



# The Legislative Auditor's Summary of Louisiana's Political Payroll Padding Laws

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## Overview

This document is a summary of the general principles and guidelines concerning [Louisiana's Political Payroll Padding Laws](#), which is presented in a "frequently asked questions" (FAQ) format. While the material is fairly detailed, remember that every situation is unique and that each deserves careful individual review.

To facilitate use of this document, numerous links will direct your attention to areas within the document and to related documents posted on the Louisiana Legislative Auditor's website and on external websites. For example, in the index, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, several links will direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number, a link will return to the index to allow you to select another question to view.

This Summary does not seek to give legal advice. Should you have any questions regarding political payroll padding, please consult your legal counsel.

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## AG OPINIONS

## Political Payroll Padding Laws

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### **Q.1. What is political payroll padding?**

- A.1.** Political payroll padding occurs when an incumbent hires, before a gubernatorial election, large numbers of people whose services might be utilized for campaign activities.

In order to prevent this hiring activity, the Legislature enacted certain limitations on the number of people that could be hired by public officers and employees (R.S. 14:139) and sheriffs (R.S. 14:139.1) during the six months before a gubernatorial election. With these statutes, the Legislature criminalized political payroll padding and also limited increases in payroll or other operating expenses during the six months before a gubernatorial election. These limitations are calculated based on the average number of employees and the average amount of payroll and operating expenses during certain time periods before and after gubernatorial elections. (See, [Q.3](#)).

### **Q.2. What is the time period during which specified increases may not be made?**

**[R.S. 14:139\(A\)](#), [R.S. 14:139.1\(A\)](#) and [R.S. 14:139.2\(A\)](#)**

- A.2.** During the six months before any election for Governor.

### **Q.3. In general, what is the base time period for calculating the average number of employees and the average amount of payroll and operating expenses?**

- A.3.** The base period used to calculate the averages of employees and payroll and operating expenses is the first six months of the twelve months prior to the gubernatorial election. The period of time during which increases must not take place is the six months prior to the election.

To illustrate this point: a governor's election is held in October every four years. For example, the six months preceding the October 2019 election are:

- April 2019
- May 2019
- June, 2019
- July 2019
- August 2019
- September 2019

No increases prohibited by R.S. 14:139 or 14:139.1 may take place during these months.

The base time period for determining the average number of employees and payroll or operating expenses is the first six months of the twelve months immediately preceding the governor's election. Twelve months immediately preceding the governor's election would begin in October of the prior year. Therefore, the first six months of the twelve months preceding the 2019 election are:

- October 2018;
- November 2018;
- December 2018;
- January 2019;
- February 2019; and
- March 2019

These six months are the base period for calculating the average number of employees and payroll or operating expenses.

**Q.4. Are there exceptions to political payroll padding provisions?**

**R.S. 14:139(B), R.S. 14: 139.1(C) & R.S. 14:139.2(D)**

- A.4.** The statutes contain exceptions for increases necessitated by flood, invasion by a common enemy, or other public emergency.

For sheriffs, there are two additional exceptions:

R.S. 14:139.1(C)(1) provides for exceptions if any increase is based upon the use of additional revenue from a tax district election or to an increase necessitated by the completion of a new or expansion of an existing prison facility or an emergency communications call or dispatch center.

R.S. 14:139.1(C)(2) provides that the provisions do not apply to an incumbent sheriff against whom no person has qualified to run for any transfers or increases that occur *after* the qualifying period closes nor to any incumbent sheriff who is reelected to office for any transfers or increases that occur *after* the date the official election results are declared.

**Q.5. What are the penalties for committing political payroll padding?**

**R.S. 14:139(C), R.S. 14: 139.1(D) and R.S. 14:139.2(E)**

- A.5.** The penalty for committing the crime of political payroll padding is imprisonment for not more than five years, or a fine of not more than five thousand dollars, or both.

**Q.6.** What are the definitions of “public office” and “public officer”? **R.S. 42:1**

**A.6.** The term “**public office**” means any elective or appointive state, district, parish or municipal office, or any elective or appointive position as member on a board or commission, when the office or position is established by the constitution or laws of this state.

“**Public officer**” means any person holding a public office in this state.

**Q.7.** What are the specific payroll padding provisions applying to public officers and employees? **R.S. 14:139(A)**

**A.7.** R.S. 14:139(A) provides that:

**Political payroll padding is committed when any public officer or public employee shall, at any time during the six months preceding any election for governor:**

- (1) Increase the number of public employees in his office, department, board, agency, or institution more than five percent over the average number of such employees for each of the first six months of the twelve months next preceding the election; or**
- (2) Increase the payroll or other operating expenses of his office, department, board, agency, or institution more than fifteen percent over its average amount of such expenditures for each of the months of the first six months of the twelve months next preceding the election.**

Any public officer or employee who increases the number of his or her employees during the six months before the election by more than 5% of the average number of employees employed during the first six months of the twelve-month period prior to the election has committed political payroll padding.

Any public officer or employee who increases the payroll or operating expenses in the six months before the election by more than 15% over the average of the first six months of the twelve-month period prior to the election has committed political payroll padding.

**Q.8.** What are the specific payroll padding provisions applying to sheriffs?

**A.8.** The political payroll padding statute specific to sheriffs mandates that during the six months preceding a gubernatorial election, and during the interval between a gubernatorial election and the **first day of July** following election, (when the sheriff-elect takes office) a sheriff may not:

- (1) Increase the number of deputies or employees in his or her office by more than five percent over the average number of employees for each of the first six months of the twelve months preceding the election; or**

- (2) Increase the payroll or other operating expenses of his or her office more than fifteen percent over the average expenditures for each of the first six months of the twelve months preceding the election; or**
- (3) Transfer title and ownership of the capital assets of his or her office of a value exceeding ten percent of the total value of assets reflected in the current inventory filed in the office of the sheriff under the provisions of R.S. 24:513, as of the date of the primary election.**

*\*The referenced provision in R.S. 24:513 was repealed by Act 207 of the 1981 Regular Session. See now [R.S. 24:515\(B\)\(1\)](#) which provides the same language regarding asset lists.*

**Q.9. How are the average number of deputies or employees, the average amount of payroll and operating expenses, and transfer of capital assets calculated for sheriffs?**  
**R.S. 14:139.1**

- A.9.** For sheriffs, as with public officers and employees, the base period used to calculate the averages of employees and payroll and operating expenses is the first six months of the twelve months prior to the gubernatorial election.

Additional restrictions apply for sheriffs: in addition to not being allowed to add more than 5% of the average number of employees or 15% of the average payroll and operating expenses during the base period during the six months before the Governor's election, sheriffs are also prohibited from making these increases during the period from the governor's election until July 1, eight months after the election.

Sheriffs must also refrain from transferring title and ownership of the capital assets of his or her office whose value exceeds ten percent of the total value of those assets reflected in the current inventory filed in the office of the sheriff (per the provisions of R.S. 24:513, the Audit Law\*) on the date of the primary election. \*The referenced provision in R.S. 24:513 was repealed by Act 207 of the 1981 Regular Session. See [R.S. 24:515\(B\)\(1\)](#) which provides the same language regarding asset lists.

To determine if a sheriff has transferred ten percent of the value during the relevant time period, the base value of the sheriff's assets are, therefore, calculated according to the inventory on the date of the first gubernatorial primary.

If a sheriff has made a transfer of assets during the relevant period greater than 10% of the average, a violation has occurred.

**Q.10. How is a surplus or a deficit in the sheriff's office determined at the expiration of the sheriff's term? [R.S. 14:139.1](#)**

**A.10.** R.S. 14:139.1(B) also provides a method of determining whether any surplus or deficit exists in the office of any sheriff at the expiration of a term of office:

**... the current market value of the capital assets of the office as set forth in the inventory filed in accordance with [R.S. 24:513](#)\* shall be included in the total assets of the sheriff's office.** \*The referenced provision in R.S. 24:513 was repealed by Act 207 of the 1981 Regular Session. See [R.S. 24:515](#)(B)(1) which provides the same language regarding asset lists.

This provision does not appear to be related to the prohibited transfer of assets, as it is limited to the "expiration of a term of office." Other reasons a deficit or surplus at the end of a sheriff's term of office might be important include apprising a new sheriff of the financial status of his or her office at the beginning of a new term.

**Q.11. What are the specific payroll provisions for clerks of court regarding the transfer of assets? [R.S. 14:139.2](#)**

**A.11.** Clerks of court are subject to similar proscriptions on the transfer of assets as sheriffs. In R.S. 14:139.2, the law mandates that it shall be unlawful for any clerk of court, during a period beginning on the second Saturday in April of a year in which a regular gubernatorial election is scheduled and ending on the first day of July of the following year, to transfer title and ownership of any capital assets of his office that have an aggregate value greater than ten percent of the total value of the capital assets of his or her office.

**Q.12. During what time period must certain transfers by a clerk of court be avoided? [R.S. 14:139.2](#)**

**A.12.** From the second Saturday in April of an election year to the first day of July of the following year.

**Q.13. How is the value of transfers by clerks of court calculated? [R.S. 14:139.2](#)**

**A.13.** The statute specifies what must be included in the calculation of the total value of the clerk's capital assets.

**For purposes of making determinations under this law, the capital assets of the office of a clerk of court shall include all general fixed assets over which the clerk has custody and control, regardless of whether such assets are carried as assets by the clerk or by the parish governing authority.**

**Further, the value of the capital assets shall be the value of such assets as reflected in the current inventory filed under the provisions of [R.S. 24:513](#)\* prior to the beginning day of the period specified in Subsection**

**A or, if no such inventory is filed, the value of the assets as carried on the records of the clerk or the parish governing authority on the day prior to the beginning day of the period specified above.**

\*The referenced provision in R.S. 24:513 was repealed by Act 207 of the 1981 Regular Session. See now [R.S. 24:515\(B\)\(1\)](#) which provides the same language regarding asset lists.

Therefore, in order to determine the total value of the clerk of courts assets, those assets over which he or she has custody and control must be included whether they are listed on the clerk's inventory or the parish's.

Although the referenced section in R.S. 24:513 has been repealed, R.S. 24:515(B)(1) provides for the listing of assets and inventory of auditees, including the clerk of court. This list should be used to calculate the value for the purpose of this provision.

### **AG Opinions**

#### **Public Officers and Employees**

The AG has opined that a restructuring project of the 11th Judicial District Clerk of Court's office does not constitute payroll padding, because it is not being done in conjunction with or because of the gubernatorial election. **AG Op. No. 03-0227**

The AG has also opined that a restructuring project of the 19th Judicial District Clerk of Courts office is an on-going project, not being done in conjunction with or because of the gubernatorial election and thus does not fall within the purview of R.S. 14:139. The AG therefore opined that even though the project is funded within the six months preceding the election of governor, the Clerk's office is not in violation of R.S. 14:139.

**AG Op. No. 99-0062**

The AG opined that in order for the statute apply, a person must be engaged in a capacity to perform services for wages or a salary; if no such compensation is paid, the person is not an employee within the meaning of R.S. 14:139. The AG stated that it is clear from the language of the statute that the law contemplates a payment of wages or salary by inclusion of the employee on the public payroll as an essential element of the crime.

**AG Op. No. 79-0699**

#### **Sheriffs**

The AG has opined that a Presidential Declaration of Emergency concerning national border security constitutes a "public emergency" for the purposes of the exception contained in R.S. 14:139.1(C), thereby allowing the sheriff to hire additional employees beyond the hiring limit.

**[AG Op. No. 19-0064](#)**



The AG has opined that a large reduction in the police personnel of a municipality which requires a sheriff to increase his or her personnel to accommodate the law enforcement needs of the municipality constitutes a “public emergency” for the purposes of the exception contained in R.S. 14:139.1(C) and therefore it is not a violation of the public payroll padding law if this increase otherwise exceeds the hiring limitations in R.S. 14:139.1 (A). [\*\*AG Op. No. 15-0079\*\*](#)

The AG has also opined that a sheriff of a large rural parish may hire additional employees in excess of the hiring limits under R.S. 14:139.1(A) to address additional law enforcement need brought about by permanent and temporary population increases resulting from large business and construction projects located in the parish. Such increased demand for law enforcement would constitute a “public emergency” under the provisions of R.S. 14:139.1(C). [\*\*AG Op. No. 15-0054\*\*](#)

The AG has opined that the indebtedness incurred for construction and the expenses for operation of an 80-bed work release facility will not be a violation of [\*\*R.S. 14:139.1\*\*](#), as the Legislature has allowed an exception for projects such as this. **AG Op. No. 03-0332**

The AG has further opined that it is a violation of R.S. 14:139.1 for a sheriff to hire within six months after a gubernatorial election an additional employee to feed prisoners, despite the fact that the sheriff was unopposed in his most recent election. **AG Op. No. 84-0398**