

The Supreme Court of the State of Louisiana

**J. SCHUYLER MARVIN, 26TH JUDICIAL
DISTRICT ATTORNEY**

No. 2023-C-00214

VS.

**ROBERT BERRY, AND CYPRESS BLACK
BAYOU RECREATION AND WATER
CONSERVATION DISTRICT**

IN RE: State of Louisiana, by and through Attorney General Jeff Landry, in his official capacity - Applicant Other; Applying For Writ Of Certiorari, Parish of Bossier, 26th Judicial District Court Number(s) C-162,928, Court of Appeal, Second Circuit, Number(s) 54,230-CA;

April 25, 2023

Writ application granted. See per curiam.

WJC

JLW

JDH

JTG

JBM

Crichton, J., dissents, would grant and docket and assigns reasons.

Griffin, J., dissents and would grant and docket.

Supreme Court of Louisiana

April 25, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-C-00214

J. SCHUYLER MARVIN, 26TH JUDICIAL DISTRICT ATTORNEY

VS.

**ROBERT BERRY, AND CYPRESS BLACK BAYOU RECREATION AND
WATER CONSERVATION DISTRICT**

On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Bossier

PER CURIAM

Writ granted. Defendant Robert Berry is a member of the board of commissioners for the Cypress Black Bayou Recreation and Water Conservation District, a political subdivision of the state. *See* La. R.S. 38:2603A. Berry is also employed by the Water District as its executive director, a full-time, compensated position. The district attorney for the Twenty-Sixth Judicial District filed this suit seeking a declaratory judgment as to whether Berry’s dual positions with the Water District violate Louisiana’s “Dual Officeholding and Dual Employment Law.” *See* La. R.S. 42:61-66. The trial court granted summary judgment in favor of the defendants, declaring Berry is not violating that law. The court of appeal affirmed.

The Dual Officeholding Law recognizes that public officials and employees must “perform the public business in a manner which serves to promote and maintain in the general citizenry a high level of confidence and trust in public officials.” *See* La. R.S. 42:61A. This trust is “impaired when a public official or employee holds two or more public offices or public jobs which by their particular nature conflict with the duties and interests of each other.” La. R.S. 42:61A. In that regard, the Dual Officeholding Law, in relevant part, prohibits the same person from holding two public offices or jobs if the incumbent of one, alone or in conjunction with others, has the power to appoint or remove the incumbent of the other:

[N]o . . . offices or employments shall be held by the same person in combination if any of the following conditions are found to pertain and these prohibitions shall exist whether or not the person affected by the prohibition exercises power in conjunction with other officers:

(1) The incumbent of one of the offices, whether or not in conjunction with fellow officers, or employment *has the power to appoint or remove the incumbent of the other*, except that local governmental subdivisions may appoint members of the governing body to boards and commissions created by them

La. R.S. 42:64A(1) (emphasis added).

Berry's authority as a member of the Water District's board of commissioners is defined by law. The Water District has "all powers necessary for it to carry out the objects for which it was created" and "shall be governed and controlled by a board of five commissioners." *See* La. R.S. 38:2603B(1) and 2604A. Given this authority, Berry, in conjunction with his fellow commissioners, "has the power to appoint and remove" the Water District's executive director. The possession of this power, whether exercised or not, implicates the public-trust concerns of the Dual Officeholding Law and violates the prohibition of Subsection 42:64A(1). The statute contains no language suggesting this violation is rectified by Berry abstaining from the board's selection and oversight of the executive director. Similarly, Berry's authority over the executive director, which is statutorily granted, cannot be divested by a majority vote of the board.

The trial court erred in granting summary judgment declaring Berry's dual positions with the Water District do not violate the Dual Officeholding Law. The summary judgment is reversed, and the case is remanded for further proceedings.

SUMMARY JUDGMENT REVERSED; CASE REMANDED.