State of Delaware
Office of Auditor of Accounts

Dual Employment
Agreed-Upon Procedures Report

Fiscal Year Ended June 30, 2010

Fieldwork End Date: April 28, 2011
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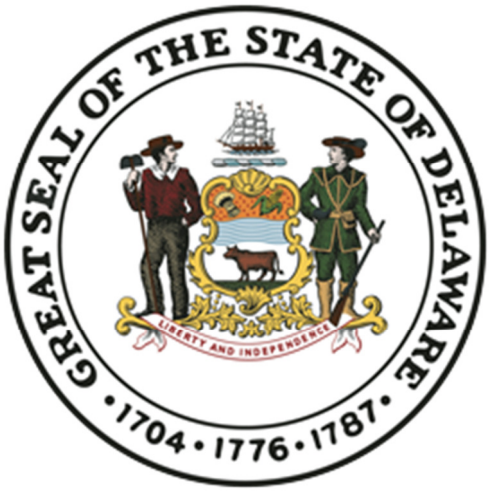
R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts



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STATE OF DELAWARE
OFFICE OF AUDITOR OF ACCOUNTS

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Independent Accountant's Report
on Applying Agreed-Upon Procedures

To the Specified User of the Report:

Janet A. Wright, Esq.
Commission Counsel
State Public Integrity Commission
Margaret O'Neill Building
Suite 3
410 Federal Street
Dover, DE 19901

We have performed the procedures enumerated below, which were agreed to by the Office of Auditor of Accounts (AOA) and the specified user of the report, as identified above, and as defined within the applicable laws of the State of Delaware. The procedures were performed solely to assist the specified parties in evaluating compliance with the Dual Employment Law, Delaware Code, Title 29, Chapter 58, Subchapter 3, (sections 5821, 5322, and 5823). Management is responsible for their agency's compliance with those requirements for the period July 1, 2009 through June 30, 2010.

This agreed-upon procedures engagement was performed in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States and the attestation standards established by the American Institute of Certified Public Accountants, and *Quality Standards for Investigations*, issued by the President's Council on Integrity and Efficiency. The sufficiency of these procedures is solely the responsibility of the specified user of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and results were as follows:

Procedure 1: Determine the population of State of Delaware legislators and State Board of Education members working as State employees at agencies, departments, divisions, universities, and school districts. Select a sample of elected or appointed officials, who were also State employees during Fiscal Year 2010, paid with more than one tax-funded source (selection of employees for review will be based on compensation received from another department greater than or equal to $15,000 for Fiscal Year 2010, auditor judgment, and percentage of coverage).

We obtained listings of all State of Delaware legislators and State Board of Education members as of June 30, 2010. Using a data analysis software package, we identified the State Legislators and the State Board of Education members who received at least $15,000 in compensation from dual employment.

For the purpose of this report, a person who is dually employed is any person employed by the State who also serves in an elected or paid appointed position in State government.

Results: We identified the following elected officials who met the above criteria:

- Representative Donald Blakey – Delaware State University
- Representative Richard Cathcart – Delaware State University
- Senator Anthony DeLuca – Department of Labor
- Senator Margaret Henry – Delaware Technical and Community College
- Representative Helene Keeley – Department of Labor
- Representative Nick Manolakos – Red Clay Consolidated School District
- Representative John Mitchell – Delaware Technical and Community College
- Representative Michael Mulrooney – New Castle County Vocational Technical School District
- Representative John Viola – Department of Labor

Procedure 2: Obtain dual employment and compensatory policies from departments/divisions/agencies selected for test work. Also, obtain timesheets and leave records for the Fiscal Year 2010 legislative session for the selected sample of elected or appointed officials.

We obtained and reviewed the dual employment and compensatory policies from each of the agencies listed above.

For the Fiscal Year 2010 legislative session, we obtained timesheets and leave records for each of the officials listed above. In addition, we obtained the Fiscal Year 2010 legislative session attendance records maintained by the State Senate and House of Representatives.

Results: Our procedures disclosed the following:

I. The attendance records maintained by the State Senate and House of Representatives do not provide a sufficient level of detail that would allow for the review of the hours spent at committee meetings or legislative sessions. Without this detail, it is difficult to determine, in some instances, if there is concurrent time. For example, a legislator who remains at their primary State job in lieu of attending a scheduled meeting or session of the General Assembly does, in fact, receive compensation from two State sources, concurrently. The treatment of this time, however, is consistent with the Attorney General's Opinion in **Appendix A**.

II. During our review of the Legislative Hall attendance records, we found that two representatives were erroneously paid mileage reimbursements of $72 and $40, respectively, for legislative sessions in which they were absent. We verified that the House of Representatives fully recovered the erroneous mileage reimbursements prior to the completion of the engagement.

Recommendation: AOA recommends that the attendance records be reviewed for accuracy at the end of each legislative day.

Auditee Response: Based on the recommendations of the Auditor of Accounts, the House of Representatives will institute the following procedure: At the end of each session day, the Chief Clerk of the House and the Journal Clerk will review the attendance record to ensure an accurate roll has been taken of all the members present and absent.

Procedure 3: Review timesheet and leave records to determine if employees are in compliance with Dual Employment Law for the selected sample of elected or appointed officials.

For the officials listed above, we compared the timesheet and leave records to the Legislative attendance records to determine if the employees were in compliance with the Dual Employment Law.

Results: Our procedures disclosed instances of noncompliance that resulted in the following:

I. There were 38 days, during the period reviewed, in which the pay of one employee at the New Castle County Vocational Technical School District was not reduced in the same period in which the hours were not worked. All pay was eventually reduced; however, the pay was reduced two to four months from the time the hours were not worked.

II. There was one instance, in May 2010, in which the New Castle County Vocational Technical School District did not properly reduce one official's records for three hours of leave and three instances, in March and June 2010, in which Delaware Technical and Community College did not properly reduce another official's records for three hours of leave while both officials attended Legislative sessions.

Recommendation:

I. We continue to recommend that the District ensure the official's pay is reduced in the proper pay period.

II. We recommend that the District recover three hours, or $128.01, from their employee and the College recover three hours, or $133.14, from their employee.

Auditee Response:

<u>New Castle County Vocational Technical School District</u>

The New Castle County Vocational Technical School District recognizes the importance of diligent record-keeping and continues to maintain detailed and timely records on all employees with legislative responsibilities. It is the District's position that the time period and frequency by which employee's paychecks are being reduced is fair and reasonable. Because of their dedicated service to the State, the District believes it would be a hardship to drastically reduce, and in some instances completely eliminate, paychecks during the busy legislative season. Since legislative pay is spread evenly throughout the year, the drastic reduction of pay during the busy legislative months would in no way be made up through the legislative pay received, thus creating a financial hardship. For this we stand behind our position to keep detailed, accurate, and timely records and make payroll deductions on an agreed upon and reasonable basis.

The New Castle County Vocational Technical School District recognizes the importance of diligent record-keeping and will make the necessary adjustment to the employee's payroll.

Delaware Technical and Community College

Delaware Tech corrected the findings regarding the employee by charging "comp time" to address the three errors found in March and June 2010 and requested that the employee submit leave forms. All corrections have been entered and processed into the College leave system.

Procedure 4: Review prior year findings and recommendations and determine the status for the current engagement period.

Results: Our procedures disclosed the following:

In the Fiscal Year 2009 Dual Employment report, AOA recommended that the General Assembly revisit the current statute regarding Dual Employment and amend to resolve the issue discussed in the results of Procedure 1. As of June 30, 2010, this recommendation remained not implemented; however, the current treatment is consistent with the Attorney General's Opinion in **Appendix A**.

Also, in the Fiscal Year 2009 Dual Employment report, AOA recommended:

- New Castle County Vocational Technical School District ensure one official's pay is reduced in the proper pay period. As of June 30, 2010, this recommendation remained not implemented.

- Department of Labor recover 5.25 hours, or $97.07, from one official and ensure employees' pay is reduced in the proper pay period, by requiring all employees to submit timesheets and leave slips in a timely manner. As of June 30, 2010, the recommendation was implemented.

- Red Clay Consolidated School District recover 0.50 hours, or $27.43, from one official. As of June 30, 2010, the recommendation was implemented.

We were not engaged to, and did not conduct an audit, the objective of which would be the expression of an opinion on compliance with specified laws. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the State of Delaware Public Integrity Commission and is not intended to be, and should not be, used by anyone other than this specified party. However, this report is a matter of public record and its distribution is not limited. This report, as required by statute, was provided to the Office of the Governor, Office of the Controller General, Office of the Attorney General, Office of Management and Budget, and the Department of Finance.

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts

April 28, 2011

Appendix A: Attorney General Opinion Regarding Legislative Committee Meetings

JOSEPH R. BIDEN, III
ATTORNEY GENERAL

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February 21, 2008

The Honorable R. Thomas Wagner, Jr.
Auditor of Accounts
401 Federal Street
Townsend Building, Suite 1
Dover, Delaware 19901

ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL

RE: Legislative Committee Meetings

Dear Mr. Wagner:

Chief Administrative Auditor Stacey Wynne has asked this office whether time should be "docked" from a State legislator who remains at his or her State job and does not attend a simultaneously scheduled meeting of a legislative committee of which the legislator is a member.[1] We conclude that the relevant statute does not authorize the legislator's State job pay to be docked under your scenario.

The General Assembly's findings on dual employment are recited in the State Compensation Policy (the "Policy") at 29 *Del.C.* §§ 5821(b)[2] and 5821(c)[3] (the "Findings"). The Findings convey the General Assembly's expectation that so-called "double-dipping" should not occur under *any* circumstances. The provision that implements the Findings states in pertinent part:

> *Any person employed by the State ... who also serves in an elected ... position ... shall have his or her pay reduced on a prorated basis for any hours or days* ***missed*** *during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected ... position which* ***requires the employee to miss*** *any time which is normally required of other employees in the same or similar positions.*

29 *Del.C.* § 5822(a) (Emphasis added).

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[1] It is my understanding from your Office that State legislators are paid a stipend for committee membership and that no dollar amount is allocated per meeting.

[2] "The members of the General Assembly believe that the taxpayers of Delaware should not pay an individual more than once for coincident hours of the workday."

[3] "The State should have in place clear policies and procedures to ensure that taxpayers of the State as a whole ... are not paying employees or officials from more than 1 tax-funded source for duties performed during coincident hours of the workday."

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The plain meaning of this provision requires the State legislator be away from the job physically (actually "miss" time) in order for a reduction in pay to occur. The language of the Policy is also unambiguous in that only the State job pay can be docked. There is no corresponding provision that permits a legislator's General Assembly pay to be docked when a legislator is absent from legislative business.

Further support for this interpretation is found in the legislative history of the Policy. Your scenario was raised and discussed during the Senate debate.[4] While noting that a legislator has a moral obligation to attend legislative sessions, the General Assembly chose not to create a statutory remedy for the situation where a legislator chooses to remain at his or her State job during a legislative session (thus receiving State funds for both positions during the same time period). As a result, each legislator in this situation has the discretion to double-dip without the consequences set forth in the Policy.

We believe this situation is inconsistent with the express Findings of the Policy. Nonetheless, given our review of the legislative history and the plain meaning of the statute, we also must reach a conclusion that is inconsistent with the Findings. We conclude the General Assembly did not intend that a legislator's State employment pay be docked when that legislator remains at his or her State job during the time scheduled for that legislator to attend a committee meeting.

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[4] *President [of the Senate]*: Senator Vaughn.
Senator Vaughn: Thank you, Mr. President. A question to the sponsor: Suppose a State employee stays on his job and does not come to the General Assembly to serve. How does your bill handle that situation?

* * *

President: Senator Connor?
Senator Connor: Thank you, Mr. President. Senator, the question is answered to the fact that there is no time sheet on that particular day because there are no coincident hours on that particular day shown. The individual does not show up in the Senate. The individual stays in his place of employment. There is no time sheet turned in. There's no sign-off on the time sheet. There's no coincident hours. So the individual is not docked from being at his normal place of work since that's the place where his responsibility has not been shirked. Now whether that creates a problem because the individual is paid from the State at the same time, that's his responsibility – a moral responsibility as well as a statutory responsibility to be here and acting on behalf of his constituency. If he's not here acting on behalf of his constituency, I think that matter will be resolved very quickly through the next election and through also hopefully other types of releases in the press and so forth that would force him into that situation.
President: Senator Vaughn.
Senator Vaughn: Mr. President, I agree with the Senator that the individual is obligated to be here, but from his response it's not clear to me whether under this bill he would be docked pay in the General Assembly pay.
President: Senator Citro.
Senator Citro: Mr. President, I think I know what Senator Vaughn...you're talking about the Senator misses a day, but if you look down on the first page, under Policy, it says any person employed by the State or county, who serves in a State or county elected or paid appointed position, shall have his or her pay reduced on a prorated, we're talking about that State employee that's an elected official. There's nothing in here that says anything about the elected official. Maybe next term around that will be a good bill for you.

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We note that at the end of the Senate debate on the Policy, Senator Citro suggested that Senator Vaughn might wish to address this situation in the subsequent term of the General Assembly. No one acted on this suggestion. In light of the inconsistency noted above, you may wish to recommend that the General Assembly reconsider this issue as was previously suggested by the late Senator Vaughn.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Frank N. Broujos
Deputy Attorney General

Xc: Lawrence W. Lewis, State Solicitor
Jennifer D. Oliva, Deputy State Solicitor

Distribution of Report

Copies of this report have been distributed to the following public officials:

Executive Branch

The Honorable Jack A. Markell, Governor, State of Delaware
The Honorable Thomas J. Cook, Secretary, Department of Finance
The Honorable Ann S. Visalli, Director, Office of Management and Budget
Mr. Kristopher Knight, Director, Division of Accounting
The Honorable John McMahon, Secretary, Department of Labor

Legislative Branch

The Honorable Russell T. Larson, Controller General, Office of the Controller General
The Honorable Anthony J. DeLuca, President Pro Tempore, Delaware State Senate
The Honorable Robert F. Gilligan, Speaker of the House, Delaware House of Representatives

Other Elective Offices

The Honorable Joseph R. Biden, III, Attorney General, Office of the Attorney General

Other Districts and Agencies

Ms. Janet Wright, Commission Counsel, Public Integrity Commission, Department of State
Dr. Henry Lee Williams, President, Delaware State University
Dr. Orlando J. George, Jr., President, Delaware Technical Community College
Dr. Steven H. Godowsky, Superintendent, New Castle County Vocational Technical School District
Dr. Mervin B. Daugherty, Superintendent, Red Clay Consolidated School District

This report can be accessed online through the AOA website at http://auditor.delaware.gov.