state-wide elected officials are not included in there so with regard to which policy do you use policy and procedures were adopted and it was decided to also do it as a rule so that comments could be included. The oversight committees may either leave the rule as it is, make changes, or reject the notice of intent.

BC: Ms. Gautreaux, are you aware that Policy #2 was sent out and signed under Jay Dardenne? Could someone get back to me and let me know whether or not it was sent to every ROV office?

ST: When was Policy #2 changed?

CG: When #46 was adopted.

ST: There is no uniformity. I am opposed to the policy because it is not uniform and across the board. I ask that it be brought before the retirement committee because of the detriment to the ROV retirement.

CG: Secretary Schedler doesn't accumulate leave either.

ST: I am concerned and would like to know more about the Secretary of State's authority on prohibition.

CG: Pam Rainey, who was the director of human resources, is no longer with the Department. Ashley Gautreaux has been here since October.

BC: I would like to ask when did Secretary of State revise Policy #2. There was a question by Ms. Loraine Dees. I have here copies of emails from Ashley Gautreaux replying to a concern sent to her on whether or not registrars would be affected, to which she responds changes to Policy #2 would not affect ROV's or the 300 balance cash out.

CG: We did have another comment. We received a comment from the Office of Uniform Payroll and it shows no impact.

Mrs. Guidry goes over the timetable for the adoption of the rule.

CG: We will get all of this information that you have requested. After we get this narrative report done we will send it to the legislature.

CG: We can notify you when the public meeting for the oversight committees is scheduled. What they have done in the past is the House and the Senate will have a joint meeting. The earliest we can publish the rule is August 20<sup>th</sup>. Once we have that public hearing, within 4 days the committee will have a favorable or non-favorable opinion. Earliest the rule can be adopted is August 2013.

JR: This isn't the public hearing you are talking about is it?

CG: No. There will be a hearing with the legislature with H&GA and Senate and Governmental Affairs.

JR: Now what is this prospective August date that you are talking about?

CG: That is the earliest that we can adopt the rule.

JR: If you can't adopt the rule until August, what does March 4<sup>th</sup> have to do with anything?

CG: March 4<sup>th</sup> is the deadline under the authority of the Secretary of State to adopt procedures. It was under that executive order that was issued by Bobby Jindal. He issued one stipulating that state-wide elected officials were not under there. So that is when the Secretary of State can make decisions on what the leave policies will be for the department. According to the AG Opinion that we have operated under in the past is that the Registrars of Voters are state employees under the Commissioner of Elections, now named Department of State.

BC: You are saying that the SOS doesn't have to follow the governor's executive orders with regard to our leave.

- CG: He could adopt his own policies. He adopted the policy under his authority but he opted to do the Notice of Intent so that there will be comments received. He decided to do this so that everybody could get a chance to see what was done and make sure it is out there in the public. Copies of the Notice of Intent were sent to every Registrar.
- BC: I would like to see the executive order that gives the SOS authority to adopt his own policies under his own authority. Why all of this back and forth for the last year? Secretary Schedler could have put it all to an end by saying this is the policy for your office and that is it we have to follow it.
- CG: Yes.
- BC: So why didn't he?
- CG: He did.
- BC: He did finally but why didn't we, I mean all of this could have been settled months ago?
- CG: It is my understanding under the AG Opinions that we have had in the past plus the executive order.
- CG: The only thing...Well, I know that your salaries cannot be changed. That is done by legislation.
- JR: Why?
- CG: Salaries are governed by state statute.
- DW: I would like to request a copy of the narrative report that you will be sending to the oversight committee.
- JR: I would like a copy of every AG Opinion that you have referenced.
- BC: I would like a copy of that executive order.
- CG: I will make sure that you get a copy.
- ST: Policies are changed. It would be great if the Registrars get copies of Policy #2 as it changes.

BC: For the last change to Policy #2, Robert Poché found it on LASOS and sent the changed policy to the ROV's and they were unaware prior to Robert Poché sending. I never did get a formal email that Policy #2 was changed.

CG: Ashley would like to make a comment?

AG: No.

CG: Joanne?

JR: No ma'am

CG: Merietta?

MN: No.

CG: Okay well like I said we will have 4 days to work up our narrative and we will include everything from today. We will send out copies of that information.

JR: On behalf of the association I would like to thank you Carol, and Ashley, Joanne, Merietta and Tricia. And I hope it will all come out with a good ending.

CG: On your opinion requests, could I get a copy of the request for the Attorney General's Opinion submitted to the AG by the Registrars?

BC: You have it. It is in the copies of various documents that I gave to you earlier.

The Public Hearing of the Department of State, Secretary of State's Office adjourned at 10:59 a.m.

*Addendum:* After the meeting adjourned a question was asked as to how many parishes had signed off on Policy #46. Carol Guidry responded 52.



DEPARTMENT OF STATE  
 ROV TIME AND ATTENDANCE POLICIES  
 RECEIVED AS OF MARCH 4, 2013 AT 9 AM

#	PARISH
1	Acadia
2	Allen
3	Ascension
4	Assumption
5	Avoyelles
6	Beauregard
7	Bienville
8	Bossier
9	Caddo
10	Calcasieu
11	Cameron
12	Catahoula
13	Claiborne
14	Concordia
15	DeSoto
16	East Baton Rouge
17	East Carroll
18	East Feliciana
19	Evangeline
20	Franklin
21	Grant
22	Iberville
23	Jackson
24	Jefferson
25	Jefferson Davis
26	Lafayette
27	Lafourche

#	PARISH
28	LaSalle
29	Lincoln
30	Livingston
31	Madison
32	Orleans
33	Ouachita
34	Plaquemines
35	Pointe Coupee
36	Rapides
37	Red River
38	Richland
39	Sabine
40	St. Bernard
41	St. Helena
42	St. John
43	St. Landry
44	Tensas
45	Terrebonne
46	Union
47	Vernon
48	Washington
49	Webster
50	West Baton Rouge
51	West Carroll
52	West Feliciana
53	Winn

**COMMENTS  
AND  
RESPONSES**

Uniform Payroll

**Carol Guidry**

---

**From:** Ashley Gautreaux  
**Sent:** Tuesday, June 04, 2013 3:53 PM  
**To:** Carol Guidry  
**Subject:** FW: Leave Accrual for Registrar of Voters

Please see below.

Thank you,

Ashley Gautreaux, SPHR  
Human Resources Director  
Human Resources Division  
Secretary of State Tom Schedler  
225.362.5186 (o)  
225.925.6034 (f)



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**From:** Ashley Gautreaux  
**Sent:** Wednesday, May 29, 2013 10:58 AM  
**To:** 'Lawanna Green'  
**Cc:** Andrea Hubbard; Cynthia Spann  
**Subject:** RE: Leave Accrual for Registrar of Voters

Good morning,

The employees who would be affected by this rule (the Registrar of Voters in each of the 64 parishes) have not earned leave in the LaGov HCM system since March 4, 2013. Effective that date, we made changes to the attributes on their positions that basically mimics the coding for an elected official. So, they no longer earn annual or sick leave. There are no programming requirements that I am aware of that will arise if this rule is adopted as written. Please let me know if you have any additional questions.

Thank you,

Ashley Gautreaux, SPHR  
Human Resources Director  
Human Resources Division  
Secretary of State Tom Schedler  
225.362.5186 (o)  
225.925.6034 (f)



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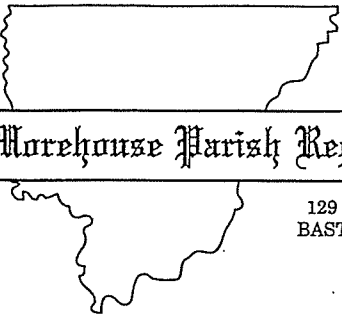
**From:** Lawanna Green [<mailto:Lawanna.Green@LA.GOV>]  
**Sent:** Friday, May 24, 2013 8:14 AM  
**To:** Ashley Gautreaux  
**Cc:** Andrea Hubbard; Cynthia Spann  
**Subject:** Leave Accrual for Registrar of Voters

OSUP has reviewed your agency's Notice of Intent published in the May 2013 Louisiana Register. Can you tell me what type of impact this rule, if finalized in its current form, will have on LaGov HCM processes? Are these employee currently earning leave in LaGov HCM? If so, how? Will any system changes be needed? Any information provided will be appreciated.

Thank you,

*Lawanna M. Green*  
Assistant Director  
Office of State Uniform Payroll  
Phone: 225.342.5333, Fax: 225.342.1650  
Email: [lawanna.green@la.gov](mailto:lawanna.green@la.gov)

**DO NOT** read, copy or disseminate this communication unless you are the intended addressee. This communication may contain information that is privileged, confidential and exempt from disclosure under the applicable law. If you are not the intended recipient, you are on notice that any unauthorized disclosure, copying, distribution, or taking of any action in reliance on the contents of the electronically transmitted materials is prohibited. Please notify immediately the sender **via EMAIL** that you have received this communication in error.



Morehouse Parish Registrar Of Voters

129 NORTH FRANKLIN ST.  
BASTROP, LOUISIANA 71220  
(318) 281-1434  
FAX: (318) 281-0929

MRS. SANDRA R. THOMAS  
REGISTRAR OF VOTERS

MRS. PATRICIA H. BOWEN  
DEPUTY REGISTRAR

MRS. MARSHA FARRAR  
CONFIDENTIAL ASSISTANT

June 12, 2013

Mr. Kyle Ardoin, First Assistant  
Secretary of State's Office  
P. O. Box 94125  
Baton Rouge, LA 70804-9125

Dear Mr. Ardoin:

As Registrar of Voters for Morehouse Parish, after much thought and consideration, I am hereby filing this statement as my opposition to the implementation of Policy #46, dated March 4, 2013. Policy #46 prohibits the accumulation of annual, sick and compensatory leave for Registrars of Voters across the state, but is not applicable to the other unclassified positions in my office (Chief Deputy and Confidential Assistant).

I, along with all unclassified employees in this office, continue to maintain time and attendance records, all as outlined by Executive Order BJ 2012-2.

Sincerely,



Sandra R. Thomas  
Registrar of Voters

cc: Mr. Tom Schedler, Secretary of State  
Mr. Kenneth Landry, Human Resources Assistant Director  
Ms. Ashley Gautreaux, Human Resources Director



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Sandra R. Sims  
Morehouse Parish Registrar of Voters  
129 North Franklin Street  
Bastrop, Louisiana 71220

RE: Letter Objecting to Implementation of Policy No. 46

Dear Ms. Sims:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg

*Caldwell Parish Registrar of Voters*

Debbie Ainsworth, Registrar

P.O. Box 1107  
Columbia, Louisiana 71418  
Phone (318) 649-7364  
Fax (318) 649-7320

March 19, 2013

Kyle Ardoin, First Assistant  
Department of State  
PO Box 94125  
Baton Rouge, LA 70804-9125

Dear Mr. Ardoin:

As Registrar of Voters for Caldwell Parish, I object to implementation of policy 46, dated March 4, 2013. Registrars of Voters are appointing authorities under the State Constitution and set its own policies and procedures. Please reinstate the Registrars' time and attendance reporting in ISIS and accumulation of Annual, Sick and Compensatory leave for Caldwell Parish.

Sincerely,



Debbie Ainsworth  
Registrar of Voters  
Parish of Caldwell

cc Secretary of State, Tom Schedler  
Human Resources, Ken Landry



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Debbie Ainsworth  
Caldwell Parish Registrar of Voters  
P.O. Box 1107  
Columbia, Louisiana 71418-1107

RE: Letter Objecting to Implementation of Policy No. 46

Dear Ms. Ainsworth:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kyle Ardoin".

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg



**Mildred L. Adams, Registrar of Voters  
Parish of Iberia**

COURTHOUSE BUILDING - SUITE 110  
300 S. IBERIA STREET  
NEW IBERIA, LA 70560-4543  
PHONE (337) 369-4407  
FAX (337) 369-4409  
iberiarov@sos.la.gov

March 19, 2013

Mr. Kyle Ardoin, First Assistant  
Department of State  
PO Box 94125  
Baton Rouge, LA 70804-9125

Dear Mr. Ardoin

As Registrar of Voters for Iberia Parish, I object to the implementation of Policy #46, dated March 4, 2013. Registrars of Voters are the appointing authorities under the state Constitution of Louisiana and therefore set their own policies and procedures. Please reinstate the Registrars' time and attendance reporting in ISIS and the accumulation of Annual, Sick and Compensatory leave for Iberia Parish.

Sincerely,

  
Mildred L Adams, Registrar of Voters  
Iberia Parish

CC: Honorable Tom Schedler, Secretary of State  
Mr. Ken Landry, Human Resources Specialist



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Mildred L. Adams  
Iberia Parish Registrar of Voters  
300 S. Iberia Street, Suite 110  
New Iberia, Louisiana 70560-4543

RE: Letter Objecting to Implementation of Policy No. 46

Dear Ms. Adams:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kyle Ardoin".

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg



**Debbie Waskom**  
REGISTRAR OF VOTERS

## REGISTRAR OF VOTERS

Natchitoches Parish

**Brenda Ellzey**  
CHIEF DEPUTY

**Debbie Tebbetts**  
CONFIDENTIAL ASST.

March 22, 2013

Mr. Kyle Ardoin, First Assistant  
Department of State  
P.O. Box 94125  
Baton Rouge, LA 70804-9125

Mr. Ardoin,

As Registrar of Voters for Natchitoches Parish, I object to implementation of Policy #46, dated March 4, 2013. Registrars of Voters are Appointing Authorities under the Louisiana State Constitution and set their own Policies and Procedures. Please reinstate my Time and Attendance reporting in ISIS and accumulation of Annual, Sick and Compensatory Leave.

Sincerely,

Deborah S. Waskom  
Registrar of Voters

CC: Honorable Tom Schedler, Secretary of State  
Mr. Kenneth Landry, Human Resources Assistant Director



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Debbie S. Waskom  
Natchitoches Parish Registrar of Voters  
P.O. Box 677  
Natchitoches, Louisiana 71458-0677

RE: Letter Objecting to Implementation of Policy No. 46

Dear Ms. Waskom:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

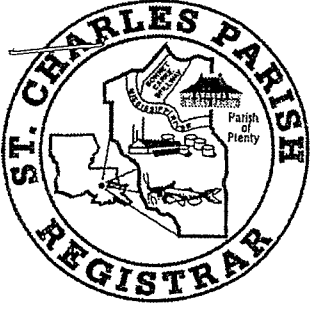
Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg



Brian J. Champagne  
Registrar of Voters

# Parish of St. Charles

## REGISTRAR OF VOTERS

March 19, 2013

Mr. Kyle Ardoin, First Assistant  
Department of State  
P.O. Box 94125  
Baton Rouge, LA 70804-9125

Mr. Ardoin,

As Registrar of Voters for St. Charles Parish, I object to implementation of Policy #46, dated March 4, 2013. Registrars of Voters are Appointing Authorities under the Louisiana State Constitution and set their own Policies and Procedures. Please reinstate my Time and Attendance reporting in ISIS and accumulation of Annual, Sick and Compensatory Leave.

Sincerely,

A handwritten signature in cursive script that reads "Brian J. Champagne".

Brian J. Champagne  
Registrar of Voters

CC: Honorable Tom Schedler, Secretary of State  
Mr. Kenneth Landry, Human Resources Assistant Director



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Brian J. Champagne  
St. Charles Parish Registrar of Voters  
P.O. Box 315  
Hahnville, Louisiana 70057-0315

RE: Letter Objecting to Implementation of Policy No. 46

Dear Mr. Champagne:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

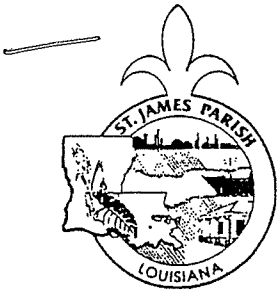
As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kyle Ardoin".

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg



# Registrar of Voters

Parish of St. James  
State of Louisiana

P.O. Box 179

Convent, LA 70723-0179

(225) 562-2330 562-2446 562-2403 Vacherie  
562-2445 562-2331 Fax

*Lisa Granier Medine*  
Registrar

March 19, 2013

Mr. Kyle Ardoin, First Assistant  
Department of State  
PO Box 94125  
Baton Rouge, La 70804-9125

Dear Mr. Ardoin:

As Registrar of Voters for St. James Parish, I object to implementation of Policy #46, dated March 4, 2013. Registrars of Voters are appointing authorities under the State Constitution and therefore set their own policies and procedures. Please reinstate the Registrars' time and attendance reporting in ISIS and accumulation of Annual, Sick and Compensatory leave for St. James Parish.

Sincerely,

Lisa Granier Medine  
Registrar of Voters  
St. James Parish

cc: Secretary of State, Tom Schedler  
Human Resources, Ken Landry



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Lisa Granier Medine  
St. James Parish Registrar of Voters  
P.O. Box 179  
Convent, Louisiana 70723-0179

RE: Letter Objecting to Implementation of Policy No. 46

Dear Ms. Medine:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg



JOLENE HOLCOMBE  
REGISTRAR

## ST. MARY PARISH REGISTRAR OF VOTERS

500 MAIN STREET, ROOM 301  
FRANKLIN, LA 70538  
(337) 828-4100 EXT 360  
Fax: (337) 829-9901

March 19, 2013

Kyle Ardoin, First Assistant  
Department of State  
PO Box 94125  
Baton Rouge, LA 70804-9125

Dear Mr. Ardoin:

As Registrar of Voters for St. Mary Parish, I object to the implementation of Policy #46, dated March 4, 2013. Registrars of Voters are the appointing authorities under the state constitution of Louisiana and therefore set their own policies and procedures. Please reinstate the Registrars' time and attendance reporting in ISIS and the accumulation of Annual, Sick and Compensatory leave for St. Mary Parish.

Sincerely,



Jolene Holcombe  
Registrar of Voters  
St. Mary Parish

cc: Secretary of State, Tom Schedler  
Human Resources, Ken Landry



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Jolene Holcombe  
St. Mary Parish Registrar of Voters  
500 Main Street, Courthouse  
Room 301  
Franklin, Louisiana 70538

RE: Letter Objecting to Implementation of Policy No. 46

Dear Ms. Holcombe:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg

**ST. TAMMANY PARISH  
REGISTRAR OF VOTERS**



M. DWAYNE WALL, CERA  
REGISTRAR

March 19, 2013

Kyle Ardoin, First Assistant  
Department of State  
PO Box 94125  
Baton Rouge LA 70804-9125

Dear Mr. Ardoin,

As Registrar of Voters for St. Tammany Parish, I object to implementation of policy 46, dated March 4, 2013. Registrars of Voters are appointing authorities under the State Constitution and set its own policies and procedures. Please reinstate the Registrars' time and attendance reporting in ISIS and accumulation of Annual, Sick and Compensatory leave for St. Tammany Parish.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Dwayne Wall".

M. Dwayne Wall  
Registrar of Voters  
Parish of St. Tammany

cc Secretary of State, Tom Shedler  
Human Resources, Ken Landry



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable M. Dwayne Wall  
St. Tammany Parish Registrar of Voters  
701 N. Columbia Street  
Covington, Louisiana 70433

RE: Letter Objecting to Implementation of Policy No. 46

Dear Mr. Wall:

The Secretary of State has received and noted your objection to Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters", which was effective as of March 4, 2013. In your letter, you claim that you set your own policies and procedures, and request that your individual time and attendance reporting be reinstated.

Please note that the Attorney General's Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that "the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]". (La. Atty. Gen. Op. No. 88-118.)

As such, the Secretary of State has the authority to implement a leave policy for the Registrars of Voters and you are subject to Policy No. 46.

Sincerely,

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg

St. Martin ROV

**Carol Guidry**

---

**From:** Carol Guidry  
**Sent:** Monday, July 01, 2013 10:02 AM  
**To:** Ashley Gautreaux  
**Subject:** FW: T & A Policy

Tracking:	Recipient	Delivery	Read
	Ashley Gautreaux	Delivered: 7/1/2013 10:02 AM	Read: 7/1/2013 10:33 AM

FYI

Carol

Carol H. Guidry  
Director of HAVA  
Legal Division  
Secretary of State Tom Schedler  
(225) 362-5142  
(800) 883-2805 (Ext. #614)  
(225) 922-1180



This communication may contain confidential information intended only for the person to whom it is addressed. Any views or opinions expressed are solely those of the author and do not necessarily represent those of the Secretary of State's Office. Any improper use, dissemination, forwarding, printing or copying of this email without consent of the originator is strictly prohibited. If you have received this email in error, please immediately notify the sender.

---

**From:** St. Martin ROV  
**Sent:** Friday, June 28, 2013 7:47 AM  
**To:** Carol Guidry  
**Subject:** FW: T & A Policy

Carol,

This is what I sent to Mr. Ardoin.

Thank you,

Pat Guidry  
St. Martin Parish

---

**From:** St. Martin ROV  
**Sent:** Monday, February 25, 2013 1:58 PM  
**To:** Kyle Ardoin  
**Subject:** T & A Policy

Mr. Ardoin,

*I have been with the registrar of voters office since March 1, 1990. I became registrar on June 21, 2011.*

*I did not sign the time and attendance policy because I feel that this will create more registrars not being accountable for their time. I am not saying that this new time and attendance policy is not good but I feel that it was done entirely too fast. I understand that something needs to be done. The registrar of Washington Parish is the "new kid on the block" and what he said really hit the nail on the head!*

Thank you,

Pat Guidry



TOM SCHEDLER  
SECRETARY OF STATE

*Secretary of State*  
*State of Louisiana*

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
[www.sos.louisiana.gov](http://www.sos.louisiana.gov)

November 25, 2013

Honorable Patricia T. Guidry  
St. Martin Parish Registrar of Voters  
415 Saint Martin Street  
St. Martinville, Louisiana 70582

RE: Comment on Time and Attendance Policy

Dear Ms. Guidry:

The Secretary of State has received your comment relating to the time and attendance policy. In your email of February 25, 2013, you state that you did not sign the time and attendance policy because you felt it “will create more registrars not being accountable for their time”. You also indicated that you felt the time and attendance policy was done “entirely too fast”.

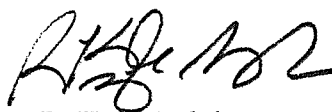
Please note that the Attorney General’s Office has confirmed that La. R.S. 18:58 subjects Registrars of Voters to the direction of the Department of State, opining that “the registrars of voters offices are subject to the personnel policies established by Commission of Elections [which is now the Department of State]”. (La. Atty. Gen. Op. No. 88-118.) Another Attorney General Opinion advised that “as head of the Department of Elections and Registration, the Commissioner [of Elections] has the implied authority to promulgate uniform rules relative to the earning of annual, sick and other forms of leave by the registrars and other unclassified officials and employees.” (La. Atty. Gen. Op. No. 85-355.)

Page 2

November 25, 2013

After several months of working with the Registrars of Voters to update the existing time and attendance policy, the Secretary of State implemented Policy No. 46, "Prohibition on Accumulation of Annual and Sick Leave and Compensatory Time for Registrars of Voters" effective as of March 4, 2013, and has exercised his authority to adopt LAC 31:II.Chapter 1 §117, "Prohibition on Accumulation of Annual, Sick and Compensatory Leave for Registrars of Voters".

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kyle Ardoin". The signature is stylized and cursive.

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg



MOREHOUSE  
PARISH

Sandra R. Thomas, Registrar Of Voters

# FAX COVER SHEET

Morehouse Parish Registrar of Voters  
129 North Franklin Street  
Bastrop, Louisiana 71220  
Telephone: (318) 281-1434  
Fax: (318) 281-0929

FAX NUMBER: 1-225-925-6034

DATE: June 28, 2013

TO: Ashley Gaubeaux

FROM: SANDRA R. THOMAS, REGISTRAR OF VOTERS

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET: 3

Please verify you  
receive this!

## Comments:

Ashley —

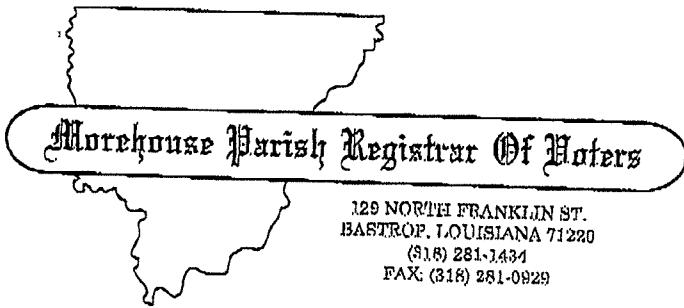
~~██████████~~ Attached is letter of opposition to implementation of rule prohibiting the accumulation of annual, sick and compensatory leave — to be included in SOS submission to the oversight committees.

I am mailing the original letter to you today!

Sandra Thomas  
Registrar of Voters

If all pages are not received, please call sender at (318) 281-1434

Received in HR  
On 6-28-13  
By jb



MRS. SANDRA R. THOMAS  
REGISTRAR OF VOTERS

MRS. PATRICIA H. BOWEN  
DEPUTY REGISTRAR

MRS. MARSHA FARRAR  
CONFIDENTIAL ASSISTANT

June 28, 2013

Ms. Ashley Gautreaux, Human Resources Director  
Secretary of State  
P. O. Box 94125  
Baton Rouge, LA 70804

Dear Ms. Gautreaux:

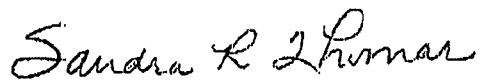
Please be advised I would like to submit the following regarding the Rule prohibiting the accumulation of annual, sick and compensatory leave for Registrars of Voters (Title 31, Part II, Chapter 1, Section 117...) and request this submission be included in the documents from the hearing held on Thursday, June 27, 2013 to be forwarded to the oversight committees:

- 1) As Registrar of Voters since September 1, 1976, I (along with all employees of this office) have accumulated annual, sick and compensatory leave and have taken leave as outlined under the Executive Orders of the various Governors.
- 2) Until the rule hearing on Thursday, June 27, 2013 when Ms. Carol Guidry advised all in the audience, I was not aware the Registrars of Voters and employees within these offices operated under Secretary of State Policy No. 2. I have never been given a copy of same and, therefore, have no knowledge of its contents.
- 3) I have served as Registrar of Voters for Morehouse Parish, LA since 1976 and have worked with the following Commissioners of Elections and Secretaries of State: Mr. Doug Fowler, Mr. Jerry Fowler, Ms. Susie Terrell, Mr. Al Ater, Mr. Jay Dardenne and Mr. Tom Schedler, with copies of Executive Orders of the sitting Governor originating from these offices.
- 4) Of significant concern is the reduction in retirement benefits, which is openly acknowledged under the Fiscal and Economic Impact Statement for Administrative Rules accompanying the Notice of Rule 1: "III. Estimated costs and/or economic benefits to directly affected persons or non-governmental groups (summary): **For current registrars of voters, prohibiting the accumulation of additional leave after March 4, 2013 will reduce the amount of annual or sick leave available for conversion to service credit and will lead to a reduction in retirement benefits**".
- 5) I disagree with the Family Impact Statement under the Notice of Rule in that a reduction in retirement benefits would have a detrimental and negative effect on the family earning and family budget, due to a possible reduction in retirement income.
- 6) The Secretary of State does not have any authority to reduce retirement benefits. The

- 1974 Constitution clearly leaves this to the Legislature.
- 7) Any leave policy should be uniform - the same policy should apply to the Registrar of Voters of each parish, as well as every employee in the office (with the exception of civil service employees). To allow Chief Deputies and other unclassified employees to accumulate leave while restricting the accumulation of leave to Registrars of Voters appears to be discriminatory in nature.
  - 8) I agree with the "on duty" status of Registrars of Voters. Clearly, when appointed, Registrars of Voters are appointed to a position of authority, of accountability, of service to the public - not just during the 8:00 to 4:30 office hours, but FULL TIME. This may mean simply answering questions about voting/elections at the grocery store, or giving an informational talk at a local civic organization, or appearing on television at 6:00 in the morning to talk about an issue relative to the duties and functions of the Registrar of Voters' office.

In closing, I would like to reiterate I oppose the implementation of the Rule prohibiting the accumulation of annual, sick and compensatory leave for Registrars of Voters.

Very truly yours,



Mrs. Sandra R. Thomas  
Morehouse Parish Registrar of Voters



TOM SCHEDLER  
SECRETARY OF STATE

Secretary of State  
State of Louisiana

P.O. Box 94125  
BATON ROUGE, LA 70804-9125  
www.sos.louisiana.gov

November 25, 2013

Honorable Sandra R. Sims  
Morehouse Parish Registrar of Voters  
129 North Franklin Street  
Bastrop, Louisiana 71220

RE: Letter Objecting to Promulgation of LAC 31:II.Chapter 1 §117, "Prohibition on Accumulation of Annual, Sick and Compensatory Leave for Registrars of Voters".

Dear Ms. Sims:

We are in receipt of your letter dated June 28, 2013 in opposition to LAC 31:II.Chapter 1 §117, "Prohibition on Accumulation of Annual, Sick and Compensatory Leave for Registrars of Voters". It will be included in the documents forwarded to the oversight committees.

Please note that the Attorney General's Office has determined that "[t]he functions of the registrars and their offices are subject to the rules and regulations of the Department of Elections and Registration, a part of the executive branch of state government." (La. Atty. Gen. Op. No. 89-216, citing La. Const. Art. IV, §12 and former La. R.S. 36:662 (repealed).)

Another Attorney General Opinion advised that "as head of the Department of Elections and Registration, the Commissioner [of Elections] has the implied authority to promulgate uniform rules relative to the earning of annual, sick and other forms of leave by the registrars and other unclassified officials and employees." (La. Atty. Gen. Op. No. 85-355.)

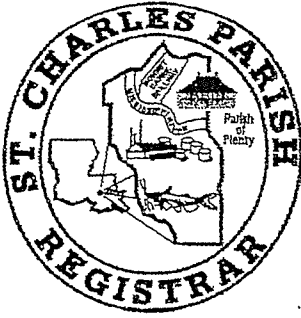
Now that the Department of Elections and Registration is under the aegis of the Department of State, the Secretary of State likewise has the authority to adopt LAC 31:II.Chapter 1 §117, "Prohibition on Accumulation of Annual, Sick and Compensatory Leave for Registrars of Voters".

Sincerely,

R. Kyle Ardoin  
First Assistant  
Secretary of State

KA:cg

**DOCUMENTS**  
**FROM**  
**ST. CHARLES PARISH**  
**REGISTRAR OF VOTERS**



Brian J. Champagne  
Registrar of Voters

# Parish of St. Charles

## REGISTRAR OF VOTERS

June 12, 2013

Honorable James D. Caldwell  
Attorney General  
Louisiana Department of Justice  
1885 N. Third Street  
Baton Rouge, LA 70804

Mr. Caldwell,

On Monday March 4, 2013 I received an Email from Ms. Ashley Gautreaux, Human Resource Director for the Louisiana Secretary of State's Office informing all Registrars of Voters that Policy #46 had been implemented on that Date to prohibit a Registrar from accumulating Annual, Sick, or Compensatory Leave Time. I responded to First Assistant Secretary of State Kyle Ardoin on March 19, 2013 my objection to the implementation of Policy #46 as the Appointing Authority for the Registrar of Voters Office under the State Constitution. Secretary of State Tom Schedler replied back to me on that same day that his Office was going to have Policy #46 approved through the Administrative Procedure Act Rule Making Process.

As my Legal Advisor according to R.S. 18:64, I am requesting an Official Opinion as to whether this Policy #46 is legally applicable with all State and Federal Laws.

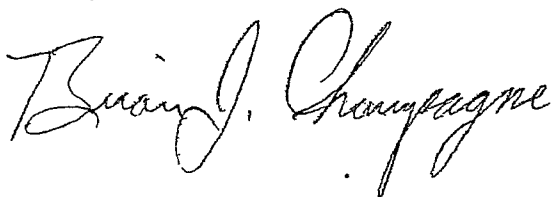
1. Has Title 49 Chapter 13. Administrative Procedure been properly followed in denying my Accumulation of Leave effective on March 4<sup>th</sup> when the Rule Making Procedure has not gone through the 100 Day Process to implement such a Policy ?
2. Does Policy #46 violate my Retirement Protections guaranteed by the Louisiana State Constitution, Louisiana Revised Statutes and any applicable Federal Statutes ?

P.O. Box 315 • Hahnville, LA 70057 • (985) 783-5120 • Fax (985) 783-5121  
[www.stcharlesgov.net/departments/rov.html](http://www.stcharlesgov.net/departments/rov.html) • Email: [registrarofvoters@stcharlesgov.net](mailto:registrarofvoters@stcharlesgov.net)

3. Once the Registrar of Voters and Unclassified Employees (Chief Deputy or Confidential Assistant) are appointed, is the accumulation of Annual, Sick, or Compensatory Leave Time while holding Office a Contractual Employee/Employer Benefit Obligation guaranteed by the Louisiana State Constitution, Louisiana Revised Statutes and any applicable Federal Statutes ?
4. What Legal Entity if any (the Governor, Louisiana State Legislature, Secretary of State or the Trustees of the Registrar of Voters Employees' Retirement System) has the Authority to modify, reduce or eliminate the accumulation of Annual, Sick, or Compensatory Leave Time for the Office of Registrar of Voters and Unclassified Employees (Chief Deputy or Confidential Assistant) ?
5. As the Appointing Authority of my Office, do I have sole authority to set a Time & Attendance Policy for myself and all Unclassified Employees (Chief Deputy or Confidential Assistant) compliant with State Civil Service Rules and any Executive Order of the Governor or does the Secretary of State set the Time & Attendance Policy for the Registrar's Office ?
6. Can a Registrar of Voter or any Unclassified Employee (Chief Deputy or Confidential Assistant) of the Registrar of Voter's Office sign a Statement waiving their Right to accumulate Annual, Sick, or Compensatory Leave Time and not be required to follow State Civil Service Time & Attendance Rules or any Executive Order of the Governor and be considered on "duty status" ?

Please note that the Secretary of State has published in the *May 2013 State Register* that there will be a Public Hearing on Thursday June 27, 2013 at the State Archives Building. It would be greatly appreciated if you and your Staff could research my questions before then. Thank you for the service that you do for my Office. You may contact me at any time to provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Champagne". The signature is written in a cursive, flowing style.

Brian J. Champagne

Documentation Enclosed

Documentation:

1. Email Monday February 18, 2013 from Ms. Janet Burks, Registrar Bossier Parish
2. Document authorizing the "freeze" of Registrars accumulation of Annual, Sick & Compensatory Leave Accumulation
3. Email Monday March 4, 2013 from Ms. Ashley Gautreaux
4. Policy #46 Prohibition on Accumulation of Annual & Sick Leave & Compensatory Time for Registrars of Voters
5. Letter March 19, 2013 to Mr. Kyle Ardoin
6. Letter March 19, 2013 from Secretary of State Tom Schedler
7. Notice of Intent to adopt Rule
8. Fiscal and Economic Impact Statement / Worksheet
9. March State Register – Published Notice of Intent pages 1362 – 1364
10. Executive Order No. BJ 2012 - 2



## Time and Attendance Policy Proposal

Bossier ROV

**Sent:** Monday, February 18, 2013 11:55 AM

**To:** Tom Schedler; Kyle Ardoin; Joe Salter; Ashley Gautreaux; SOS-ROV

**Attachments:** leave policy218.pdf (80 KB)

February 18, 2013

TO: All Registrars of Voters

From: Janet Burks, President, Louisiana Registrar of Voters Association

Subject: Time and Attendance Policy Proposal

A meeting was held on February 15, 2013 to resolve the issue of time and attendance with the Secretary of State and representatives of the Registrars of Voters' Association. After a lengthy and open discussion of concerns by both parties, the following was agreed upon:

The registrar of voters **only**, with regard to Time and Attendance, will forgo any future earning of annual, sick and compensatory leave. Present accumulation of all current leave in these categories would be frozen and documented for retirement purposes and would be retained by the registrar. Registrars either in DROP or contemplating DROP will in no way be affected in their calculations nor will their final retirement calculations be affected.

The relinquishment of future accumulation of earned leave would permit registrars to report for duty, in the same manner as do elected officials. Registrars would continue to earn overtime pay.

Attached is a document for each registrar to complete and send to Director of Human Resources, Ms. Ashley Gautreaux.

As president, I cannot express to you the amount of time, effort and discussions that have gone into the development of and acceptance by the Secretary of State of this document. Many registrars have given a detailed and thoughtful review of this document in conjunction with the question of time and attendance.

In order to resolve this matter, the representatives of the Registrar of Voters Association **strongly recommend** that registrars, as appointing authority, adopt the attached document.

If you have any specific questions, please feel free to contact myself or any of the following registrars: Dr. Sandra Wilson, Dennis Dimarco, Lorraine Dees, Stacie Ryan or John Moreau.

A deadline for return of the document to Ms. Gautreaux, Director of Human Resources is February 22, 2012. Please scan and email to Ashley Gautreaux or fax to 1-225-925-6034 and place the original in the mail and retain a copy for your records. Implementation would begin with the March 4, 2013 pay period.

Finally, resolving this matter quickly will allow registrars to focus on the work at hand.

Appreciate your input and your cooperation.

Cc: Tom Schedler, Secretary of State

Kyle Ardoin, First Assistant

Joe Salter, Under Secretary

Ashley Gautreaux, Director, Human Resources

EFFECTIVE DATE: March 4, 2013

SUBJECT: Annual, Sick, & Compensatory Leave Accumulation

AUTHORIZATION: \_\_\_\_\_  
(Print Registrar of Voters Name)

\_\_\_\_\_  
(Parish)

**Policy:**

As the Appointing Authority for the \_\_\_\_\_ Parish Registrar of Voters Office, it is the policy of this office that I, as Registrar of Voters, effective on the above date, forego any future earning of Annual, Sick, and Compensatory Leave, and I would "freeze" my current accumulation of all earned leave in these categories. The result of the above would be to treat only myself, the Registrar of Voters, as an elected official for leave purposes only.

Signed:

\_\_\_\_\_  
Registrar of Voters

Dated:

\_\_\_\_\_

## **New Policy #46 on Accumulation of Annual & Sick Leave and Comp. Time for ROV's**

Ashley Gautreaux

**Sent:** Monday, March 04, 2013 5:38 PM

**To:** SOS-ROV

**Cc:** Tom Schedler; Kyle Ardoin (kyle.ardoin@sos.louisiana.gov); Angie Rogers; Merietta Norton (mnorton@sos.louisiana.gov)

**Attachments:** 46 Prohibition on Accumula~1.pdf (703 KB)

Good afternoon,

Per Secretary Schedler's request, please see the attached personnel policy #46 that is effective today, March 4, 2013.

Thank you,

Ashley Gautreaux, SPHR  
Human Resources Director  
La. Secretary of State  
Phone 225.362.5186

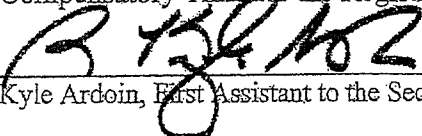
<http://www.sos.la.gov/>

**SECRETARY OF STATE**  
**SECRETARY OF STATE**  
**POLICY #46 – Prohibition on Accumulation of Annual & Sick Leave &  
Compensatory Time for Registrars of Voters**

**EFFECTIVE DATE:** March 4, 2013

**SUBJECT:** Prohibition on Accumulation of Annual and Sick Leave and  
Compensatory Time for the Registrars of Voters

**AUTHORIZATION:**

  
\_\_\_\_\_  
Kyle Ardoin, First Assistant to the Secretary of State

**I. POLICY**

- A. The Registrar of Voters of each parish shall not be eligible to earn or accrue any type of annual or sick leave or paid time off, including compensatory time, during his/her tenure as the registrar of voters, except as authorized by R.S. 18:1400.8.
- B. Registrars of voters shall be considered in "duty status" at all times and therefore will not be required to report absences from the office, take leave for time away from the office, or report hours worked to the Department of State for purposes of payroll processing. Each registrar of voters will be solely responsible for the performance of the mandated duties of his/her office. Variances in time and attendance shall not affect the provision of duties and services mandated for each Registrar of Voters by the Louisiana Constitution and Title 18 of the Louisiana Revised Statutes.
- C. Registrars of voters will be eligible to receive pay for over time worked during early voting as authorized by R.S. 18:1400.8.
- D. The current balances of accrued annual and sick leave for each registrar of voters shall be frozen as of March 4, 2013. Upon retirement or separation from service, Registrars will be eligible to be paid for up to 300 hours of accumulated annual and compensatory leave. The remaining balances will be reported by the Human Resources Division of the Department of State to the Registrars of Voters Employees' Retirement System for purposes of certification for retirement credit and calculation of retirement benefits, as allowed by the laws and rules governing that system.
- E. Any accrued annual or sick leave for a newly appointed registrar of voters shall be frozen as of the date of appointment of the Registrar of Voters. Upon retirement or separation from service, Registrars will be eligible to be paid for up to 300 hours of accumulated annual and compensatory leave. The remaining balances will be reported by the Human Resources Division of the Department of State to the Registrars of Voters Employees' Retirement

System for purposes of certification for retirement credit and calculation of retirement benefits, as allowed by the laws and rules governing that system.

- F. The provisions of this rule shall not be applied in violation of any provision of the Fair Labor Standards Act. Any application of such is strictly prohibited and shall render the applicable portion of the rule null and void.

## II. APPLICABILITY

This policy applies to all 64 Registrars of Voters for the State of Louisiana effective March 4, 2013 and all Registrars that may be appointed to office at any time following that date.

## III. EXCEPTIONS

No exceptions shall be granted to this policy for any Registrar of Voters regardless of the stated reason for the request.

## IV. QUESTIONS

Questions regarding this policy should be addressed to the Human Resources Director.

## Louisiana Registrar of Voters

Louisiana State Constitution of 1974

U.S. District Court Ruling

Title 49. State Administration Chapter 13. Administrative Procedure

May 2013 Louisiana Register

Attorney General Opinions

Legislative Auditor Reports / Audits

Secretary of State Policies

Emails / Committee Minutes

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ARTICLE X. PUBLIC OFFICIALS AND EMPLOYEES  
PART I. STATE AND CITY CIVIL SERVICE

§1. Civil Service Systems

Section 1.(A) State Civil Service. The state civil service is established and includes all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof, and any joint state and federal agency, joint state and parochial agency, or joint state and municipal agency, regardless of the source of the funds used to pay for such employment. It shall not include members of the state police service as provided in Part IV of this Article or persons holding offices and positions of any municipal board of health or local governmental subdivision.

(B) City Civil Service. The city civil service is established and includes all persons holding offices and positions of trust or employment in the employ of each city having over four hundred thousand population and in every instrumentality thereof. However, paid firemen and municipal policemen may be excluded if a majority of the electors in the affected city voting at an election held for that purpose approve their exclusion. The election shall be called by the municipal governing authority within one year after the effective date of this constitution.

Amended by Acts 1990, No. 1106, §1, approved Oct. 6, 1990, eff. Jan. 1, 1991.

§2. Classified and Unclassified Service

Section 2.(A) Classified Service. The state and city civil service is divided into the unclassified and the classified service. Persons not included in the unclassified service are in the classified service.

(B) Unclassified Service. The unclassified service shall include the following officers and employees in the state and city civil service:

- (1) elected officials and persons appointed to fill vacancies in elective offices;
- (2) the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city;
- (3) city attorneys;
- (4) registrars of voters;
- (5) members of state and city boards, authorities, and commissions;
- (6) one private secretary to the president of each college or university;
- (7) one person holding a confidential position and one principal assistant or deputy to any officer, board, commission, or authority mentioned in (1), (2), (4), or (5) above, except civil service departments;
- (8) members of the military or naval forces;
- (9) teaching and professional staffs, and administrative officers of schools, colleges, and universities of the state, and bona fide students of those institutions employed by any state, parochial, or municipal agency;
- (10) employees, deputies, and officers of the legislature and of the offices of the governor, lieutenant governor, attorney general, each mayor and city attorney, of police juries, school boards, assessors, and of all offices provided for in Article V of this constitution except the offices of clerk of the municipal and traffic courts in New Orleans;
- (11) commissioners of elections, watchers, and custodians and deputy custodians of voting machines;
- (12) railroad employees whose working conditions and retirement benefits are regulated by federal agencies in accordance with federal law; and
- (13) the director, deputy director, and all employees of the Governor's Office of Homeland Security and Emergency Preparedness.

Additional positions may be added to the unclassified service and those positions may be revoked by rules adopted by a commission.

Acts 2009, No. 538, §1, approved Oct. 2, 2010, eff. Nov. 2, 2010.



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

ANTHONY WILSON, JERRY RAVEN,  
AND BARRY RAVEN

CIVIL ACTION

VERSUS

NO. 12-187-BAJ-SCR

ROBERT J. POCHE, IN HIS OFFICIAL  
CAPACITY AS REGISTRAR OF VOTERS  
FOR THE PARISH OF ASCENSION

**RULING AND ORDER**

This matter is before the Court on a Motion to Dismiss (doc. 8). No further briefing is required.

The Court has carefully reviewed this matter and finds that the motion should be granted for the reasons advanced by Defendant's, Robert J. Poche, in his Official Capacity as Registrar of Voters for the Parish of Ascension ("Defendant"), supporting memorandum. The Court concludes that Plaintiffs, Anthony Wilson, Jerry Raven, and Barry Raven ("Plaintiffs") fail to show subject matter jurisdiction pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure. Alternatively, the Court finds that the complaint should be dismissed on the merits for failure to state a claim. Specifically, the Court concludes that Plaintiffs fail to "state a claim to relief that is plausible on its face." *Ashcroft v.*

*Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).<sup>1</sup> The Court reaches these conclusions for several reasons.

First, Defendant asserts, and the Court agrees, that any claims for monetary relief against Defendant in his official capacity as the Registrar of Voters for the Parish of Ascension, State of Louisiana constitute claims against the “State” and, therefore, are barred by the Eleventh Amendment.

Under the Eleventh Amendment to the United States Constitution, an unconsenting state is immune from suits seeking monetary damages brought in Federal court by her own citizens as well as citizens of another state. *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 1355 (1974). Although Congress has the power to abrogate this immunity through the Fourteenth Amendment, it has not done so as to claims for the deprivation of civil rights under color of state law. See *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S. Ct. 2666, 49 L.Ed. 2d 614 (1976); *Quern v. Jordan*, 440 U.S. 332, 99 S. Ct. 1139, 59 L.Ed.2d 358 (1979); *Edelman v. Jordan*, *supra*.

Further, suits brought against a state official in his official capacity “generally represent only another way of pleading an action against an entity of which an officer is an agent.” *New Orleans Towing Ass'n v. Foster*, 248 F.3d 1143 (5th Cir. 2001), (citing *Hafer v. Melo*, 502 U.S. 21, 25, 112 S. Ct. 358, 116

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<sup>1</sup> Defendant states, preliminarily, that he will seek dismissal pursuant to Rule 12(b)(1). However, in his supporting memorandum, Defendant also discusses dismissal of the claim pursuant to Rule 12(b)(6) and cites case law to that effect (doc. 8-1, at 16). The Court presumes that Defendant seeks dismissal pursuant to Rule 12(b)(1) and Rule 12(b)(6).

L.Ed.2d 301 (1991)) (internal quotations omitted) (quoting *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S. Ct. 3099, 87 L.Ed.2d 114 (1985)).

Here, Plaintiffs sue Defendant only in his official capacity. Plaintiffs contest that Defendant is a state official by asserting that he is really a parish official. In contrast, Defendant asserts multiple grounds for which his position as the Registrar of Voters is a state position. Specifically, Defendant supports this assertion by stating that: (1) the legislature provides for the office of the registrar of voters (La. R.S. 18:51, *et seq.*) and provides for the registrar's compensation as required by Article XI § 5 of the Louisiana Constitution (La. Const. 1974) in La. R.S. 18:55; (2) the Attorney General has opined that the registrar of voters and his employees are properly classified as state and not parish officials or employees, See La. Atty. Gen. Op. La. Atty. Gen. Op. No. 85-355; and (3) The Commissioner of Elections is authorized to prescribe uniform rules and regulations subject to the approval of the Attorney General for general procedures to be used by the Registrar of Voters. La. R.S. 18:18(3) (doc. 8-1, at 3-5). Thus, Defendant offers persuasive authority to support his assertion that his position with the Office of the Registrar of Voters is a state position.

Because Defendant demonstrates that his position as the Registrar of Voters is a state position, any claims for monetary relief against Defendant in his official capacity as the Registrar of Voters for the Parish of Ascension, State of

Louisiana constitute claims against the “State” and, therefore, are barred by the Eleventh Amendment.<sup>2</sup>

Second, Plaintiffs’ claims under section 1983 against Defendant do not amount to a constitutional violation entitled to a section 1983 remedy in a Federal court. The Fifth Circuit has held that section 1983 provides a remedy for cases where the violation of due process rights is through “willful conduct which undermines the organic processes by which candidates are elected.” *Duncan v. Poythress*, 657 F.2d 691, 701 (5th Cir. 1981) (citing *Hennings v. Grafton*, 523 F.2d 861, 864 (7th Cir. 1975)). Further, the Supreme Court has held that negligent acts by state actors do not effect a “deprivation” for the purposes of the Due Process Clause. *Daniels v. Williams*, 474 U.S. 327 (1986). Moreover, the random and unauthorized conduct of a government actor, even intentional, does not implicate the Due Process Clause if the state provides a meaningful post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).

Here, not only are Plaintiffs unable to show willful conduct on the part of Defendant, but the record shows that they have already benefited from a judgment in their favor in state court. Plaintiffs’ state court suit (Docket Number 99,722) was filed in the 23rd Judicial District Court of Louisiana on April 11, 2011, assigned to the Honorable Alvin Turner, and resulted in a judgment in their

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<sup>2</sup> The findings of this ruling pertain to Plaintiffs’ claims under 42 U.S.C. §§ 1983 and 1988. Where a plaintiff fails to prevail, either because of legal immunity or merits of the claim, § 1988 does not authorize a fee award against that defendant. *Kentucky v. Graham*, 473 U.S. 170, 105 S. Ct. 3099, 87 L.Ed.2d 114 (1985).

favor (doc. 8-2). In that suit, there was no finding indicating that there was willful conduct on the part of Defendant. The court found that due to a failure to exercise due diligence, there was an omission of the names of qualified voters from the official voting list, which resulted in the denial of the right of eight voters to fully participate in the voting process (doc. 8-2, at 5). Because Plaintiffs fail to allege willful conduct on the part of Defendant, Plaintiffs fail to plead a constitutional violation entitled to a section 1983 remedy.

Similarly, Plaintiffs received an adequate remedy at the state court level.<sup>3</sup> As per the state court's judgment, Plaintiffs in this instant action were beneficiaries of a restricted election conducted on May 21, 2011. Plaintiffs cast their votes in the restricted election, and as such, their claims for general or equitable relief must be denied as moot.

Therefore, because: (1) Defendant offers persuasive authority that his position as the Registrar of Voters is a state position; and (2) Plaintiffs' claims under section 1983 against Defendant do not amount to a constitutional violation entitled to a section 1983 remedy in a Federal court, Plaintiffs' claims must be dismissed.

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<sup>3</sup> The Court notes that Plaintiffs seek damages resulting from a deprivation of their right to vote as guaranteed under the Constitutions of the State of Louisiana and the United States of America (doc. 1 ¶ 10). This is despite their previous suit in state court in which they were granted relief under the Constitution of the State of Louisiana.

Accordingly, Defendant's Motion to Dismiss (doc. 8) is hereby **GRANTED**.

The case is dismissed with prejudice.

Baton Rouge, Louisiana, March 8, 2013.



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BRIAN A. JACKSON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

**CONST 10 29**

**§29. Retirement and Survivor's Benefits**

Section 29.(A) Public School Employees. The legislature shall provide for retirement of teachers and other employees of the public educational system through establishment of one or more retirement systems. Membership in such a retirement system shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member or retiree or to his lawful beneficiary upon his death.

**(B) Other Officials and Employees. The legislature shall enact laws providing for retirement of officials and employees of the state, its agencies, and its political subdivisions, including persons employed jointly by state and federal agencies other than those in military service, through the establishment of one or more retirement systems. Membership in any retirement system of the state or of a political subdivision thereof shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member of a state retirement system or retiree or to his lawful beneficiary upon his death.**

**(C) Retirement Systems; Change; Notice. No proposal to effect any change in existing laws or constitutional provisions relating to any retirement system for public employees shall be introduced in the legislature unless notice of intention to introduce the proposal has been published, without cost to the state, in the official state journal on two separate days. The last day of publication shall be at least sixty days before introduction of the bill. The notice shall state the substance of the contemplated law or proposal, and the bill shall contain a recital that the notice has been given.**

(D) Compensation for Survivors of Law Enforcement Officers and Firemen. The legislature shall establish a system, including the expenditure of public funds, for compensating the surviving spouses and dependent children of law enforcement officers, firemen, and personnel, as defined by law, who die, or who died after June 30, 1972, as a result of injury sustained in the performance of official duties or in the protection of life or property while on or off duty.

(E) Actuarial Soundness. (1) The actuarial soundness of state and statewide retirement systems shall be attained and maintained and the legislature shall establish, by law, for each state or statewide retirement system, the particular method of actuarial valuation to be employed for purposes of this Section.

(2) For public retirement systems whose benefits are guaranteed by this constitution as is specified in Paragraphs (A) and (B) of this Section:

(a) The legislature shall, by law, determine and set all required contributions to be made by members. However, until the unfunded accrued liability referenced in (c) below is eliminated, this determination and setting shall not cause the ratio of employee contributions to total contributions, on the basis of each particular plan or classification within each particular retirement system, to exceed such ratio as it existed on January 1, 1987. Upon elimination of the

unfunded accrued liability referenced in (c) below, this determination and setting shall not cause a member's contribution to exceed an amount contributed on his behalf as an employer contribution.

**(b) The legislature shall, in each fiscal year, by law, provide an amount necessary to fund the employer portion of the normal cost, which shall be determined in accordance with the method of valuation established under (1) above.**

(c) The legislature shall, in each fiscal year, by law, provide for the amortization of the unfunded accrued liability existing as of June 30, 1988, which shall be determined in accordance with the method of valuation selected in (1) above, by the year 2029, commencing with Fiscal Year 1989-1990.

(d) Amounts provided for under (b) and (c) above are hereby guaranteed payable, each fiscal year, to each retirement system covered herein. If, for any fiscal year, the legislature fails to provide these guaranteed payments, upon warrant of the governing authority of the retirement system, following the close of said fiscal year, the state treasurer shall pay the amount guaranteed directly from the state general fund.

(3) For statewide public retirement systems not covered by Paragraphs (A) and (B) of this Section, the legislature shall determine all required contributions to be made by members, contributions to be made by employers, and dedicated taxes required for the sound actuarial maintenance of the systems, including the elimination of the unfunded accrued liability as of the end of the 1988-1989 Fiscal Year, under the method of valuation selected under (1) above, by the year 2029, commencing with Fiscal Year 1989-1990.

(4) For all state and statewide public retirement systems, neither the state nor the governing authority of such system shall take any action that shall cause the actuarial present value of expected future expenditures of the retirement system to exceed or further exceed the sum of the current actuarial value of assets and the actuarial present value of expected future receipts of the retirement system, except with respect to the following:

- (a) Normal business operating expenses of the retirement system.
- (b) Capital outlay expenditures of the retirement system.
- (c) Management of investments of the retirement system.
- (d) Cost-of-living increases to retirees, as provided by law, provided the retirement system is approaching actuarial soundness as provided by law, and the granting of such increase does not cause an increase in the actuarially required contribution rate.

(5) All assets, proceeds, or income of the state and statewide public retirement systems, and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested as authorized by law, or disbursed as in trust for the exclusive purpose of providing such benefits, refunds, and administrative expenses under the management of the boards of trustees and shall not be encumbered for or diverted to any other purpose. The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired.

**(F) Benefit Provisions; Legislative Enactment. Benefit provisions for members of any public retirement system, plan, or fund that is subject to legislative authority shall be altered only by legislative enactment. No such benefit provisions having an actuarial cost shall be enacted unless approved by two-thirds of the elected members of each house of the legislature. Furthermore, no such benefit provision for any member of a state retirement system having an actuarial cost shall be approved by the legislature unless a funding source providing new or additional funds sufficient to pay all such actuarial cost within ten years**



**of the effective date of the benefit provision is identified in such enactment. This Paragraph shall be implemented as provided by law.**

(G) Forfeiture of Retirement Benefits; Felony Convictions. The receipt of a public retirement benefit shall be expressly conditioned upon the rendition of honorable service by the public official or employee. Notwithstanding any provision of this constitution or of any home rule charter to the contrary, the legislature may provide for the forfeiture of all or part of the benefits from a public retirement system, plan, or fund in this state by any person who holds or held any public office or employment and who is convicted of a felony associated with and committed during his service in such public office or employment. The legislature may provide for the application of all or part of any forfeited benefits to the unfunded accrued liability of the system, plan, or fund. The provisions of this Paragraph shall be applied only to persons employed, re-employed, or elected on or after January 1, 2013. The provisions of this Paragraph shall be applied only to benefits earned on or after January 1, 2013.

Amended by Acts 1987, No. 947, §1, approved Nov. 21, 1987, eff. Dec. 24, 1987; Acts 2007, No. 484, §1, approved Oct. 20, 2007, eff. Nov. 19, 2007; Acts 2010, No. 1048, §1, approved Nov. 2, 2010, eff. Dec. 1, 2010; Acts 2012, No. 868, §1, approved Nov. 6, 2012, eff. Dec. 9, 2012; Acts 2012, No. 872, §2, approved Nov. 6, 2012, eff. Dec. 10, 2012.

**Registrars of Voters Employees' Retirement System  
Minutes of the Meeting of the Board of Trustees  
October 10, 2012**

The meeting of the Board of Trustees for the Registrars of Voters Employees' Retirement System was held at the Renaissance Hotel at 7000 Bluebonnet Boulevard in Baton Rouge, Louisiana.

**I. Call to Order**

The Chairman of the Board, Robert Poche, called the meeting to order at 9:09 a.m.

**II. Invocation and Pledge of Allegiance**

Linda Rodrigue offered an invocation and Dennis DiMarco led the Pledge of Allegiance.

**III. Roll Call**

Lorraine Dees called the roll. Board members present were: Dennis DiMarco, Charlene Menard, John Moreau, Robert Poche, Linda Rodrigue, and Dwayne Wall. Board members absent were Representative J. Kevin Pearson and Senator Elbert Guillory. A quorum was present.

Others present included Greg Curran and Ben Barcelona (representing Actuary and Administrator, G. S. Curran & Company, Ltd.); Denise Akers (Legal Counsel); Lorraine Dees (System Director); John Breth (representing Investment Consultant, The Bogdahn Group); Terry Meagher (representing the Custodian of Assets, Capital One Bank); Stephanie Little (House Retirement Attorney, representing Representative J. Kevin Pearson); Margaret Corley (Senate Retirement Attorney, representing Senator Elbert Guillory); and Shelley Bouvier.

**IV. Public Comments**

Chairman Poche asked if there were any public comments. Hearing none, the meeting continued.

**V. Review and Approval of Minutes**

Upon motion by Mr. Moreau and second by Ms. Rodrigue, the Board voted unanimously to approve the minutes from the September 11, 2012 meeting.

Upon motion by Ms. Rodrigue and second by Mr. Moreau, the Board voted unanimously to approve of the minutes from the September 14, 2012 meeting with amendment on line 3-4 of page 4. The amendment changed "the Board previously authorized another future Board member to attend training" to "the Board previously authorized other future Board members to attend training."

**VI. Presentation by G.S. Curran & Company**

Mr. Curran stated that certain economic assumptions needed to be changed in the June 30, 2012 valuation. He reviewed the valuation interest rate assumption which was 8%. He stated that for the past several years, the actuarial report had included a discussion of the effect on employer contributions of a 1% change in valuation interest rate as a tool to facilitate a discussion with the

Board of the possibility that the interest rate assumption might need to be lowered. He added that the 8% assumption was appropriate given the returns of the 1990's, but with the technology stock bubble of 2000 and the larger losses in 2008, the 20 year average rate of return in the plan had dropped to 5.9%. He stated that although the plan's historical rate of return was below 8%, the valuation interest rate assumption was not set based solely on the past. He stated that his firm was performing studies of the best estimate range for the valuation interest rate assumption using data collected from consultants working with Louisiana public retirement systems as well as other available sources of information. He stated that this information included expected rates of return by asset class, standard deviation of return by asset class, and correlation coefficients between asset classes. He stated that given this work and the need to lower the risk to such a small plan, he recommended a reduction in the valuation interest rate to 7.5%.

In response to a question from Mr. DiMarco on the impact of a change in valuation interest rate to 7.5%, Mr. Curran stated that he had made an estimate of the employer rate for 2014, including the effect of assumption changes. He stated that Ms. Dees needed to provide an estimate to the Secretary of State's office for inclusion in their budget. Mr. Curran reminded the Board that the employer rate was 19.75% for fiscal 2013. He stated that the estimated rate for 2014 was 26%. He added that the increase was in large part due to the investment return for fiscal 2012 and the past four years. He stated that investment returns had accounted for an increase of approximately 5%. He told the Board that CSG had reported a loss of 4.2% on the overall portfolio for fiscal 2012. He added that it was also possible that the auditors would be required to write down Land Baron assets to an even lower level than CSG showed. He stated that a loss of 4% on assets was an actuarial loss of 12% since the assumption was that the plan would earn 8% for the year.

Mr. Breth asked about the possibility of spreading the effect of the change over 2-5 years. Mr. Curran stated that given the amount of smoothing in the valuation and the fact that all losses were being spread over future working lifetimes of members, he recommended a one-time change.

Mr. DiMarco asked if the Board should consider an increase in the employee contribution rate. Mr. Curran stated that he and Ms. Dees had spoken about what the Board could do to limit the future increases to the employer rate including a change in the employee rate. He added that the 7% employee contribution rate was among the lowest in the state and was below the social security rate.

The Board discussed the possibility of asking the legislature to allow a range of employee contribution rates that could be set by the Board. They discussed the pros and cons of a range with their attorney and the attorneys representing the legislative committees on retirement.

Mr. Curran also discussed the possibility of lowering the accrual rate to 3% for all future accruals of members. He stated that such a change would not affect past accruals but would lower the accruals added each year going forward.

Mr. DiMarco asked about what could be done to lessen the impact of sick and annual leave conversion. Mr. Curran stated that, in his opinion, the Board could not affect the leave accumulated in the past but could pursue legislation to change leave conversion in the future.

Ms. Dees suggested lowering the accrual rate used for leave conversion. Ms. Akers discussed a possible limit to the number of hours of accumulated leave that could be converted. The Board discussed the different possibilities and came to a consensus that the issue needed further study.

Mr. Poche asked about the impact of 5 year smoothing on results. Mr. Curran responded that the 2011 valuation results used 2007-2011 returns of 14%, -3.9%, -18.3%, 8.2%, and 16.4%. He stated that with smoothing, employer rates didn't go up or down as quickly. He added that 2012 would be

LEGISLATION  
State Legislature  
2008 Regular Session

Administrative Procedure Act (R.S. 49:950 et seq.)

**Title 49. STATE ADMINISTRATION**

**Chapter 13. Administrative Procedure**

**§950. Title and form of citation**

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

Added by Acts 1982, No. 129, □1.

**§951. Definitions**

As used in this Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The

term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in R.S. 49:953 shall also apply to adoption of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

Acts 1995, No. 1057, □1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1997, No. 1224, □1.

NOTE: See Acts 1987, No. 240, □2.

**§952. Public information; adoption of rules; availability of rules and orders**

Each agency which engages in rulemaking shall:

(1) File with the Department of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.

(4) Make available for public inspection all final orders, decisions, and opinions.

Acts 1966, No. 382, □2, eff. July 1, 1967. Amended by Acts 1978, No. 252, □1; Acts 1979, No. 578, □1, eff. July 18, 1979; Acts 1990, No. 1085, □1, eff. July 31, 1990; Acts 1993, No. 386, □1.

**§953. Procedure for adoption of rules**

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;

(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) A statement indicating whether the agency has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(b)(i) The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.

(ii) Upon publication of the notice, copies of the full text of the proposed rule shall be available from the agency proposing the rule upon written request within two working days.

(c) Notice of the intent of an agency to adopt, amend, or repeal any rule and the approved fiscal and economic impact statements, as provided for in this Subsection, shall be mailed to all persons who have made timely request of the agency for such notice, which notice and statements shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule change is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(2)(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the legislature to which the proposed rule change has been referred under the provisions of R.S. 49:968.

(b)(i) Make available to all interested persons copies of any rule intended for adoption, amendment, or repeal from the time the notice of its intended action is published in the Louisiana Register. Any hearing pursuant to the provisions of this Paragraph shall be held no earlier than thirty-five days and no later than forty days after the publication of the Louisiana Register in which the notice of the intended action appears. The agency shall consider fully all written and oral comments and submissions respecting the proposed rule.

(ii) The agency shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the agency may

prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions. Such preamble and response to comments and submissions shall be furnished to the respective legislative oversight subcommittees at least five days prior to the day the legislative oversight subcommittee hearing is to be held on the proposed rule, and shall be made available to interested persons no later than one day following their submission to the appropriate legislative oversight subcommittee. If no legislative oversight hearing is to be held, the agency shall issue a response to comments and submissions and preamble, if any, to any person who presented comments or submissions on the rule and to any requesting person not later than fifteen days prior to the time of publication of the final rule.

(iii) The agency shall, upon request, make available to interested persons the report submitted pursuant to R.S. 49:968(D) no later than one working day following the submittal of such report to the legislative oversight subcommittees.

(3)(a) For the purposes of this Subsection, the statement of fiscal impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such fiscal impact statement shall include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision of the state.

(b) For the purposes of this Subsection, the statement of economic impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such economic impact statements shall include an estimate of the cost to the agency to implement the proposed action, including the estimated amount of paperwork; an estimate of the cost or economic benefit to all persons directly affected by the proposed action; an estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and a detailed statement of the data, assumptions, and methods used in making each of the above estimates.

B.(1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within

However, there is nothing in the Louisiana revised statutes or the Fair Labor Standards Act that limits the Tangipahoa Parish Council's power to bar employees from working future overtime hours and, consequently, discontinue paying future overtime earnings.

Please contact this office if you need further assistance.

Very truly yours,

RICHARD P. IEYOUB  
ATTORNEY GENERAL

BY:

GINA M. PULEIO  
Assistant Attorney General

RPI/GMP/pb  
/gmp/opinion/95-144

## Notes of Decisions

The legislature has primary authority over the functions of registrars of voters and the board of registration has a secondary degree of authority to act when the legislature has not. Op.Atty.Gen., Sept. 24, 1973.

### 3. Voting requirement tests

Voting registrar would not be compelled by preliminary injunction to receive and process voter applications, and open his office for registration, where federal court had previously struck down one voting requirement test as unconstitutional and had rendered other test inoperative by injunction, without finding it unconstitutional, so that registrar had no test to determine qualifications of applicants. U. S. v. Palmer, E.D.La.1964, 230 F.Supp. 716, reversed 356 F.2d 951. Injunction 1343

### 4. Registration

Registrar of voters may accept offer by private entity to use their mobile voter registration unit, but registrar is responsible for designating time, place, and manner of use of unit. Op.Atty.Gen., No. 91-365, July 15, 1991.

### 5. Employment policies

**While no state statute permits the parish governing authority to pay unclassified employees of the registrar of voters' office for overtime work required of them, the employees should nevertheless be granted leave under the Department of Elections and Registration's regulations. Op.Atty.Gen. No. 95-144, Aug. 4, 1995.**

**A parish governing authority has no power to establish employment policies for the employees of the registrars of voters. Op.Atty.Gen., No. 88-118, March 4, 1988.**

**Although parish governing authorities are mandated by state law to pay a portion of the compensation of registrars of voters and their employees, the registrars of voters offices are subject to the personnel policies established by the Commission of Elections. Op.Atty.Gen., No. 88-118, March 4, 1988.**

### 6. Voter registration drives

The police jury or city council cannot order the registrar of voters to conduct a voter registration drive in a district so as to directly benefit the elected council of that district; it has a statutory duty to appropriate funds necessary so the registrar can fully discharge his duties and it can be compelled by mandamus to do so. Op.Atty.Gen., No. 04-0280, February 18, 2005.  
LSA-R.S. 18:58, LA R.S. 18:58

Titles 9, 14, 15, 19, 32, 40, 44, 46, and 56 of the Revised Statutes, the Civil Code, the Code of Criminal Procedure, the Code of Evidence, and the Children's Code are current through the 2012 Regular Session. All other provisions are current through the 2011 First Extraordinary and Regular Sessions

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William P. Bryan, III | Assistant Attorney General  
Louisiana Department of Justice



DANIEL G. KYLE, PH.D., CPA, CFE  
LEGISLATIVE AUDITOR

OFFICE OF  
LEGISLATIVE AUDITOR  
STATE OF LOUISIANA  
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
TELEPHONE: (504) 339-3800  
FACSIMILE: (504) 339-3870

July 30, 1996

Honorable Jerry Fowler  
Commissioner of Elections  
Post Office Box 14179  
Baton Rouge, Louisiana 70898-4179

Dear Commissioner Fowler:

At the request of several members of the Louisiana House of Representatives, a house committee staff member began making inquiries concerning the approval of time and attendance records of the various registrar of voters by the Department of Elections and Registrations (department) management. Upon initial research of this matter, we could not find any reports issued on the department by this office that contained any findings relating to the time and attendance records. However, after speaking with the department's staff, it was determined that there was a discussion on this matter during the June 30, 1994, audit exit conference.

During this audit, my staff felt that since the various registrars were considered "state" employees and were in a leave-earning capacity, the controls surrounding the payroll function would be strengthened by having the department's Director of Registration sign the time and attendance records turned in by the registrars. In the subsequent year, the department implemented our suggestion.

In discussions with department personnel, it appears that the department's management exercises little or no control over the daily activities of the registrars. Also, they are not in a position to know of the daily attendance of the registrars. The registrars do not contact the department on a daily basis but only when a problem occurs. For that reason, it now appears that the signing of the time and attendance records by the Director of Registration would add little to the controls surrounding the payroll function. In addition, we could not find any legal requirement for time and attendance records of the registrars to be approved by a higher level authority.

The registrars are appointed by the parish governing authority, so if the situation existed that the parish government had knowledge of the registrar's daily activities, that individual within the parish government could approve the time and attendance records. However, from discussions with department personnel, it appears that the registrars operate independently, and no one at the parish or state level would be aware of their daily activities.

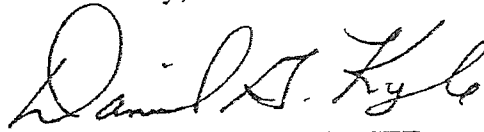


Honorable Jerry Fowler  
July 30, 1996  
Page Two

In conclusion, it appears that the approval of the time and attendance records of the registrars does little to add to the controls surrounding the payroll function, and I would not object to the discontinuation of the approval signature on registrar time sheets.

If you have any additional questions, please contact me or Mr. Randall C. LeJeune, CPA, Assistant Director of Financial and Compliance Audit, at 339-3800.

Sincerely,



Daniel G. Kyle, CPA, CFE  
Legislative Auditor

DGK:RCL:mf

xc: Mr. John Russell, Legislative Liaison  
Registrar of Voters Association

FOWLER

07/12/96

ELECTIONS & REGISTRATION INFORMATION NETWORK

15:57

ADMINISTRATION OFFICE  
4888 CONSTITUTION AVE.  
BATON ROUGE, LA. 70808-3323  
(504) 925-7885

TO: ALL TIMEKEEPERS

FAX# (504) 925-1841

FROM: CHERYL BOSARGE, PAYROLL  
PARISH CODE (A00)

SUBJECT:

FOR THE REGISTRAR'S TIME AND ATTENDANCE RECORD ONLY-----PLEASE  
SIGN BY THE EMPLOYEE'S SIGNATURE ONLY.

DO NOT SIGN BY THE SUPERVISOR'S SIGNATURE.

THE LEGISLATURE AUDITOR'S REQUIRE SOMEONE FROM THIS OFFICE TO SIGN BY THE  
SUPERVISOR'S SIGNATURE. EITHER CAROL GUIDRY, ALAN ELKINS OR GAYLE TRUDY  
WILL BE SIGNING BY THE SUPERVISOR'S SIGNATURE.

THIS WILL BE EFFECTIVE 6-30-96 PAY PERIOD. IF YOU ALREADY SIGNED BY THE  
SUPERVISOR'S SIGNATURE-----DON'T WORRY-----IT'S OKAY!!!  
JUST LEAVE IT LIKE IT IS.  
PLEASE CALL ME IF YOU HAVE ANY QUESTIONS. THANKS, CHERYL

DEPARTMENT OF ELECTIONS AND REGISTRATION  
TIME AND ATTENDANCE RECORD  
REGISTRAR OF VOTERS' OFFICES

All employees within the Department of Elections and Registration must utilize the new Time and Attendance Record (Form #00404) for posting time worked. Please note there are many new features which have been incorporated into the form.

These forms must be used beginning July 26, 1999. Until this period, you should use the old forms.

At the top right hand corner, please show your section and unit number. If you do not know your section and/or unit number, call the Payroll Section.

At the top of the form, you should show your name and social security number exactly how it appears on your social security card. You should also sign your timesheet with the same name that is on your social security card. In addition, you should record the pay period ending date and the parish/work location (i.e., EBR/Administrative, EBR/Warehouse, EBR/ROV).

The date must be shown on the form in the following format: month/day/year (07/26/99). It has been brought to my attention that some employees are not showing the year. This format must be followed.

You are now required to show the time you arrived at work and the time you left work for the day. In addition, you must show any other time that you leave the office (i.e., doctor's appointment). For example, if you arrived at 8:03, went to the doctor's office at 10:00, returned to work at 10:53, and left at 4:30 for the day, you would show 8:03/10:53 in time in and 10:00/4:30 in time out. You do not need to show the time you left for lunch unless you exceed the amount of time allotted for lunch.

You will be required to complete a minimum of ½ hour leave slip for time absent from work in excess of 10 minutes. This includes arrival to work, returning from lunch or leave, and leaving the work location at the end of the day.

For those individuals who work compensatory leave, leave will only be given for full consecutive 30 minute intervals. For example, if you work 50 minutes, you will only earn ½ hour of compensatory leave.

In the Actual # Hours Worked column, post the actual number of hours worked during regular work hours. In the Comp. Hours Earned column, post the actual hours worked outside of regular work hours.

All time worked or taken must be posted in ½ hour increments.

In the Work Location column, you must show the location of work other than your official domicile. Attached is a parish code list. If you are domiciled at the EBR warehouse and you go to the WBR warehouse, you should show 61 warehouse in this column. If you work in the Jefferson ROV office and you go to the Capitol in Baton Rouge, you should show 17 Capitol in this column.

The Time Absent (Hours) column remains the same. You should post the amount of annual, sick, compensatory, leave without pay, and other leave taken in this column.

Each employee will be responsible for totaling the number of hours worked and leave taken.

After you have completed the Time and Attendance Record, you should sign your name in the space provided certifying that the time reported is correct. You should forward the form to your immediate supervisor who will certify that the information is correct.

**IT IS THE RESPONSIBILITY OF THE IMMEDIATE SUPERVISOR TO REVIEW THE EMPLOYEE'S RECORD TO INSURE THAT THE EMPLOYEE CORRECTLY COMPLETES THE TIME AND ATTENDANCE RECORD.**

**THE IMMEDIATE SUPERVISOR MUST VERIFY THAT THE EMPLOYEE ACTUALLY WORKED THE HOURS REFLECTED ON THE TIME AND ATTENDANCE RECORD AND HAS ALL THE NECESSARY LEAVE STEPS AND APPROVALS.**

The individual who is responsible for posting the information contained on the form into the Uniform Payroll System must initial the form and date it.

Please feel free to call the following individuals in the Payroll Office if you have any questions concerning this form: Billie Jo Spillman (225) 925-6141, Cheryl Bosarge (225) 925-6087, and Jackie Gilbert (225) 925-7910. Please note that we anticipate a large volume of calls concerning this matter so your calls will be answered in the order they are received but we will make every effort to call you back as soon as possible.

In addition, I would like to take this opportunity to remind you that we now have an Internal Auditor (Tammy Starnes) if you should find a problem with individuals who are not accurately reporting time worked or leave taken. Her telephone number is (225) 925-3541.

October 31, 2001  
**OPINION NUMBER 01-328**

Nat Bankston  
Registrar of Voters  
Parish of East Baton Rouge  
222 Saint Louis Street, Rm. 201  
Baton Rouge, LA 70802-5860

Dear Mr. Bankston:

You have requested an Attorney General's Opinion on the following questions:

1. What is considered election expenses to be paid by the state, with regard to the Registrar of Voters office? For example, if a Registrar of Voters employees work overtime everyday of the week before a Saturday election, who is responsible for paying overtime to that employee? Can compensatory leave be granted in lieu of overtime pay, and is this discretionary, and who has the discretion, if any, to make that decision?
2. What's required by the Parish Board when a request is made to recount absentee ballots?
3. Can the Parish Board choose to recount absentee ballots in an open courtroom in full view of the general public and a sitting judge of the court?
4. What authority, if any, does the Commissioner have with respect to the day to day operations of a Registrar of Voter's office; and, whether the Registrar of Voters can fill vacancies in his office?
5. Does the Commissioner have the authority to legally direct a Parish Board of Election Supervisors and/or a Registrar of Voters with regard to election procedures, such as recounting absentee ballots?
6. Does the Commissioner have the authority to reprimand a Registrar of Voters?

You have provided our office with several letters of communication between the Commissioner of Elections and yourself, the first one being a "letter of reprimand" from the Commissioner regarding the recount of the absentee ballots cast on July 21, 2001, which is the reason for this opinion request.

Your first question regarding election expenses has been addressed with respect to clerks of court in Attorney General Opinion Nos. 2000-194 and 2001-311, enclosed herein for your information and review. The Election Code provides general guidelines for making reimbursements to the registrars of voters under R.S. 18:1400.3, which are required to be followed. In general, R.S. 18:1400.3 *mandates* reimbursement to registrars of voters when it provides in paragraphs (A) and (B), "election expenses incurred by clerks of court and registrars of voters... *shall* be paid by the state...". Specifically, R.S. 18:1400.3(D) provides:

- D. For the purposes of this Section, 'election expenses incurred by registrars of voters' is defined and limited to the following:
- (1) Expenses incurred by a registrar of voters to pay for one or more temporary part-time clerical employees to perform election duties and responsibilities associated with his office as provided in this Title. Such employees shall be paid at an hourly rate established by the registrar at not to exceed that of a Voter Registration Specialist in the General Schedule at the entry level as specified in the classification and pay plan of the Louisiana Department of Civil Service.
  - (2) Expenses incurred by a registrar of voters to pay a permanent employee below the level of chief deputy and confidential assistant to perform election duties and responsibilities associated with his office during other than normal hours of operation of his office.
  - (3) Expenses of an extraordinary nature incurred by a registrar of voters for an election which have received prior approval of the commissioner of elections.

In response to your first question, election expenses incurred by a registrar are clearly defined by law and are to be paid by the state for gubernatorial and congressional elections and for special elections from funds appropriated to the commissioner of elections for that purpose. All other elections are to be paid by the appropriate governing authority. When local candidates or issues appear on the ballot, the state is required to pay one-half the costs and the remaining one-half is pro-rated between the state and local or municipal entities who participate in an election. The commissioner may initially pay such costs, with the appropriate governing authority reimbursing the commissioner. [R.S. 18:1400.3].

In your example of an employee working overtime for a Saturday election, it is our opinion that if the employee is a permanent employee below the level of chief deputy and confidential assistant, and the employee is required to perform election duties and responsibilities during other than normal hours of operation of the registrar's office, then it is the state's responsibility, through the

Commissioner, to pay such expenses as provided by law [which includes local responsibility for payment as well]. The normal hours of operation of a registrar of voters are provided in R.S. 18: 134 as follows:

- A. A registrar shall keep his principal office open for business on those days that state departments are open. A registrar shall observe the holidays which are provided by law or proclaimed by the governor for state departments. On days that a registrar's office is open, he shall observe the same office hours as the clerk of court for the parish. Notwithstanding any provision of this Subsection, any registrar may keep his principal office open during additional hours and on additional days.

\* \* \*

- E. On election days the principal office of the registrar shall remain open from 6:00 a.m. until 9:00 p.m. The registrar or a deputy registrar designated by him shall remain in the office during that time.

\* \* \*

The hours for operation of a clerk of court's office are set forth in R.S. 13:756 as 8:30 a.m. to 4:30 p.m. every day except Saturdays, Sundays, legal holidays, and in cases of public emergency.

Therefore, should a permanent employee of the registrar's office work outside of the normal hours of 8:30 a.m. to 4:30 p.m. Monday - Friday and 6:00 a.m. to 9:00 p.m. on an election day, the state is responsible for either all overtime expenses or for it's pro-rata share of overtime expenses, according to law. Part-time employees would not be entitled to overtime pay.

With regard to your first question about compensatory leave being granted in lieu of overtime pay; please see our conclusions in Opinion No. 01-311, enclosed herein. The reimbursement of expenses by the state for overtime of a permanent employee who works on election duties outside of the normal hours can not be through compensatory leave; only the registrar can grant compensatory leave to his/her employees.

In response to your second question, we refer you to R.S. 18:1313(l)(2), (3) and (4), which provides the requirements for recounting absentee ballots by a parish board of election supervisors.

In response to your third question, it is our opinion that the parish board of election supervisors is responsible for choosing the time and place where absentee ballots will be recounted. R.S. 18:1313(l)(2)(b).

In response to your fourth question, we refer you to R.S. 18:18, which provides in pertinent part:

The commissioner of elections shall administer the laws relating to custody of voting machines and voter registration, and for the purpose he shall:

\* \* \*

- (2) Direct and assist the registrars of voters of the state with respect to matters pertaining to the registration of voters as provided by law.
- (3) Prescribe uniform rules, regulations, forms, and instructions, which shall be approved by the attorney general and thereafter shall be applied uniformly by each registrar of voters in the state. These rules, regulations, forms, and instructions shall include but not necessarily be restricted to forms of applications for registration, records, affidavits and statements, documents, and general procedures to be used by the registrars of voters, none of which shall be inconsistent with the constitution and laws of the United States or of this state.

We also refer you to R.S. 18:58, which provides in pertinent part:

- A. Subject to the direction of the commissioner of elections and as provided by law, the registrar in each parish shall be responsible for the registration of voters in the parish he serves and for the administration and enforcement of the laws and the rules and regulations of the commissioner relating to the registration of such voters.

\* \* \*

These two laws on the same subject matter are required to be read together, C.C.art. 13, and thus, it is our opinion that the Commissioner of Elections has the authority to direct the registrars of this state *with respect to the registration of voters*. We do not believe that the Commissioner has any authority over a Registrar's office and/or with respect to the day to day operations of a Registrar's office, including whether or not a vacancy in a Registrar's office can be filled.

Your fifth question is answered in our response to your fourth question. Additionally, we add that the Attorney General is the legal advisor to each parish board of election supervisors, per R.S. 18:423(G), and he may designate the appropriate district attorney to represent the board and/or authorize the board to employ special counsel. Likewise, the Attorney General is the legal advisor to each registrar, per R.S. 18:64.



In response to your sixth and last question, it is our opinion that the reprimand to you as Registrar of Voters was inappropriate for several reasons. First, the election duty that you were performing, recounting absentee ballots, was being done in your role as registrar and as a member of the parish board of election supervisors, for which the Commissioner has no authority. It was not a registration duty, for which we do believe the Commissioner has supervision to direct you. Second, the Commissioner was reprimanding you for a matter that in her opinion was not being performed properly and/or legally, and the law does not give her the power to act as your legal advisor. The Commissioner's recourse in such a situation could be to seek a legal opinion from the Attorney General, to file a complaint with the State Board of Elections Supervisors, and/or to file a complaint with the professional review committee of the Registrar of Voters Association.

We hope that the foregoing has fully addressed all of your questions, and if we can be of further assistance, please advise.

Yours very truly,

RICHARD P. IEYOUB  
ATTORNEY GENERAL

---

ANGIE ROGERS LAPLACE  
Assistant Attorney General

RPI/ARL;mjb

Cc: East Baton Rouge Parish  
Board of Election Supervisors  
Hon. Suzanne Haik Terrell

## SYLLABUS

#01-328

- 24 - ELECTIONS – Conduct of Primaries & General
- 26 - ELECTIONS – Election Officers – Party Committee, Commissioners,  
Special Duty Sheriffs

Addresses the authority of the Commissioner of Elections vis-a-vis a Registrar of Voters and a Parish Board of Election Supervisors.

Nat Bankston  
Registrar of Voters  
Parish of East Baton Rouge  
222 Saint Louis Street, Rm. 201  
Baton Rouge, LA 70802-5860

Date Received:  
Date Released: October 31, 2001

ANGIE ROGERS LAPLACE  
Assistant Attorney General

August 21, 2002  
**OPINION NUMBER 01-328(A)**

Honorable Suzanne Haik Terrell  
Commissioner of Elections  
Department of Elections & Registration  
P. O. Box 4729  
Baton Rouge, Louisiana 70821-4729

Dear Commissioner Terrell:

You requested reconsideration of Attorney General Opinion No. 01-328, regarding our interpretation of R.S. 18:1400.3(D)(2), wherein we found that the state is responsible for reimbursement of expenses to the registrar for overtime of a permanent employee and that such reimbursement can not be through compensatory leave, as only the registrar can grant compensatory leave to his/her employees.

You state that registrars never incur an expense with regard to their employees because those employees are paid directly by the Department of Elections and Registration and the parish governing authority. Thus, you argue that no reimbursement is necessary and that since payments come directly from the budgets of the Department of Elections and Registration and the parish governing authority, that these two agencies should set policies with regard to how they will pay for overtime work, either through cash or through compensatory leave. Finally, you believe that the requirement for your department to pay for actual overtime expense instead of compensatory leave would be to allow the registrars by policy to impose an unfunded mandate in violation of the constitution, Article VI, Section 14(a).

The powers and duties of the commissioner of elections is set forth in R.S. 36:662:

In addition to the functions, powers, and duties otherwise vested in the commissioner of elections by law, he shall:

\* \* \*

- (2) Employ, appoint, remove, assign, and promote such personnel as is necessary for the efficient administration of the department.

\* \* \*

- (7) Be responsible for accounting and budget control, procurement and contract management, management and program analysis,

data processing, personnel management, and grants management for the department.

\* \* \*

The commissioner has other powers as provided in R.S. 18:18 as follows:

The commissioner of elections shall administer the laws relating to custody of voting machines and voter registration, and for the purpose he shall:

- (1) Subject to applicable civil service laws and applicable provisions of this Title, employ and fix the salaries and duties of necessary staff to carry out the functions of the department.
- (2) Direct and assist the registrars of voters of the state with respect to matters pertaining to the registration of voters as provided by law.

\* \* \*

Registrars are appointed according to R.S. 18:51 as follows:

- A. There shall be a registrar of voters for each parish in the state, who shall be appointed by the governing authority of the parish.

\* \* \*

Registrars are compensated according to R.S. 18:55 as follows:

- A. (1) The annual salary of registrars of voters shall be based on the most recent population figures as shown by the latest federal decennial census, the Louisiana Tech University population estimates for Louisiana parishes, or as determined by the governing authority of each parish in accordance with law.
- (2) The salary ranges and pay schedule for the registrars shall be as follows:

\* \* \*

- D. The state portion of each salary shall be paid biweekly by the state through the commissioner of elections, and the parish portion of each salary shall be paid monthly by the parish governing authority on the warrant of the respective registrars. The funds for the parish portion of the salary shall be annually appropriated by the parish governing authority and the funds for the state portion of the salary shall be annually appropriated to the commissioner of elections.

The powers and duties of the registrars are stated in R.S. 18:58, in part as, "Subject to the direction of the commissioner of elections and as provided by law, the registrar in each parish shall be responsible for the registration of voters in the parish he serves and for the administration and enforcement of the laws and the rules and regulations of the commissioner relating to the registration of such voters. ..."

Payment of salaries and expenses of registrars and their employees according to R.S. 18:59.1, is as follows:

- A. All monies made available from state funds for the payment of the state portion of the salaries and expenses of registrars of voters and their confidential assistants, deputy registrars, and other personnel shall be appropriated to and be paid to each such person by the commissioner of elections in accordance with each appropriation for the purpose. The commissioner of elections shall include in his annual budget an amount necessary for the purpose, and the monies so appropriated shall be withdrawn from the treasury upon warrants drawn by the commissioner and payments therefrom shall be made in accordance with applicable law. (Emphasis added).

Civil Service Rule 1.4 defines "appointing authority" as "[t]he agency, department, board or commission, and the officers and employees thereof authorized by statute or by lawfully delegated authority to make appointments to positions in the State Service." Registrars appoint their employees according to R.S. 18:59 as follows:

- A. Except as otherwise provided by law and in conformity with applicable civil service laws, registrars may appoint deputies, confidential assistants, and other office employees.

Thus, it is our opinion that the registrars are the "appointing authority" under civil service rules.

Civil Service Rule 11.29 provides, in part, for compensatory leave as follows:

- (a) Subject to the provisions of Subsections (b) and (g) of this Rule, and in accordance with Rules 6.18 through 6.27 and the requirements of Federal rules, statutes, regulations and judicial decisions, an employee who is required to perform overtime duty may, at the option of the appointing authority, be credited

with compensatory leave for the hours he has been required to work.

\* \* \* (Emphasis added).

Methods of compensation for overtime hours worked under civil service is addressed in Civil Service Rules 6.18 through 6.27, which includes either cash payment at the time and one-half rate, cash payment at the regular rate, compensatory leave earned hour for hour, or compensatory leave earned at the time and one-half rate. Civil Service Rules 6.20, 6.21, 6.22, 6.23 and 6.24 all provide for the appointing authority to select and use the applicable options listed in the rules for compensation for overtime hours worked.

You have sent us documentation which reflects the process in which your office pays registrars of voters and their employees. Specifically, your department prepares salary documents for registrars of voters and their employees, and forwards a copy to the parish governing authority for the parish portion of the employee's salary. The information for the state's portion is entered into the ISIS-HR system. The timekeepers in the registrars' office enters the time for registrars and their employees into the ISIS-HR system. This information is then utilized to generate the employees' check and post leave earned and taken. Checks and/or direct deposits are made biweekly at the same time as other employees within the department from funds appropriated to the department through the operating appropriation bill. The parish's portion of the employees' salary is either issued by the parish governing authority or in the registrars' office. This process varies in each parish. The parish accepts the leave balances maintained on the department's records.

In Atty.Gen.Op.No. 01-328, page 3, we stated:

With regard to your first question about compensatory leave being granted in lieu of overtime pay; please see our conclusions in Opinion No. 01-311, enclosed herein. The reimbursement of expenses by the state for overtime of a permanent employee who works on election duties outside of the normal hours cannot be through compensatory leave; only the registrar can grant compensatory leave to his/her employees.

A review of our analysis above of the state statutes and the civil service rules leads us to believe that this statement is correct, i.e., that only the registrar, as the appointing authority, can grant compensatory leave to his/her employees. However, as discussed in Atty.Gen.Op.No. 01-311, if the registrars have a policy with regard to the method of compensating overtime hours worked by their employees, then said policy would be enforceable by the department. It is our

understanding from the documentation you provided that your office met with the registrars at the beginning of your term, wherein it was decided by majority vote that compensation for overtime hours worked by the employees of the registrars' office would be paid as compensatory leave earned, rather than cash payment. Thus, we are of the opinion that your department can rely on this agreement in reimbursing the state's portion of election expenses to the registrars of voters, i.e., in the form of compensatory leave earned, and not cash payment.

As we have advised in the past, the commissioner of elections is mandated to establish rules and regulations governing reimbursement for expenses set forth in the election code and this issue should be addressed therein. Specifically, since the law [R.S. 18:59.1] requires the commissioner to include in her annual budget an amount necessary for the purpose of payment of the state portion of the salaries and expenses of registrars and their employees, the commissioner should establish by rule the necessary procedures for meeting with and determining the method of compensation for overtime hours worked by the employees of the registrars' office prior to the presentation of her budget request, as it will be necessary for an agreement to be reached between the commissioner and the registrars prior to the preparation of the commissioner's annual budget request.

We hope this opinion clarifies and answers all of your questions regarding reimbursement to the registrars for overtime worked by their employees. If you should have further questions regarding this matter, please do not hesitate to contact our office.

Yours very truly,

RICHARD P. IEYOUNG  
ATTORNEY GENERAL

---

ANGIE ROGERS LAPLACE  
Assistant Attorney General

RPI/ARL;mjb

Cc: Registrar of Voters Association

Syllabus

24            ELECTIONS  
92-A-1       REGISTRAR OF VOTERS

Clarifies the state's responsibility for payment of election expenses to the registrars when overtime work is incurred.

Honorable Suzanne Haik Terrell  
Commissioner of Elections  
Department of Elections & Registration  
P. O. Box 4729  
Baton Rouge, Louisiana 70821-4729

Date Received:  
Date Released: August 21, 2002

ANGIE ROGERS LAPLACE  
Assistant Attorney General



May 17, 2002  
OPINION NUMBER 02-0087

Ms. Debbie Waskom  
Secretary/Treasurer  
Louisiana Registrar of Voters Association, Inc.  
P. O. Box 677  
Natchitoches, LA 71458

Dear Ms. Waskom:

On behalf of the Louisiana Registrar of Voters Association, Inc., you requested the opinion of this office concerning the discretionary powers of the Commissioner of Administration relating to legislative mandates. You advised that the Commissioner of Administration denied the Registrars of Voters merit increases for the fiscal year beginning July 1, 2002.

The compensation of the registrar of voters, the chief deputies and the confidential assistants is set forth in R.S. 18:55, et seq. The compensation for each of these persons is based on population with the salary ranges and pay schedules set forth in statute. R.S. 18:55, R.S. 18:59. These statutes further provide for merit pay for the registrar, chief deputy and confidential assistant. Merit pay for the registrar is found at R.S. 18:55(A)(4)(b), as follows in pertinent part:

Each registrar whose salary is at the level of step one or higher shall be evaluated as to merit in January. The criteria and procedure for the merit evaluation shall be determined by the commissioner of elections in conjunction with the Registrar of Voters Association. It shall provide that each registrar be evaluated by the commissioner of elections or his designee acting on his behalf. Upon a finding of "excellent" on a merit evaluation, the registrar shall receive a salary increase to the next step until the registrar's salary is equal to the highest step of the appropriate population range.

Similar statutes are found authorizing merit pay for the chief deputy registrar and the confidential assistant, except that the criteria and procedure for the merit evaluation is to be determined by the Registrar of Voters Association with evaluations to be conducted by the registrar of the particular parish involved. R.S. 18:59(B)(4)(b); R.S. 18:59(C)(4)(b).

R.S. 18:59:1 states as follows:

**All monies made available from state funds for the payment of the state portion of the salaries and expenses of registrars of voters and their confidential assistants, deputy registrars, and other personnel shall be appropriated to and be paid to each such person by the commissioner of elections in accordance with each appropriation for the purpose. The commissioner of elections shall include in his annual budget an amount necessary for the purpose, and the monies so appropriated shall be withdrawn from the treasury upon warrants drawn**

by the commissioner and payments therefrom shall be made in accordance with applicable law. (Emphasis added)

Concerning the State budgetary process, La.Const. Art. VII, Sec. 11(A) provides in pertinent part as follows:

The governor shall submit to the legislature, at the time and in the form fixed by law, a budget estimate for the next fiscal year setting forth all proposed state expenditures. This budget shall include a recommendation for appropriations from the state general fund and from dedicated funds ... which shall not exceed the official forecast of the Revenue Estimating Conference and the expenditure limit for the fiscal year....

The "time and in the form fixed by law" are found in Title 39 of the Louisiana Revised Statutes, as amended. R.S. 39:28 provides that the budget office shall prescribe budget request forms to be used by each budget unit, which shall be transmitted to each budget unit on or before September 20 of each year. The budget office is also required to furnish to each budget unit a set of specific guidelines under which the budget unit shall provide information to allow the budget office to establish a continuation budget. R.S. 39:29. R.S. 39:33(A)(1), requires that, on a date specified by the Commissioner of Administration, but not later than November 15th of each year, the head of each budget unit submit to the Governor, the Joint Legislative Committee on the Budget and the Legislative Fiscal Office an estimate of financial requirements and receipts of the budget unit for the ensuing Fiscal Year. R.S. 39:32 requires the agency to submit its request at the existing operating budget level with a prioritized listing of budget packages to increase or decrease the existing operating budget. The Governor is required to prepare an executive budget, submit a copy to the Joint Legislative Committee on the Budget forty-five (45) days, except that during the first year of each term it shall be submitted 30 days, prior to the beginning of the regular session of the Legislature and transmit a copy to each member of the Legislature on the first day of the regular session. "Executive budget" is defined in R.S. 39:2(14) to mean the document submitted to the legislature at each regular session, pursuant to the provisions of Title 39 of the Revised Statutes and Article VII, Section 11(A) of the Constitution of Louisiana, presenting the governor's recommended complete financial plan for each year.

R.S. 39:34 further provides that the executive budget is to present a complete financial and programmatic plan for the ensuing fiscal year which shall include recommendations for appropriations from the state general fund and dedicated funds which shall not exceed the official forecast of the Revenue Estimating Conference. In connection with preparing the executive budget, the governor is authorized to direct such changes or revisions in policy and program, and in specific details, as he may find warranted. R.S. 39:35. R.S. 39:36 sets forth the requirements as to content and format of the executive budget and also requires the Governor to submit a budget message in the executive budget summarizing the proposed financial plan and programmatic policies, including a statement of impact that his proposed recommendations have on the existing operating budget. The financial plan presented in the executive budget is enacted into law by the legislature by the passage of such appropriation and revenue acts and such other acts as the legislature may deem necessary to make the financial plan effective and with such amendments as may be determined by the legislature. R.S. 39:53(A). The legislature has absolute control over the finances of the state, except as limited by constitutional provisions. *Woodard v. Reily*, 244 La. 337, 152 So.2d 41 (La.

1963). It is the legislature that decides how the branches and departments of government shall be funded from the public fisc. *Louisiana Public Facilities Authority v. Foster*, 2001-0009 (La. 9/18/01), 795 So.2d 288; *Quarles v. Jackson Parish Police Jury*, 482 So.2d 833 (La.App. 2 cir. 1986), citing *State ex rel. Assistant Dist. Attys. Ass'n v. Theriot*, 242 So.2d 49 (La.App. 1 Cir. 1970). After the legislature enacts the budget, it is then sent to the Governor for his signature. La.Const. Art. III, Sec. 15. The State Constitution prohibits the passage of an unbalanced budget. La.Const. Art. VII, Sec. 10(E). The Governor may veto any line item appropriation, subject to legislative override. La.Const. Art. III, Sec. 16.

After enactment of the budget, the legislative fiscal office is required to prepare a legislative summary of appropriations which shall describe the changes, by program, which occurred from the proposals submitted by the governor in the executive budget and for revenue raising bills through the enactment of the various appropriation and revenue acts. R.S. 39:55.

Thus the Commissioner of Administration is mandated to prepare an executive budget utilizing the budget requests submitted by the various entities which receive State appropriations, which includes the Department of Elections on behalf of the registrars, yet the total of which cannot exceed the official forecast of the Revenue Estimating Conference. We were unable to find any statute which grants the Commissioner the discretion to determine which of the multitude of statutes requiring annual funding to exclude in the executive budget.

The situation which seems most analogous to the question presented in this opinion request is the requirement that parish governing bodies pay the legislatively mandated expenses of officials such as district attorneys, coroners, clerks of court, etc. In those instances the legislature determines the duties of state officials such as coroners, and delegates some of the responsibility for funding the coroner's office to parish governing bodies. When the legislature places the burden of paying salaries or other expenses of a state official on parish governing authorities, those bodies are generally obliged to pay these mandated expenses. See, *Carriere v. St. Landry Parish Police Jury*, 97-1914 (La. 3/4/98), 707 So.2d 979; *Perron v. Evangeline Parish Police Jury*, 2001-0603 (La. 10/16/01), 798 So.2d 67; *Reed v. Washington Parish Police Jury*, 518 So.2d 1044, 1046 (La.1988).

In this instance, the legislature determines, by statute, which expenses of government it desires to fund. The Commissioner must then develop an executive budget including those expenses yet ensure that the total amount of recommended appropriations do not exceed the official forecast.

It must be emphasized that the executive budget is merely a recommendation to the legislature. R.S. 39:2; R.S. 39:34; R.S. 39:35; R.S. 39:55. The legislature is authorized to appropriate monies for different purposes and/or in different amounts than what is set forth in the executive budget. La.Const. Art. III, Sec. 16; R.S. 39:53; R.S. 39:55.

Accordingly, it is the opinion of this office that the Commissioner of Administration is not given the discretion to exclude in the executive budget, the programs or expenses which the legislature has stated must be funded.

Trusting this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUNG  
Attorney General

BY: \_\_\_\_\_  
MARTHA S. HESS  
Assistant Attorney General

RPI/MSH

**OPINION NUMBER 02-0087**

3 APPROPRIATIONS

R. S. 18:55; R.S. 18:59; R.S. 18:59.1; 39:2; R.S.  
39:33; R.S. 39:32; R.S. 39:34; R.S. R.S. 39:35; R.S.  
39:36; R.S. 39:53; R.S. 39:55

La. Const. Art. III, §16; Art. VII, §10; Art. III, §15

Ms. Debbie Waskom  
OPINION NUMBER 02-0087  
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Commissioner of Administration is not given discretion as to what programs and the amount of funding for each, to be included in the executive budget.

Ms. Debbie Waskom  
Secretary/Treasurer  
Louisiana Registrar of Voters Association, Inc.  
P. O. Box 677  
Natchitoches, LA 71458

DATE RECEIVED:  
DATE RELEASED: May 17, 2002

MARTHA S. HESS, ASSISTANT ATTORNEY GENERAL

Mr. Michael E. Ponder  
OPINION NUMBER 02-0173  
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**OPINION NUMBER 02-173**

**9 CIVIL SERVICE COMMISSION  
90-A POLITICAL SUBDIVISION**

**La. Constitution Act VI, §14  
La. Constitution Act X, §10**

Action of Department of Elections under its "agency delegated classification authority" does not constitute a rule or regulation for purposes of Constitution prohibition on State increasing financial burden of political subdivisions even if such is considered a rule, \$7,500 is not a significant fiscal impact on an entity with a \$492 million budget. City Parish is not appropriate governing authority for state civil service employees.

Mr. Michael E. Ponder  
Office of the Parish Attorney  
City of Baton Rouge  
Parish of East Baton Rouge  
222 St. Louis Street  
P. O. Box 1471  
Baton Rouge, LA 70821

DATE RECEIVED:

DATE RELEASED: October 9, 2002

MARTHA S. HESS, ASSISTANT ATTORNEY GENERAL

Ms. Deborah Waskom  
Opinion No. 02-338  
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Syllabus

92-A-1 REGISTRAR OF VOTERS

If the parish governing authority approves a supplement in pay for the registrar, chief deputy, and any other unclassified employee, this action increases their compensation and can not be reduced while they hold the office or position.

Ms. Deborah Waskom  
Registrar of Voters  
Natchitoches Parish  
Post Office Box 677  
Natchitoches, Louisiana 71458-0677

Date Received:  
Date Released: October 25, 2002

ANGIE ROGERS LAPLACE  
Assistant Attorney General

October 9, 2002  
**OPINION NUMBER 02-0173**

9 CIVIL SERVICE COMMISSION  
90-A POLITICAL SUBDIVISION  
La. Constitution Act VI, §14  
La. Constitution Act X, §10

Action of Department of Elections under its "agency delegated classification authority" does not constitute a rule or regulation for purposes of Constitution prohibition on State increasing financial burden of political subdivisions even if such is considered a rule, \$7,500 is not a significant fiscal impact on an entity with a \$492 million budget. City Parish is not appropriate governing authority for state civil service employees.

Mr. Michael E. Ponder  
Office of the Parish Attorney  
City of Baton Rouge  
Parish of East Baton Rouge  
222 St. Louis Street  
P. O. Box 1471  
Baton Rouge, LA 70821

Dear Mr. Ponder:

You requested the opinion of this office concerning the constitutionality of a state department action mandating an increase in expenditures by a local governing authority. You advised that House Resolution 110 of the 2001 Regular Session of the Louisiana Legislature requested that the Department of State Civil Service ("State Civil Service") conduct a job study of registrars of voters' employees and report the results to the House Committee on House and Governmental Affairs prior to the 2002 Regular Session. You further advised that State Civil Service issued a regulation implementing raises for registrars of voters' employees effective March 18, 2002 thereby imposing an unfunded mandate of salary increases for registrar of voters employees. Those raises were not included in the 2002 budget for the City of Baton Rouge/Parish of East Baton Rouge (the "City/Parish") nor did the City/Parish governing authority enact an ordinance or adopt a resolution relative to same. It is our further understanding that the legislature did not appropriate additional funds to pay the cost of the raises.

Your first question is whether the action of State Civil Service violates La.Const. Art. VI, Sec. 14, which provides as follows:

**(A) No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by ordinance enacted, or resolution adopted, by the governing authority of the affected political subdivision or until, and only as long as, the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the political subdivision for the purpose and the affected political subdivision is authorized by ordinance or resolution to levy**



and collect such revenue and only to the extent and amount of such revenue. This Section shall not apply to a school board.

(B) This Section shall not apply to:

- (1) A law requested by the governing authority of the affected political subdivision.
- (2) A law defining a new crime or amending an existing crime.
- (3) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 1991.
- (4) A law enacted, or state executive order, rule, or regulation promulgated, to comply with a federal mandate.
- (5) A law providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen.
- (6) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature and any rule or regulation adopted to implement such instrument or adopted pursuant thereto.
- (7) **A law having insignificant fiscal impact on the affected political subdivision.** (Emphasis added)

As to the type of action actually taken by State Civil Service, we refer you to "A Study of State Civil Service in Response to HOUSE RESOLUTION NO. 110 of 2001" (the "Study") which indicates that State Civil Service held a meeting with representatives of the Department of Elections, the Secretary of State's office and various staff and registrars throughout the State. The consensus of the meeting was that pay levels for most employees were inadequate to recruit and retain employees. State Civil Service suggested that the most efficient and rapid solution was to use "agency delegated classification authority" vested in the Department of Elections to move the employees from the classification of Voter Registration Specialist to higher paid existing generic clerical titles. The existing generic clerical job titles were representative of the job duties and responsibilities of the Voter Registration Specialist positions. After the employees moved from the Voter Registration Specialist classification to the generic clerical classification, the classification of Voter Registration Specialist would then be abolished. Pre-approval from State Civil Service was not necessary for these changes to occur. It does not appear from

the information that has been supplied to this office that State Civil Service adopted any rule or regulation with regard to these positions.

We would suggest that the action of State Civil Service does not constitute a state executive order, rule or regulation for purposes of La.Const. Art. X, Sec. 10 as it does not appear that State Civil Service imposed a mandate that the classifications be changed. Nor was there a rule or regulation adopted by the Department of Elections. The action was taken by the Department of Elections as part of their "agency delegated classification authority". Thus it does not appear that there was a violation of La.Const. Art. VI, Sec. 16. See discussion in *Polk v. Edwards*, 626 So.2d 1128 (La. 1993).

However, assuming that the above described actions do constitute a "rule or regulation" for purposes of Art. VI, Sec. 16, exceptions (B)(1) through (6) to the constitutional provision are not applicable in this situation. We specifically concur with your conclusion that the exception contained in (B)(5) only applies to firemen and municipal policemen.

The question then becomes: does the regulation have a significant fiscal impact on the City/Parish?

According to the Study, the total cost to the State to implement the change on a statewide basis was \$59,261.02. The State's share is 50%. Local governments are responsible for their proportionate share of the remaining 50% or \$59,261.02. From discussions with House of Representative employees, it appears that 60 registrar employees were affected on a statewide basis, of which 8 were employed by the East Baton Rouge Parish Registrar of Voters Office. The estimated cost to the City/Parish for the non-State portion of the raises for the eight employees was estimated not to exceed \$7,500. The 2002 City/Parish budget from all sources is \$492,018,390.00.

You advised that the 2002 City/Parish budget has been reduced to 95% of the 2001 budget due to a decline in revenues. You indicated that payment of the raise increases would force the City/Parish to use non-recurring revenue for a recurring purpose and questioned whether such a practice constitutes a significant fiscal impact. As stated earlier, the City/Parish budget for 2002 is approximately \$492 million from all sources. By our calculations, an impact of \$7,500 would be 0.00152%. Even looking only at the general fund portion of the City/Parish budget (approximately \$208 million), the impact of \$7,500 is 0.00361%. It is the opinion of this office that raises in the approximate amount of \$7,500 which causes a 0.00152% effect on an estimated \$492 million budget is not a significant fiscal impact on the City/Parish. See Op.Atty.Gen. No. 00-268.

Your next question is whether the City/Parish is the "appropriate governing authority" to approve the salary increase pursuant to La. Const. Art. X, Sec. 10(C).

La. Const. Art. X, Sec. 10(A) and (C) provide in pertinent part as follows:

“(A) Rules (1) Powers. **Each commission** is vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified service, including the power ... **to adopt a uniform pay and classification plan** ... and generally to accomplish the objectives and purposes of the merit system of civil service ...

\* \* \*

(C) Wages and Hours. Any rule or determination affecting wages or hours shall have the effect of law and become effective only after approval by the governor or the **appropriate governing authority.**” (Emphasis added)

In *Thoreson v. State Department of Civil Service*, 433 So.2d 184 (La.App. 1st Cir. 1983), the Court held that State Civil Service was given a Constitutional trust to establish and implement a uniform classification and pay plan as a non-political body. See also, *Gaspard v. Department of State Civil Service*, 93-0311 (La.App. 1st Cir. 3/11/94), 634 So.2d 14; *Strickland v. State*, 525 So.2d 740 (La.App. 1st Cir. 1988). Registrars of voters and their employees are not employees of local police juries or other local government units. *In re Bankston*, 306 So.2d 863 (La.App. 1st Cir. 1974). They are considered to be State employees. *City of New Orleans v. State*, 426 So.2d 1318 (La. 1983); Op. Atty. Gen. Nos. 87-20, 88-118, 85-558, 85-355; R.S. 18:62. Accordingly, State Civil Service has the exclusive authority, subject to the approval of the governor, to make rules or determinations affecting wages or hours of the employees of the registrars of voters who are in the State classified service.

In this instance, there is no “appropriate governing authority” to approve rules or determinations. With regards to the State system, the Governor must approve rules or determinations. The City/Parish would be the appropriate governing authority under La. Const. Art. X, Sec. 10(C) to approve rules or determinations affecting wages or hours for the Baton Rouge civil service system. It is the opinion of this office that “appropriate governing authority” refers to non-State civil service systems. See *Saulter v. Sewerage & Water Board*, 593 So.2d 767 (La.App. 4th Cir. 1992); *Babin v. City of New Orleans*, 83-2499 (La.App. 4th Cir. 5/26/94), 637 So.2d 1309.

Trusting this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUNG  
Attorney General

Mr. Michael E. Ponder  
OPINION NUMBER 02-0173  
Page -5-

BY:  
MARTHA S. HESS  
Assistant Attorney General

RPI/MSH

Mr. Michael E. Ponder  
OPINION NUMBER 02-0173  
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**OPINION NUMBER 02-173**

**9 CIVIL SERVICE COMMISSION  
90-A POLITICAL SUBDIVISION**

**La. Constitution Act VI, §14  
La. Constitution Act X, §10**

Action of Department of Elections under its "agency delegated classification authority" does not constitute a rule or regulation for purposes of Constitution prohibition on State increasing financial burden of political subdivisions even if such is considered a rule, \$7,500 is not a significant fiscal impact on an entity with a \$492 million budget. City Parish is not appropriate governing authority for state civil service employees.

Mr. Michael E. Ponder  
Office of the Parish Attorney  
City of Baton Rouge  
Parish of East Baton Rouge  
222 St. Louis Street  
P. O. Box 1471  
Baton Rouge, LA 70821

DATE RECEIVED:

DATE RELEASED: October 9, 2002

MARTHA S. HESS, ASSISTANT ATTORNEY GENERAL

October 25, 2002  
**OPINION NUMBER 02-338**

Ms. Deborah Waskom  
Registrar of Voters  
Natchitoches Parish  
Post Office Box 677  
Natchitoches, Louisiana 71458-0677

Dear Registrar Waskom:

Your request for an Attorney General's opinion has been assigned to me for research and reply. Your letter states that on June 19, 2002 the Natchitoches Parish Police Jury approved a \$100.00 per month raise for each employee of the Registrar of Voter's office with an effective date of January 1, 2003. You also attached a newspaper article dated Friday, July 19, 2002 from *The Natchitoches Times* which confirms this action:

The Finance and Budget Committee discussed several matters and respectfully submits the following:

1. That the Jury approve a pay plan request of 5% or a \$100.00 per month for each employee in the Registrar Voters Office.

\* \* \*

On motion by Mr. Huggins, duly seconded by Mr. Allen, that the Natchitoches Parish Police Jury, in regular and legal session convened, does hereby approve a pay plan request of a \$100.00 per month for each employee in the Registrar of Voters Office, effective January 1, 2003.

Motion Carried

\* \* \*

Your letter further states that there was an unsuccessful attempt at the August monthly meeting of the police jury to freeze this raise due to a lack of funding. You seek an opinion on an interpretation of R.S. 18:55(B), regarding the notice requirements prior to the enactment of a law to either increase or decrease the parish portion of the salary of registrars. You also ask if R.S. 18:57, which prohibits the reduction of the compensation of any registrar during his term of office, prohibits the police jury from rescinding it's action on June 19, 2002, which increased the pay of the employees in the registrar's office by \$100.00 a month, effective January 1, 2003.

It is our opinion that the language of R.S. 18:55(B) refers only to laws enacted by the legislature. This provision of the Election Code is consistent with the constitutional provision on the enacting of local or special laws:

**LSA-R.S. 18:55(B):**

- B. No law to increase or decrease that portion of the salary payable by the parish shall be enacted hereafter unless notice of intent to enact such a law has been published on two separate days, without cost to the state, in the official journal of each locality affected by the enactment of the increase or decrease in the salary figures. The last day of publication shall be at least thirty days prior to introduction of the bill.

**LSA-Const. Art. III, Sec. 13 (1974):**

Section 13. No local or special law shall be enacted unless notice of the intent to introduce a bill to enact such a law has been published on two separate days, without cost to the state, in the official journal of the locality where the matter to be affected is situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and every such bill shall recite that notice has been given.

Thus, we are of the opinion that R.S. 18:55(B)'s purpose is to require notice to the local jurisdiction prior to any state law being enacted that would increase or decrease the parish's portion of the salary that they pay to the registrar, and is not relevant to the instant matter.

The law prohibiting the reduction of the compensation of the registrar is relevant in this matter. LSA-R.S. 18:56 provides:

The salaries provided by law for the registrar, the chief deputy, and any other unclassified employees may be supplemented by the parish governing authority.

The salary provided by law for the registrar is found in R.S. 18:55, and may not be reduced, as provided in R.S. 18:57 as follows:

- A. The compensation of any registrar, chief deputy, or other unclassified employee which is payable in accordance with the provisions of R.S. 18:55 and 59 shall not be reduced while he holds his office or position, or as a result of promotion.

In sum, it is our opinion that the salary provided by R.S. 18:55 may be supplemented by the parish governing authority and can not be reduced while the registrar holds office. Further, since the parish governing authority took official action to increase the salary of the registrar by a \$100 a month supplement, they can not now take action to reduce this salary, as to do so would be a violation of R.S. 18:57.

This opinion is consistent with the case of *Registrar of Voters v. Morehouse Parish Police Jury*, 521 So.2d 827 (La.App. 2<sup>nd</sup> Cir.1988), where the court found that the inclusion of the registrar in the police jury's insurance program was a benefit equivalent to supplemental salary and that under Act 299 of 1983, it could not be reduced. Act 299 of 1983 provided a Section 3 that stated, "the annual salary, including any salary supplement paid pursuant to R.S. 18:56, of a person employed on the effective date of this Act [August 30, 1983] in the position of registrar of voters, ... shall not be decreased during his incumbency in such position." This language is consistent with present law, namely R.S. 18:57.

Trusting that this information is a sufficient response to your request, we remain

Yours very truly,

RICHARD P. IEYOUB  
ATTORNEY GENERAL

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ANGIE ROGERS LAPLACE  
Assistant Attorney General

RPI/ARL;mjb



Syllabus

92-A-1 REGISTRAR OF VOTERS

If the parish governing authority approves a supplement in pay for the registrar, chief deputy, and any other unclassified employee, this action increases their compensation and can not be reduced while they hold the office or position.

Ms. Deborah Waskom  
Registrar of Voters  
Natchitoches Parish  
Post Office Box 677  
Natchitoches, Louisiana 71458-0677

Date Received:  
Date Released: October 25, 2002

ANGIE ROGERS LAPLACE  
Assistant Attorney General

STATE OF LOUISIANA  
SECRETARY OF STATE

AL ATER  
SECRETARY OF STATE

P.O. BOX 94125  
BATON ROUGE, LA 70804-9125  
(225) 922-1000  
www.sos.louisiana.gov



July 21, 2005

TO: All Employees

FROM: Al Ater, Secretary of State

SUBJECT: Work Hours, Work Schedules, and Attendance and Leave

Effective immediately, there will be a no tolerance policy in effect for abuse of time and attendance and/or leave.

The Department of State Policy #2, Work Hours, Work Schedules, and Attendance and Leave, is currently being revised. Once the policy has been finalized and approved, you will receive a copy of the revised policy. Until that time, current schedules and work hours will be in effect. In addition, the following will be mandated:

***Employees must arrive ready to begin working at their scheduled time.***

Employees who cannot arrive at their scheduled time must contact their supervisor and ***must present a leave request immediately upon their arrival at work.***

As in the past, requests for leave ***must be in advance, in writing and approved prior to taking the time off*** unless and emergency situation prohibits this.

Employees who cannot report to work on a scheduled work day ***must contact their supervisor, not a co-worker, within 15 minutes of their start time*** for approval and stating the reason for the absence.

Employees found in violation of the policy and/or this memorandum is subject to disciplinary action, up to and including termination.

All employees must sign showing receipt of this memorandum and forward the signed memorandum back to the Human Resource Division by Friday, August 5, 2005. Please keep a copy for your records.

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF LOUISIANA  
SECRETARY OF STATE



Jay Dardenne  
SECRETARY OF STATE

P.O. BOX 94125  
BATON ROUGE, LA 70804-9125  
(225) 922-1000  
www.sos.louisiana.gov

November 10, 2006

TO: All Employees  
FROM: Jay Dardenne, Secretary of State  
SUBJECT: Work Hours, Work Schedules, and Attendance and Leave

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All employees must sign showing receipt of this memorandum and forward the signed memorandum back to the Human Resource Division. Please keep a copy for your records.

Received by: *Brian J. Champagne* Date: 8/2/2007

The Human Resource Division will maintain this form.  
8549 United Plaza Blvd.  
Baton Rouge, La 70809

Jay Dardenne  
SECRETARY OF STATE

STATE OF LOUISIANA  
SECRETARY OF STATE

P.O. BOX 94125  
BATON ROUGE, LA 70804-9125  
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November 10, 2006

TO: All Employees  
FROM: Jay Dardenne, Secretary of State  
SUBJECT: Work Hours, Work Schedules, and Attendance and Leave

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All employees must sign showing receipt of this memorandum and forward the signed memorandum back to the Human Resource Division. Please keep a copy for your records.

Received by: *Kristie Z. Arger* Date: 12/10/2008

The Human Resource Division will maintain this form.  
8549 United Plaza Blvd.  
Baton Rouge, La 70809

## STATEMENT OF AGREEMENT OR UNDERSTANDING

RE: Compensation for Overtime Work

I, Kristie Orgeron, understand that agencies of the State of Louisiana have the option of granting compensatory leave for overtime hours worked.

NON-EXEMPT EMPLOYEES: In cases where the Fair Labor Standards Act applies, such leave will be credited to non-exempt employees at the rate of one and one-half hour for each hour worked. For overtime hours worked during weeks when leave is taken (with or without pay), or when holidays are observed, the agency may opt to use straight-time cash payments or hour-for-hour compensatory leave to compensate non-exempt employees, in accordance with the Rules of the Department of State Civil Service.

EXEMPT EMPLOYEES: Agencies have the option of granting no overtime compensation at all to exempt employees; but if the agency chooses to compensate exempt employees for overtime, the agency may choose to compensate such employees with compensatory leave rather than cash payment.

### PAYMENT OF COMPENSATORY LEAVE UPON SEPARATION:

- NON-EXEMPT EMPLOYEES: I also understand that non-exempt employees shall be paid upon separation for any time and one-half compensatory leave earned for overtime, as required by the Fair Labor Standards Act. Other straight, hour-for-hour compensatory leave may or may not be paid upon separation in accordance with the applicable Civil Service Rules. Any hour-for-hour compensatory leave that is not paid upon separation shall be cancelled.
- ✶ • EXEMPT EMPLOYEES: Compensatory leave credited to exempt employees may or may not be paid upon separation in accordance with the applicable Civil Service Rules. Any such compensatory leave that is not paid, shall be cancelled, in accordance with the applicable Civil Service Rules.

I have read the above and agree to accept compensatory leave as compensation for overtime work.

Printed or Typed Name: Kristie Orgeron

Signature: Kristie Orgeron Date: 12/10/2008

STATE OF LOUISIANA  
SECRETARY OF STATE

Jay Dardenne  
SECRETARY OF STATE

P.O. BOX 94125  
BATON ROUGE, LA 70804-9125  
(225) 922-1000  
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November 10, 2006

TO: All Employees  
FROM: Jay Dardenne, Secretary of State  
SUBJECT: Work Hours, Work Schedules, and Attendance and Leave

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All employees must sign showing receipt of this memorandum and forward the signed memorandum back to the Human Resource Division. Please keep a copy for your records.

Received by: Michele L. Rosta Date: 4/21/2010

## STATEMENT OF AGREEMENT OR UNDERSTANDING

RE: Compensation for Overtime Work

I, Mickele Lousteau, understand that agencies of the State of Louisiana have the option of granting compensatory leave for overtime hours worked.

NON-EXEMPT EMPLOYEES: In cases where the Fair Labor Standards Act applies, such leave will be credited to non-exempt employees at the rate of one and one-half hour for each hour worked. For overtime hours worked during weeks when leave is taken (with or without pay), or when holidays are observed, the agency may opt to use straight-time cash payments or hour-for-hour compensatory leave to compensate non-exempt employees, in accordance with the Rules of the Department of State Civil Service.

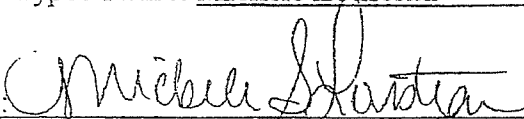
EXEMPT EMPLOYEES: Agencies have the option of granting no overtime compensation at all to exempt employees; but if the agency chooses to compensate exempt employees for overtime, the agency may choose to compensate such employees with compensatory leave rather than cash payment.

### PAYMENT OF COMPENSATORY LEAVE UPON SEPARATION:

- NON-EXEMPT EMPLOYEES: I also understand that non-exempt employees shall be paid upon separation for any time and one-half compensatory leave earned for overtime, as required by the Fair Labor Standards Act. Other straight, hour-for-hour compensatory leave may or may not be paid upon separation in accordance with the applicable Civil Service Rules. Any hour-for-hour compensatory leave that is not paid upon separation shall be cancelled.
- EXEMPT EMPLOYEES: Compensatory leave credited to exempt employees may or may not be paid upon separation in accordance with the applicable Civil Service Rules. Any such compensatory leave that is not paid, shall be cancelled, in accordance with the applicable Civil Service Rules.

I have read the above and agree to accept compensatory leave as compensation for overtime work.

Printed or Typed Name: Mickele Lousteau

Signature: 

Date: 4/21/2010

November 9, 2010  
OPINION 10-0111

92-A-1 Registrar of Voters

La. R.S. 11:102  
La. R.S. 11:103  
La. R.S. 11:2031 *et seq.*  
La. R.S. 1309  
La. R.S. 18:1400.8

Lorraine C. Dees, Director  
Registrar of Voters Employees'  
Retirement System  
P.O. Box 57  
Jennings, LA 70546

Compensation earned for services rendered by the registrar of voters and its permanent employees in performing election duties and responsibilities associated with early voting is eligible for contribution to ROVERS. The Secretary of State is responsible for the payment of the employer contribution to ROVERS, out of the money appropriated to it for early voting expenses, for services rendered by registrar of voters' employees in performing election duties and responsibilities associated with early voting because this is an expense incurred by the registrar of voters and his permanent employees.

Dear Ms. Dees:

You have requested an opinion of the Attorney General on several issues involving the Registrar of Voters Employees' Retirement System ("ROVERS"). Specifically, you want to know if compensation for services rendered to perform election duties and responsibilities associated with early voting is eligible for contribution to ROVERS. If so, you want to know if La. R.S. 18:1400.8 mandates the payment of such contributions to ROVERS as appropriated to the Secretary of State for that purpose.

We start our analysis by looking at ROVERS. The laws creating and governing ROVERS can be found at Chapter 6 of Title 11, Consolidated Public Retirement Systems.<sup>1</sup> ROVERS was established in nineteen hundred and fifty-five, and it provides retirement allowance and other benefits for the registrars of voters, their deputies, and their permanent employees in the parish. See La. R.S. 11:2032. Membership in the system is further explained in La. R.S. 11:2051.

La. Const. art. X, § 29(E)(1) requires that the legislature establish a particular method of actuarial valuation to be employed for each state or statewide public retirement system, which includes ROVERS. As such, many of the laws found in Chapter 2 of Title 11 are applicable to the method of financing for ROVERS. Additional laws on the method of financing for ROVERS can be found in Part VII of Chapter 6 at La. R.S. 11:2131 through La. R.S. 11:2144. For example, the

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<sup>1</sup> ROVERS was redesignated into Title 11 from Title 18, attendant citation and capitalization changes were made, and paragraphs were reordered, pursuant to Acts 1991, No. 74.



amount of employee contributions is discussed in La. R.S. 11:2132, and provides in pertinent part that:

**B. Each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period seven per centum of his earnable compensation.** In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period, to facilitate the making of deductions it may modify the deduction required of any member by such an amount as shall not exceed one-tenth of one per centum of the annual compensation upon the basis of which such deduction is to be made.

(Emphasis added.) *See also* La. R.S. 11:61-La. R.S. 11:62.

Employer contributions also may be assessed and collected and are discussed at La. R.S. 11:2142. *See also* La. R.S. 11:102-11:103. It is important to note that "employer" for purposes of ROVERS shall mean the registrar of voters of any parish in the State of Louisiana, the State of Louisiana, the police jury or any other governing body of a parish which employs and pays registrars of voters. *See* La. R.S. 11:2031 (11). "Employer" can also mean ROVERS. *Id.*

As it relates to your first inquiry, you want to know if compensation earned for services rendered in performing election duties and responsibilities associated with early voting is eligible for contribution to ROVERS. It is clear from the language of La. R.S. 18:1309 that early voting is mandatory under Louisiana Law and that it is mandatory for the registrar of voters to maintain extra hours during the time period of early voting. Specifically, La. R.S. 18:1309 provides in pertinent part that:

§1309. Early voting application and early voting

A. (1) The periods for conducting early voting application and **early voting shall be from fourteen days to seven days prior any scheduled election.**

(2) During the early voting period, **the registrar shall maintain regular office hours, remaining open from 8:30 a.m. to 6:00 p.m. Monday through Saturday.** Early voting on the last day of voting with terminate when all persons who are in line to vote,

at the close of the regular office hours of the registrar's office, as provided in this Paragraph, have been allowed to vote.

(Emphasis added.)

You also informed our office that the services rendered to perform election duties associated with early voting are included in the regular pay of employees. The language of La. R.S. 11:2132 which is outlined above and which deals with employee contributions mandates deductions from the salary of each member on each and every payroll of such employer for each and every payroll period for contribution to ROVERS. This mandatory deduction for contribution to ROVERS would include payments made for early voting services rendered by employees. This is especially evident, since you have indicated that early voting services are included in the regular pay of employees.

Even in the event that early voting services performed by registrar of voters' employees are considered overtime or extra time, there is no prohibition from including these services for retirement system contribution because the duties associated with early voting are being performed as part of the employee's regular and mandated duty. This determination is consistent with the practices of other retirement systems. For example, La. R.S. 11:233 which governs earnable compensation for Firefighters Retirement System, Sheriffs' Pension and Relief Fund, Parochial Employees' Retirement System of Louisiana, and Assessors Retirement Fund, provides that earnings, earned or earnable compensation shall not include overtime unless it is required to be worked in the employee's regular tour of duty.<sup>2</sup> ROVERS is silent as to overtime and has no express provision limiting the amount of overtime earnings that can be used in the computation of earnings for purposes of retirement.

Therefore, in response to your first inquiry, it is the opinion of this office that compensation earned for services rendered by the registrar of voters' and its permanent employees in performing election duties and responsibilities associated with early voting is eligible for contribution to ROVERS.

As it relates to your second inquiry, you want to know if the Secretary of State is responsible for the contribution to ROVERS, out of the money appropriated to it for early voting expenses, for services rendered by registrar of voters' employees in performing election duties and responsibilities associated with early voting. State law provides for a method of payment for expenses incurred by the registrar of voters conducting early voting pursuant to La. R.S. 18:1400.8. Specifically, La. R.S. 18:1400.8 provides in pertinent part that:

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<sup>2</sup> Please note that La. R.S. 11:1902, which deals with the Parochial Employees' Retirement System, limits the amount of overtime earnings that can be used in the computation of earnings for purposes of retirement.

**1400.8 Expenses incurred by registrars of voters conducting early voting; payment by secretary of state**

**Election expenses incurred by a registrar of voters and his permanent employees to perform election duties and responsibilities associated with early voting on any day during the week between 4:30 p.m. and the time that early voting terminates that day and on any Saturday on which early voting is conducted shall be paid by the state from funds appropriated to the secretary of state for that purpose.**

(Emphasis added.)

The employer contribution into ROVERS for the compensation earned by the registrar of voters' employees for services rendered during early voting is a legitimate expense incurred by the registrar of voters. Moreover, our review of what constitutes an "employer" under ROVERS, which is discussed in greater detail above, showed that an "employer" also included the State of Louisiana. Arguably, the Secretary of State would be the State of Louisiana and could be considered an "employer" for purposes of contributions due to ROVERS.

Thus, it is the opinion of this office that the Secretary of State is responsible for the payment of the employer contribution to ROVERS, out of the money appropriated to it for early voting expenses, for services rendered by registrar of voters' employees in performing election duties and responsibilities associated with early voting because this is an expense incurred by the registrar of voters and his permanent employees.

We trust that this information sufficiently answers your inquiry. If we can be of further assistance, please do not hesitate to contact us.

With Best Regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Angelique Duhon Free'  
Assistant Attorney General

JDC:ADF

**SYLLABUS  
OPINION 10-0111**

92-A-1        Registrar of Voters

La. R.S. 11:102  
La. R.S. 11:103  
La. R.S. 11:2031 *et seq.*  
La. R.S. 1309  
La. R.S. 18:1400.8

Compensation earned for services rendered by the registrar of voters and its permanent employees in performing election duties and responsibilities associated with early voting is eligible for contribution to ROVERS. The Secretary of State is responsible for the payment of the employer contribution to ROVERS, out of the money appropriated to it for early voting expenses, for services rendered by registrar of voters' employees in performing election duties and responsibilities associated with early voting because this is an expense incurred by the registrar of voters and his permanent employees.

Lorraine C. Dees, Director  
Registrar of Voters Employees' Retirement System  
P.O. Box 57  
Jennings, LA 70546

ANGELIQUE DUHON FREEL, ASSISTANT ATTORNEY GENERAL

DATE RECEIVED:

DATE RELEASED: November 9, 2010

June 13, 2012  
OPINION 10-0111A

92-A-1 Registrar of Voters

La. R.S. 11:233  
La. R.S. 11:403  
La. R.S. 11:710  
La. R.S. 11:1310  
La. R.S. 11:2031, *et seq.*  
La. R.S. 18:56  
La. R.S. 18:1309  
La. R.S. 18:1400.8  
29 USCA § 201, *et seq.*

Mr. Dennis A. DiMarco  
Chairman  
Human Resources Committee  
Registrar of Voters Association  
1221 Elmwood Park Blvd.  
Suite 502  
Jefferson, Louisiana 70123

Dear Mr. DiMarco:

The amount set as the regular rate of pay for employees cannot be set at a different rate of pay when the employees are conducting overtime election related duties. The regular rate of pay can include supplemental pay if the supplemental pay is regularly paid, and it is not considered a bonus, commission or special pay. Overtime compensation accrued by employees working during early voting periods should be used when calculating earnable compensation for purposes of ROVERS because the duties associated with early voting are performed as part of the employees' mandated duties, and ROVERS defines earnable compensation as the full rate of compensation that would be payable to the member if he worked the full working time.

You requested an opinion clarifying the issue of whether supplemental pay granted by parish governing authorities to unclassified employees of the registrar of voters should be included in the payment of overtime. You also want clarification as to the definition of "regular rate of pay" received by unclassified registrar of voters employees. Finally, you want supplementation to La. Atty. Gen. Op. No. 10-0111 to include an overtime analysis.

### Background

You provided us with the following background information:

- Supplements are paid by the parish to the registrar and unclassified employees on a regular basis pursuant to La. R.S. 18:56;
- Registrar of Voters Employees' Retirement System ("ROVERS")<sup>1</sup> receives contributions from the parishes and from employees in relation to their parish supplements;

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<sup>1</sup> The laws creating and governing ROVERS can be found at Chapter 6 of Title 11, Consolidated Public Retirement Systems. ROVERS was established in nineteen hundred and

- The supplements are taxed as regular income, and the taxes are reported on appropriate tax forms by the parish at the end of the year as are all other salary monies received by the registrar and unclassified employees;
- The Secretary of State obtains a salary certification report from the parish to confirm the salary paid by the parish to each registrar and unclassified employee;
- The salary verifications are used for reporting purposes to appropriate state agencies such as the Legislative Auditor.

### Overtime and Regular Rate of Pay

Overtime pay is covered under the Federal Fair Labor Standards Act ("FLSA").<sup>2</sup> A determination of exempt status under the FLSA is primarily a question of fact. See La. Atty. Gen. Op. Nos. 02-0360 and 00-0503. Our office does not issue opinions on questions of fact. *Id.* You have indicated that the registrar and unclassified employees at issue are not exempt under FLSA. For purposes of this opinion, this office will assume that FLSA is applicable and that the employees work a week longer than forty hours.<sup>3</sup>

It is important to note that when computing overtime, FLSA grants exemptions for bonuses, commissions or other special pay. The limited facts that you provided to this office show that the registrar and his employees receive their parish supplements regularly. Thus, the supplemental pay is not considered a bonus, commission or special pay to be treated differently than pay earned and otherwise paid by the state or parish to registrars or their employees.

In La. Atty. Gen. Op. No. 01-0328, this office was asked several questions with regard to election expenses, including overtime charges, incurred by the Registrar of Voters. This office opined that "should a permanent employee of the registrar's office work outside of the normal hours of 8:30 a.m. to 4:30 p.m., Monday - Friday and 6:00 a.m. to 9:00 p.m. on an election day, the state is

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fifty-five, and it provides retirement allowance and other benefits for the registrars of voters, their deputies, and their permanent employees in the parish. See La. R.S. 11:2032. Membership in the system is further explained in La. R.S. 11:2051.

<sup>2</sup> FLSA establishes standards for minimum wages, overtime pay, recordkeeping, and child labor. The Act covers federal, state, and local government agencies. See 29 USCA § 201, *et seq.* The general rule of FLSA provides that no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation at a rate not less than one and one-half times the regular rate of pay or in the case of political subdivisions, compensatory time off at a rate not less than one and one-half hours for each hour of overtime employment. See 29 USCA § 207(A)(1).

<sup>3</sup> Some employees may be entitled to only straight time pay for overtime worked, when the employee has not worked an actual forty hour work week. When an employee's work does not consist of forty actual work hours due to either a holiday, annual leave or sick leave, any overtime work by the employee should be paid only as straight time. See La. Atty. Gen. Op. No. 97-0338A.

responsible for either all overtime expenses or its pro-rata share of overtime expenses, according to law." *Id.* The same would be true as it relates to the facts in this opinion request, as state law provides for a method of payment for expenses incurred by the registrar conducting early voting, which would include payment of overtime compensation due employees. La. R.S. 18:1400.8.

In order to compute overtime pay, it is necessary to determine the employee's regular rate of pay, which leads to your second inquiry, which is clarification of the definition of the regular rate of pay received monthly or bi-weekly by unclassified registrar of voters' employees. The United States Supreme Court has noted that the regular rate of pay refers to the hourly rate actually paid the employee for the normal, non-overtime work for which he is employed. See *Walling v. Youngerman-Reynolds Hardwood*, 325 U.S. 419, 65 S.Ct. 1242 (1945). To determine the regular rate of compensation, a court of law would not look to contract nomenclature, but to the actual payments, exclusive of those paid for overtime, which the parties have agreed shall be paid during each work week. *Id.* Once the parties have decided upon the amount of wages and the mode of payment, the determination of the regular rate of pay becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary regular rate in the wage contract. *Id.*

In La. Atty. Gen. Op. No. 01-0311, this office was asked to give an opinion on reimbursement of election expenses by the State's Commission of Elections for the Clerk of Court's personnel used in the election. Specifically, one of the questions asked was whether the Clerk of Court could designate a separate rate of pay for employees conducting election related duties that differed from the employee's regular rate of pay or salary, and this office opined that the Clerk could not. Once a Clerk of Court has offered a job to an employee at a certain rate of pay, he cannot then set a different rate of pay for the employee for conducting [overtime] election related duties. See La. Atty. Gen. Op. No. 01-0311.

Analogizing La. Atty. Gen. Op. No. 01-0311 to the underlying facts would yield a similar result. The amount set as the regular rate of pay by a Registrar of Voters cannot be set at a different rate of pay when the employee is working overtime. Thus, the regular rate of pay would include any regularly paid supplement. Further, given the facts that you provided to our office and assuming FLSA is applicable to the unclassified employees referenced in your opinion request, it is the opinion of this office that supplemental pay granted by parish governing authorities to unclassified registrar of voters employees would be part of the regular rate of pay and should be included in computing the amount of overtime due an employee.

**La. Atty. Gen. Op. No. 10-0111**

In La. Atty. Gen. Op. No. 10-0111, this office was asked to issue an opinion on

several issues involving ROVERS. Specifically, this office was asked if compensation for services rendered to perform election duties and responsibilities associated with early voting is eligible for contribution to ROVERS and if La. R.S. 18:1400.8 mandates the payment of such contributions to ROVERS out of funds appropriated to the Secretary of State for early voting expenses. Our office opined that compensation earned for services rendered by the registrar of voters and its permanent employees in performing election duties and responsibilities associated with early voting is eligible for contribution to ROVERS. Further, our office opined that the Secretary of State is responsible for the payment of the employer contribution to ROVERS, out of the money appropriated to it for early voting expenses, for services rendered by registrar of voters' employees in performing election duties and responsibilities associated with early voting because this is an expense incurred by the registrar of voters. Notably, the opinion requestor for La. Atty. Gen. Op. No. 10-0111 advised this office that the services rendered to perform election duties associated with early voting were included in the regular pay of employees; thus, there was no analysis with regard to overtime.

You have asked us to clarify La. Atty. Gen. Op. No. 10-0111 as it relates to overtime. You have advised that due to the expanded early voting periods, part of the early voting period is classified as overtime. You want to know if contributions to ROVERS can be based on overtime compensation.

We start our analysis by looking at Act 267 of the 2008 Regular Session ("Act"), which amended and reenacted La. R.S. 18:1309(A)(2) and 1400.8. La. R.S. 18:1309(A)(2) mandates that the registrar maintain extended office hours during early voting. La. R.S. 18:1400.8 provides that election expenses associated with early voting during the extended time be paid by the state from funds appropriated by the Secretary of State for that purpose.

Previously, our office issued an opinion on overtime, earnable compensation, and contributions as it relates to various retirement systems. See La. Atty. Gen. Op. No. 02-0329. A review of La. Atty. Gen. Op. No. 02-0329 reveals that it is dependent on the retirement system as to whether or not overtime compensation or supplemental pay is included in the retirement calculation.

With regard to the Louisiana State Employees' Retirement System ("LASERS"), La. R.S. 11:403(6) defines "base pay" as a component in the calculation of retirement benefits under that system, but excludes overtime and supplemental pay except for certain members as provided by La. Const. art. 10 (A)(1). *Id.*

With regard to the Teachers' Retirement System of Louisiana ("TRSL"), La. R.S. 11:701(10) defines "earnable compensation" as a component in the calculation of retirement benefits, but provides that earnable compensation shall not include per diem, post allowances, payments in kind. . . .*Id.*



Mr. Dennis DiMarco  
Opinion 10-0111A  
Page 5

La. R.S. 11:1310(2)(a) pertains to State Police, and for purposes of computing average salary for retirement purposes, overtime is not included but additional pay or salary [supplemental pay] provided by the city parish or legislature over and above that set by the Civil Service Commission may be included in the calculation if it is paid on a monthly basis.

With regard to ROVERS, "earnable compensation" is defined as the full rate of compensation that would be payable to the member (employee) if he worked the full working time. See La. R.S. 11:2031(9). Unlike some of the other systems examined above, there is no express prohibition against including overtime or supplemental pay for determining earnable compensation for purposes of retirement. Further, you have indicated that ROVERS receives contributions from the parishes and from employees in relation to their parish supplements. Therefore, it is the opinion of our office that overtime compensation accrued by employees for working early voting should be used when figuring earnable compensation for purposes of ROVERS because the duties associated with early voting are being performed as part of the employee's mandated duty.

This determination is consistent with the practices of other retirement systems. For example, La. R.S. 11:233 which governs earnable compensation for Firefighters' Retirement System, Sheriffs' Pension and Relief Fund, Parochial Employees' Retirement System of Louisiana, and Assessors' Retirement Fund, provides that earnings, earned or earnable compensation shall not include overtime unless it is required to be worked in the employee's regular tour of duty.<sup>4</sup>

We trust that this information sufficiently answers your inquiry. If we can be of further assistance, please do not hesitate to contact us.

With Best Regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Angelique Duhon Freel  
Assistant Attorney General

JDC:ADF

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<sup>4</sup> Please note that La. R.S. 11:1902, which deals with the Parochial Employees' Retirement System, limits the amount of overtime earnings that can be used in the computation of earnings for purposes of retirement.

**SYLLABUS  
OPINION 10-0111A**

92-A-1 Registrar of Voters

La. R.S. 11:233  
La. R.S. 11:403  
La. R.S. 11:710  
La. R.S. 11:1310  
La. R.S. 11:2031, *et seq.*  
La. R.S. 18:56  
La. R.S. 18:1309  
La. R.S. 18:1400.8  
29 USCA § 201, *et seq.*

The amount set as the regular rate of pay for employees cannot be set at a different rate of pay when the employees are conducting overtime election related duties. The regular rate of pay can include supplemental pay if the supplemental pay is regularly paid, and it is not considered a bonus, commission or special pay. Overtime compensation accrued by employees working during early voting periods should be used when calculating earnable compensation for purposes of ROVERS because the duties associated with early voting are performed as part of the employees' mandated duties, and ROVERS defines earnable compensation as the full rate of compensation that would be payable to the member if he worked the full working time.

Mr. Dennis A. DiMarco  
Chairman, Human Resources Committee  
Registrar of Voters Association  
1221 Elmwood Park Blvd.  
Suite 502  
Jefferson, Louisiana 70123

ANGELIQUE DUHON FREEL, ASSISTANT ATTORNEY GENERAL

DATE RECEIVED:

DATE RELEASED: June 13, 2012

 You forwarded this message on 12/3/2012 4:12 PM.  
This message was sent with high importance.

**St. Charles ROVA**

**From:** Kyle Ardoin **Sent:** Wed 11/21/2012 11:41 AM  
**To:** SOS-ROV  
**Cc:**  
**Subject:** FW: Chenges to Dept. of State Policy on terminal leave  
**Attachments:**

I've received several calls about the new SOS Terminal Leave policy. Please see the email below from our HR Director.

Happy Thanksgiving to all!

Kyle

R. Kyle Ardoin  
First Assistant  
Secretary of State Tom Schedler  
P. O. Box 94125  
Baton Rouge, Louisiana 70804-9125  
225-922-2880  
[www.sos.la.gov](http://www.sos.la.gov)

**From:** Ashley Gautreaux  
**Sent:** Wednesday, November 21, 2012 11:08 AM  
**To:** Kyle Ardoin  
**Subject:** Chenges to Dept. of State Policy on terminal leave

Kyle,

As we discussed, the Attendance and Leave policy #02 changes the amount of time off that can be granted to a Department of State employee prior to retirement. This change does not affect the 300 hour payment for annual leave that is made when someone separates. Also, this policy does not necessarily apply to the Registrars of Voters. Each of those offices is its own agency with an appointing authority who can establish how they will handle this matter. Each Registrar can determine if their office will follow this policy or if they will have their own policy/procedures.

Please let me know if you would like any additional information.

Thank you,

Ashley Gautreaux, SPHR

Human Resources Director

La. Secretary of State

Phone 225.362.5186

<http://www.sos.la.gov/>

CALCASIEU PARISH REGISTRAR OF VOTERS



ADVISORY SERVICES REPORT  
ISSUED MARCH 13, 2013

does this not out of recognition of wrongdoing but in an effort to maintain the integrity and honor of her office." Regrettably, the Secretary of State failed to respond to the Registrar's offer to resolve this matter and elected, instead, to include its scurrilous comments in the Legislative Auditor's "audit."

### Summary

The significant resources expended by the Professional Review Committee of the Louisiana Registrar of Voters Association, the Legislative Auditor and by the Secretary of State that were initiated as the result of the complaint by the former employee spanned many months, was invasive and created a substantial impairment to the efficiency and morale of the Office.

This considerable expenditure of personnel, resources and time of both the Office of the Legislative Auditor and the Secretary of State might have been better utilized in reviewing the policies and practices of all Registrar of Voters, throughout Louisiana, as the "audit" conducted of the Calcasieu Parish Registrar of Voters apparently represents the first – and only – inquiry by either of these two agencies (or by any other agency) into the operations of Registrars of Voters. However, we maintain the correct legal position that the ROV is its own appointing authority, under the constitution, and sets its own policies and procedures.

Yet, and notwithstanding the intrusive and disruptive nature of these unwarranted "inquires" and "audits", the Calcasieu Parish ROV achieved a highly successful and record breaking early voting turnout and, in due course, managed the equally successful election cycle involving the highest number of participating registered voters in the history of Calcasieu Parish.

**REQUEST**  
**FOR**  
**ATTORNEY GENERAL OPINION**  
**FROM**  
**NATCHITOCHE PARISH**  
**REGISTRAR OF VOTERS**



**REGISTRAR OF VOTERS**  
Natchitoches Parish

**Debbie Waskom**  
REGISTRAR OF VOTERS

**Brenda Ellzey**  
CHIEF DEPUTY

**Debbie Tebbetts**  
CONFIDENTIAL ASST.

DATE: 6/28/13  
TIME: 845

**PLEASE DELIVER THE FOLLOWING PAGES TO:**

NAME: Ashley Gautreaux HRD  
FIRM: SOS

CITY / STATE: BR LA

FAX NUMBER: 225 925 6034

SENDER'S NAME: Debbie Waskom

FIRM: REGISTRAR OF VOTERS

FAX NUMBER: (318) 357-2212

TOTAL NUMBER PAGES INCLUDING COVER LETTER: 8

**REMARKS:**

Letter for AG Opinion  
request and AG opinion  
02-0087 to be included  
in discussion 6/27/13



*Mailed 6/17/13*

**Debbie Waskom**  
REGISTRAR OF VOTERS

**REGISTRAR OF VOTERS**  
Natchitoches Parish

**Brenda Ellzey**  
CHIEF DEPUTY

**Debbie Tebbetts**  
CONFIDENTIAL ASST.

June 17, 2013

Honorable James D. Caldwell  
Attorney General  
Louisiana Department of Justice  
1885 N. Third Street  
Baton Rouge, LA 70804

Mr. Caldwell,

On Monday March 4, 2013 I received an Email from Ms. Ashley Gautreaux, Human Resource Director for the Louisiana Secretary of State's Office informing all Registrars of Voters that Policy #46 had been implanted on that Date to prohibit a Registrar from accumulating Annual, Sick, or Compensatory Leave Time. I responded to First Assistant Secretary of State Kyle Ardoin on March 19, 2013 my objection to the implementation of Policy #46 as the Appointing Authority for the Registrar of Voters Office under the State Constitution. Secretary of State Tom Schedler replied back to me on that same day that his Office was going to have Policy #46 approved through the Administrative Procedure Act Rule Making Process.

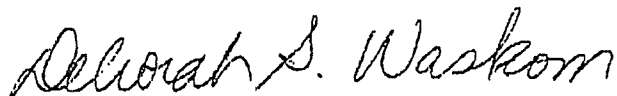
As my Legal Advisor according to R.S. 18:64, I am requesting an Official Opinion as to whether this Policy #46 is legally applicable with all State and Federal Laws.

1. Has Title 49 Chapter 13. Administrative Procedure been properly followed in denying my Accumulation of Leave effective on March 4<sup>th</sup> when the Rule Making Procedure has not gone through the 100 Day Process to implement such a Policy ?
2. Does Policy #46 violate my Retirement Protections guaranteed by the Louisiana State Constitution, Louisiana Revised Statutes and any applicable Federal Statutes ?
3. Once the Registrar of Voters and Unclassified Employees (Chief Deputy or Confidential Assistant) are appointed, is the accumulation of Annual, Sick, or Compensatory Leave Time while holding Office a Contractual Employee/Employer Benefit Obligation guaranteed by the Louisiana State Constitution, Louisiana Revised Statutes and any applicable Federal Statutes ?

4. What Legal Entity if any (the Governor, Louisiana State Legislature, Secretary of State or the Trustees of the Registrar of Voters Employees' Retirement System) has the Authority to modify, reduce or eliminate the accumulation of Annual, Sick, or Compensatory Leave Time for the Office of Registrar of Voters and Unclassified Employees (Chief Deputy or Confidential Assistant) ?
5. As the Appointing Authority of my Office, do I have sole authority to set a Time & Attendance Policy for myself and all Unclassified Employees (Chief Deputy or Confidential Assistant) compliant with State Civil Service Rules and any Executive Order of the Governor or does the Secretary of State set the Time & Attendance Policy for the Registrar's Office ?
6. Can a Registrar of Voter or any Unclassified Employee (Chief Deputy or Confidential Assistant) of the Registrar of Voter's Office sign a Statement waiving their Right to accumulate Annual, Sick, or Compensatory Leave Time and not be required to follow State Civil Service Time & Attendance Rules or any Executive Order of the Governor and be considered on "duty status" ?

Please note that the Secretary of State has published in the *May 2013 State Register* that there will be a Public Hearing on Thursday June 27, 2013 at the State Archives Building. It would be greatly appreciated if you and your Staff could research my questions before then. Thank you for the service that you do for my Office. You may be contact me at any time to provide any additional information.

Sincerely,



Natchitoches Parish Registrar of Voters

May 17, 2002  
OPINION NUMBER 02-0087

Ms. Debbie Waskom  
Secretary/Treasurer  
Louisiana Registrar of Voters Association, Inc.  
P. O. Box 677  
Natchitoches, LA 71458

Dear Ms. Waskom:

On behalf of the Louisiana Registrar of Voters Association, Inc., you requested the opinion of this office concerning the discretionary powers of the Commissioner of Administration relating to legislative mandates. You advised that the Commissioner of Administration denied the Registrars of Voters merit increases for the fiscal year beginning July 1, 2002.

The compensation of the registrar of voters, the chief deputies and the confidential assistants is set forth in R.S. 18:55, et seq. The compensation for each of these persons is based on population with the salary ranges and pay schedules set forth in statute. R.S. 18:55, R.S. 18:59. These statutes further provide for merit pay for the registrar, chief deputy and confidential assistant. Merit pay for the registrar is found at R.S. 18:55(A)(4)(b), as follows in pertinent part:

Each registrar whose salary is at the level of step one or higher shall be evaluated as to merit in January. The criteria and procedure for the merit evaluation shall be determined by the commissioner of elections in conjunction with the Registrar of Voters Association. It shall provide that each registrar be evaluated by the commissioner of elections or his designee acting on his behalf. Upon a finding of "excellent" on a merit evaluation, the registrar shall receive a salary increase to the next step until the registrar's salary is equal to the highest step of the appropriate population range.

Similar statutes are found authorizing merit pay for the chief deputy registrar and the confidential assistant, except that the criteria and procedure for the merit evaluation is to be determined by the Registrar of Voters Association with evaluations to be conducted by the registrar of the particular parish involved. R.S. 18:59(B)(4)(b); R.S. 18:59(C)(4)(b).

R.S. 18:59:1 states as follows:

**All monies made available from state funds for the payment of the state portion of the salaries and expenses of registrars of voters and their confidential assistants, deputy registrars, and other personnel shall be appropriated to and be paid to each such person by the commissioner of elections in accordance with each appropriation for the purpose. The commissioner of elections shall include in his annual budget an amount necessary for the purpose, and the monies so appropriated shall be withdrawn from the treasury upon warrants drawn**

Ms. Debbie Waskom  
OPINION NUMBER 02-0087  
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by the commissioner and payments therefrom shall be made in accordance with applicable law. (Emphasis added)

Concerning the State budgetary process, La. Const. Art. VII, Sec. 11(A) provides in pertinent part as follows:

The governor shall submit to the legislature, at the time and in the form fixed by law, a budget estimate for the next fiscal year setting forth all proposed state expenditures. This budget shall include a recommendation for appropriations from the state general fund and from dedicated funds ... which shall not exceed the official forecast of the Revenue Estimating Conference and the expenditure limit for the fiscal year....

The "time and in the form fixed by law" are found in Title 39 of the Louisiana Revised Statutes, as amended. R.S. 39:28 provides that the budget office shall prescribe budget request forms to be used by each budget unit, which shall be transmitted to each budget unit on or before September 20 of each year. The budget office is also required to furnish to each budget unit a set of specific guidelines under which the budget unit shall provide information to allow the budget office to establish a continuation budget. R.S. 39:29. R.S. 39:33(A)(1), requires that, on a date specified by the Commissioner of Administration, but not later than November 15th of each year, the head of each budget unit submit to the Governor, the Joint Legislative Committee on the Budget and the Legislative Fiscal Office an estimate of financial requirements and receipts of the budget unit for the ensuing Fiscal Year. R.S. 39:32 requires the agency to submit its request at the existing operating budget level with a prioritized listing of budget packages to increase or decrease the existing operating budget. The Governor is required to prepare an executive budget, submit a copy to the Joint Legislative Committee on the Budget forty-five (45) days, except that during the first year of each term it shall be submitted 30 days, prior to the beginning of the regular session of the Legislature and transmit a copy to each member of the Legislature on the first day of the regular session. "Executive budget" is defined in R.S. 39:2(14) to mean the document submitted to the legislature at each regular session, pursuant to the provisions of Title 39 of the Revised Statutes and Article VII, Section 11(A) of the Constitution of Louisiana, presenting the governor's recommended complete financial plan for each year.

R.S. 39:34 further provides that the executive budget is to present a complete financial and programmatic plan for the ensuing fiscal year which shall include recommendations for appropriations from the state general fund and dedicated funds which shall not exceed the official forecast of the Revenue Estimating Conference. In connection with preparing the executive budget, the governor is authorized to direct such changes or revisions in policy and program, and in specific details, as he may find warranted. R.S. 39:35. R.S. 39:36 sets forth the requirements as to content and format of the executive budget and also requires the Governor to submit a budget message in the executive budget summarizing the proposed financial plan and programmatic policies, including a statement of impact that his proposed recommendations have on the existing operating budget. The financial plan presented in the executive budget is enacted into law by the legislature by the passage of such appropriation and revenue acts and such other acts as the legislature may deem necessary to make the financial plan effective and with such amendments as may be determined by the legislature. R.S. 39:53(A). The legislature has absolute control over the finances of the state, except as limited by constitutional provisions. *Woodard v. Reily*, 244 La. 337, 152 So.2d 41 (La.

Ms. Debbie Waskom  
OPINION NUMBER 02-0087  
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1963). It is the legislature that decides how the branches and departments of government shall be funded from the public fisc. *Louisiana Public Facilities Authority v. Foster*, 2001-0009 (La. 9/18/01), 795 So.2d 288; *Quarles v. Jackson Parish Police Jury*, 482 So.2d 833 (La.App. 2 cir. 1986), citing *State ex rel. Assistant Dist. Attys. Ass'n v. Theriot*, 242 So.2d 49 (La.App. 1 Cir. 1970). After the legislature enacts the budget, it is then sent to the Governor for his signature. La. Const. Art. III, Sec. 15. The State Constitution prohibits the passage of an unbalanced budget. La. Const. Art. VII, Sec. 10(E). The Governor may veto any line item appropriation, subject to legislative override. La. Const. Art. III, Sec. 16.

After enactment of the budget, the legislative fiscal office is required to prepare a legislative summary of appropriations which shall describe the changes, by program, which occurred from the proposals submitted by the governor in the executive budget and for revenue raising bills through the enactment of the various appropriation and revenue acts. R.S. 39:55.

Thus the Commissioner of Administration is mandated to prepare an executive budget utilizing the budget requests submitted by the various entities which receive State appropriations, which includes the Department of Elections on behalf of the registrars, yet the total of which cannot exceed the official forecast of the Revenue Estimating Conference. We were unable to find any statute which grants the Commissioner the discretion to determine which of the multitude of statutes requiring annual funding to exclude in the executive budget.

The situation which seems most analogous to the question presented in this opinion request is the requirement that parish governing bodies pay the legislatively mandated expenses of officials such as district attorneys, coroners, clerks of court, etc. In those instances the legislature determines the duties of state officials such as coroners, and delegates some of the responsibility for funding the coroner's office to parish governing bodies. When the legislature places the burden of paying salaries or other expenses of a state official on parish governing authorities, those bodies are generally obliged to pay these mandated expenses. See, *Carriere v. St. Landry Parish Police Jury*, 97-1914 (La. 3/4/98), 707 So.2d 979; *Perron v. Evangeline Parish Police Jury*, 2001-0603 (La. 10/16/01), 798 So.2d 67; *Reed v. Washington Parish Police Jury*, 518 So.2d 1044, 1046 (La. 1988).

In this instance, the legislature determines, by statute, which expenses of government it desires to fund. The Commissioner must then develop an executive budget including those expenses yet ensure that the total amount of recommended appropriations do not exceed the official forecast.

It must be emphasized that the executive budget is merely a recommendation to the legislature. R.S. 39:2; R.S. 39:34; R.S. 39:35; R.S. 39:55. The legislature is authorized to appropriate monies for different purposes and/or in different amounts than what is set forth in the executive budget. La. Const. Art. III, Sec. 16; R.S. 39:53; R.S. 39:55.

Accordingly, it is the opinion of this office that the Commissioner of Administration is not given the discretion to exclude in the executive budget, the programs or expenses which the legislature has stated must be funded.

Trusting this adequately responds to your request, we remain

Yours very truly,

Ms. Debbie Waskom  
OPINION NUMBER 02-0087  
Page -4-

RICHARD P. IEYOUB  
Attorney General

BY: \_\_\_\_\_  
MARTHA S. HESS  
Assistant Attorney General

RP/MSH

**OPINION NUMBER 02-0087**

**3 APPROPRIATIONS**

R. S. 18:55; R.S. 18:59; R.S. 18:59.1; 39:2; R.S.  
39:33; R.S. 39:32; R.S. 39:34; R.S. R.S. 39:35; R.S.  
39:36; R.S. 39:53; R.S. 39:55

La. Const. Art. III, §16; Art. VII, §10; Art. III, §15

Ms. Debbie Waskom  
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Commissioner of Administration is not given discretion as to what programs and the amount of funding for each, to be included in the executive budget.

Ms. Debbie Waskom  
Secretary/Treasurer  
Louisiana Registrar of Voters Association, Inc.  
P. O. Box 677  
Natchitoches, LA 71458

DATE RECEIVED:  
DATE RELEASED: May 17, 2002

MARTHA S. HESS, ASSISTANT ATTORNEY GENERAL

**PROPOSED**

**RULE**



## **RULE**

### **Department of State**

#### **Elections Division**

### **Prohibition on Accumulation of Annual, Sick and Compensatory Leave for Registrars of Voters**

**(LAC 31:II.117)**

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and under the authority of R.S. 18:18, R.S. 18:134, R.S. 18:1400.8 and R.S. 36:742, the Secretary of State has adopted this Rule to amend LAC 31:II.Chapter 1 to implement a uniform time and attendance policy for the registrars of voters. The registrars of voters, who are the agency heads for their offices, in 53 of the 64 parishes have adopted a uniform time and attendance policy which has been accepted by the Department of State. This Rule serves to implement this time and attendance policy statewide, thus requiring all registrars of voters to adopt, implement and comply with this policy. Additionally, statewide implementation of this policy will provide for consistency in the human resources functions statutorily required of the Department of State for and on behalf of the registrars of voters.

#### **Title 31**

#### **ELECTIONS**

#### **Part II. Voter Registration and Voter Education**

#### **Chapter 1. Registrar of Voters**

#### **§117. Prohibition on Accumulation of Annual, Sick, and Compensatory Leave for Registrars of Voters**

##### **A. Definitions**

*Duty Status* – a registrar of voters shall be available and ready to perform the tasks and responsibilities necessary to fulfill the mandated duties and functions of his/her office, and shall be on-call at all times.

B. The registrar of voters of each parish shall not be eligible to earn or accrue any type of annual or sick leave or paid time off, including compensatory leave, during his/her tenure as the registrar of voters.

C. Registrars of voters shall be considered in “duty status” at all times and therefore will not be required to report absences from the office, take leave for time away from the office or report hours worked to the Department of State for purposes of payroll processing, except for those overtime hours actually worked during early voting for which payment is required and authorized by R.S. 18:1400.8. Each registrar of voters will be solely responsible for the performance of the mandated duties of his/her office. Variances in time and attendance shall not

affect the provision of duties and services mandated for each registrar of voters by the Louisiana Constitution and Title 18 of the Louisiana Revised Statutes.

D. Registrars of voters will remain eligible to receive pay for overtime hours actually worked during early voting as authorized by R.S. 18:1400.8.

E. The current balances of accrued annual, sick, and compensatory leave for each registrar of voters that were frozen pursuant to Department of State Policy #46, "Prohibition on Accumulation of Annual & Sick Leave & Compensatory Time for Registrars of Voters", shall remain frozen pursuant thereto, and no further annual, sick, or compensatory leave shall accrue after the effective date of this Rule. Upon retirement or separation from service, each registrar of voters will be eligible to be paid for up to a combined total of 300 hours of accumulated annual and compensatory leave previously earned pursuant to Department of State Policy #2, "Attendance and Leave". The leave balances (annual, sick, and compensatory) remaining will be reported by the Human Resources Division of the Department of State to the Registrars of Voters Employees' Retirement System for purposes of certification for retirement credit and calculation of retirement benefits, as allowed by the laws and rules governing that system.

F. Any annual, sick, and compensatory leave accrued by an employee appointed as registrar of voters in the future shall be carried forward and frozen as of the date of the appointment as the registrar of voters. Upon retirement or separation from service, the registrar of voters will be eligible to be paid for up to a combined total of 300 hours of accumulated annual and compensatory leave. The leave balances (annual, sick, and compensatory) remaining will be reported by the Human Resources Division of the Department of State to the Registrar of Voters Employees' Retirement System for purposes of certification for retirement credit and calculation of retirement benefits, as allowed by the laws and rules governing that system.

G. The provisions of this rule shall not be applied in violation of any provision of the Fair Labor Standards Act. Any application of such is strictly prohibited and shall render the applicable portion of the rule null and void.

H. The provisions of this rule apply to all 64 registrars of voters in the State of Louisiana and all registrars of voters that may be appointed in the future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:134, R.S. 18:1400.8, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

Tom Schedler  
Secretary of State



JOHN D. CARPENTER  
Legislative Fiscal Officer

STATE OF LOUISIANA  
LEGISLATIVE FISCAL OFFICE  
BATON ROUGE

P. O. Box 44097  
Capitol Station  
Baton Rouge, Louisiana 70804  
Phone: (225) 342-7233  
Fax: (225) 342-7243

November 15, 2013

Mr. Joe R. Salter  
Undersecretary of Management and Finance  
Executive Office  
Secretary of State  
P.O. Box 94125  
Baton Rouge, LA 70804-9125

Re: Notice of Intent – Prohibition on Accumulation of Annual, Sick and  
Compensatory Leave for Registrar of Voters

Dear Mr. Salter,

At your request, the Legislative Fiscal Office has reviewed the original notice and the proposed revision and in our opinion this change is purely technical in nature. We carefully examined each instance of a change in verbage. Each of these proposed changes is based on language existing in the original notice. The proposed changes are merely clarification to the original and do not effect a substantive change or addition.

If we can be of further assistance in this matter, please contact me.

Sincerely,

John D. Carpenter  
Legislative Fiscal Officer

JDC/dr