

**State of Delaware
Office of Auditor of Accounts**

**Dual Employment
Examination Engagement**

Calendar Years Ended 2015 and 2016

Issuance Date: January 17, 2017

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



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Background

29 Delaware Code (Del. C.) Ch. 58, Subchapter III, referred to as the Dual Employment law, was enacted in July 1986. The law states:

§5821. Findings.

- (a) There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State.
- (b) 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.
- (c) The State should have in place clear policies and procedures to ensure that taxpayers of the State as a whole, and of its various governmental jurisdictions, are not paying employees or officials from more than 1 tax-funded source for duties performed during coincident hours of the workday.

§5822. Policy.

- (a) Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, 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 or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.

§5823. Audits; penalty.

- (a) The State Auditor shall conduct an annual audit of the time records which have been kept by the supervisors or school board¹ in accordance with §5822(b) and (c) of this title to determine whether or not an employee was paid from more than 1 tax-funded source for working coincident hours of the day.
- (b) Any discrepancy found by the State Auditor shall be reported to the Public Integrity Commission for investigation pursuant to §5810 of this title and/or to the Office of the Attorney General for possible prosecution under §876 of Title 11 (tampering with public records in the first degree) and any other appropriate section.

Historically, the Office of Auditor of Accounts (AOA) has encountered great difficulty in performing this engagement. The State has not had policies or procedures to monitor or identify dually employed individuals as defined by 29 Del. C. §5822(a). As a result, AOA has been unable to identify a complete population of dually employed individuals for testing. In addition, the State has not maintained time records for elected² or appointed officials; therefore, AOA has been unable to test for the proper treatment of dual employment hours and has been unable to conclude if the officials were paid from more than one tax-funded source for working coincident hours of the day. As such, AOA has been unable to determine

¹ Although school board members are elected officials, 14 Del. C. §1046 prohibits school board members from receiving compensation for their services. Therefore, school board members do not meet the definition of dually employed individuals.

² There is no provision in the Delaware Code that permits a legislator's General Assembly pay to be docked when a legislator is absent from legislative business. Further, the General Assembly does not maintain time records that AOA could review for coincident time.

if the State was in compliance with the Dual Employment law due to the above scope limitations. Despite repeated findings, advice letters from the Office of the Attorney General, and advisory publications by the State Public Integrity Commission, these difficulties still exist.



STATE OF DELAWARE
OFFICE OF AUDITOR OF ACCOUNTS

R. THOMAS WAGNER, JR., CFE, CGFM, CICA
AUDITOR OF ACCOUNTS

Independent Accountant's Report

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We were engaged to examine the State of Delaware's compliance with 29 Del. C. Ch. 58, Subchapter III, the Dual Employment law, for the Calendar Years 2015 and 2016. Management of the State of Delaware is responsible for compliance with the Dual Employment law. Our responsibility is to express an opinion on the State's compliance with the Dual Employment Law based on conducting the examination in accordance with attestation standards established by the American Institute of Certified Public Accountants.

As discussed in the *Schedule of Findings*, we continued to encounter several difficulties in obtaining the information needed to identify and test dually employed individuals as defined by 29 Del. C. §5822(a). The State does not have policies and procedures to monitor or identify dually employed individuals as defined by 29 Del. C. §5822(a). As a result, we were unable to identify a complete population of dually employed individuals for testing. In addition, the State does not maintain time records for elected or appointed officials; therefore, we are unable to test for the proper treatment of coincident hours paid from more than one tax-funded source.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the State's compliance with the Dual Employment law; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the subject matter. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the State is in compliance with the Dual Employment law and not for the purpose of expressing an opinion on internal control over the Dual Employment law or on compliance and other matters; accordingly, we express no such opinions. Our examination disclosed certain findings that are required to be reported under *Government Auditing Standards* and those findings, along with the views of responsible officials, are described in the attached *Schedule of Findings*, as Findings #1 and 2.

Because of the limitation on the scope of our examination discussed in the preceding paragraphs, the scope of our work was not sufficient to enable us to express, and we do not express, an opinion on whether the State complied, in all material respects, with the Dual Employment law for the Calendar Years 2015 and 2016, based on criteria set forth in 29 Del. C. Ch. 58, Subchapter III.

This report is intended solely for the information and use of the Public Integrity Commission and is not intended to be, and should not be, used by anyone other than these specified parties. However, under 29 Del. C. § 10002(1), this report is 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, and Office of Management and Budget.

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

January 13, 2017

Schedule of Findings

Finding #1: Lack of Complete Population of Dually Employed Individuals

Criteria

29 Del. C. §5822(a) defines dually employed individuals as, “Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality...”

29 Del. C. §5808(a) states it is the State Public Integrity Commission’s (PIC) responsibility “...to administer and implement this chapter [29 Del. C. Ch. 58], and to perform such other responsibilities as may be entrusted to it by law.” However, there is currently no requirement for dually employed individuals to report any information to the PIC.

29 Del. C. §5813 requires public officers to file a financial disclosure report with the PIC. 29 Del. C. §5812(n)(2) specifically excludes “...elected and appointed officials of political subdivisions of the State, of public school districts of the State, and of state institutions of higher learning” from this requirement.

Condition

The State does not have policies and procedures to monitor or identify dually employed individuals as defined by 29 Del. C. §5822(a).

We requested the population of dually employed individuals from the PIC; however, the office was unable to provide a complete population for the period covered by our examination.

Cause

Due to the exclusions of Del. C. §5812(n)(2), the State lacks authority to monitor elected officials of political subdivisions. Further, the Dual Employment law does not currently require all dually employed individuals to report any information to the PIC.

Effect

The State does not maintain sufficient information to ensure all dually employed individuals are identified across the state.

Recommendation

The PIC should seek modification to the Dual Employment law to add a requirement for all dually employed individuals to report information annually to the PIC. Addition of this requirement would enable the PIC to maintain a complete listing of dually employed individuals.

Finding #2: Lack of Time Records

Criteria

29 Del. C. §5822 states:

“(a) Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, 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 or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.

(b) Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.

(c) All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.

(d) No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210.

(e) Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.

(f) School administrators whose duties require that they work regularly during summer months shall not be exempted from this chapter. If a school administrator shall have no immediate supervisor, the school administrator’s time shall be verified by the appropriate school board at its next regular or special meeting following any pay period in which said administrator missed work due to his or her elected or paid appointed position.”

Condition

The General Assembly does not maintain detailed time records that allow for the review of the hours spent at committee meetings or legislative sessions. Without this information, it is not possible to determine if a legislator incurred coincident time.

Cause

The General Assembly’s attendance records are limited to the time that legislative session began and whether or not the official was present during roll call. The time records do not include the time in which officials enter or exit a legislative session.

Effect

We were unable to test for the proper treatment of dual employment hours and cannot conclude if the officials were paid from more than one tax-funded source for working coincident hours of the day.

Recommendation

The General Assembly should improve the time-keeping process so that coincident hours spent for legislative duties can be identified, accounted for, and audited in accordance with the Dual Employment law. In addition, all entities with dually employed individuals should maintain time records in accordance with the Dual Employment law, sufficient to support whether an employee was paid for coincident hours of the day.

Status of Prior Period Findings

<u>Prior Period Finding</u>	<u>Brief Description</u>	<u>Current Period Status</u>
Finding #1	Lack of Complete Population of Dually Employed Individuals	See current period finding.
Finding #2	Lack of Time Records	See current period finding.

Appendix A: State Public Integrity Commission's Response to Findings



STATE OF DELAWARE
DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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January 13, 2017

The Honorable R. Thomas Wagner, Jr.
Auditor of Accounts
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RE: RESPONSE TO SCHEDULE OF FINDINGS

Dear Mr. Wagner,

The State Public Integrity Commission ("PIC") has received your report of the Dual Employment Examination for calendar years 2015 and 2016. PIC agrees with your findings and recommendations. However, we would like to offer the following response:

Finding #1: Lack of Complete Population of Dually-Employed Individuals

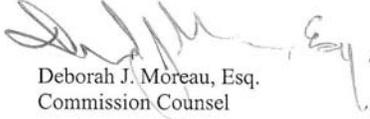
Response: (PIC) agrees that there are no mechanisms in place which could accurately capture the dual employment data described in 29 Del. C. § 5822(a). PIC only has statutory authority to gather Financial Disclosures (including sources of income) from Public Officers. 29 Del. C. § 5813(a). Falling within the definition of "Public Officer" are approximately 300 high level State employees including judges, members of the General Assembly, Cabinet Secretaries and Division Directors. 29 Del. C. § 5812. However, the vast majority of State employees are not included as those required to file financial information with the State. Nor does PIC have authority to gather dual income data from municipal employees of any city or town. Any estimate of the number of dually-employed individuals would be purely speculative but would certainly greatly exceed the number of Financial Disclosures filed with PIC every year.

The recommendation that PIC seek modifications to the Dual Employment Law to compel all dually-employed individuals within the State to file information with our Commission is, without a doubt, the solution to the problem. However, during the last legislative session, HB 252, proposing modifications to the Dual Employment law failed to garner enough support in the General Assembly to be moved out of committee. Furthermore, even if the legislative initiative had been successful, PIC does not currently have the necessary resources (manpower and funding) to meet the additional challenges which would accompany such legislation. Extending PIC's jurisdiction to include gathering financial disclosure information from county and town employees would require a costly re-design and overhaul of our database, the Public Integrity Reporting System ("PIRS"), as well as additional personnel to oversee the additional work. As you know, the State is facing a large budget shortfall for the next fiscal year and PIC does not expect our budget to be increased in the foreseeable future.

We share this information with you not to excuse our reluctance to pursue legislative changes to the Dual Employment law but to make you aware that while we completely agree with your recommendations, our ability to implement them is influenced by factors outside our control. PIC would like to thank you and your office for your diligent efforts to collect the necessary information to complete your report. Unfortunately, despite our willingness to assist you in that endeavor, we do not currently have the necessary data, nor do we have the means to meet your request for a statutory change which would allow us to provide you with the information.

Please contact us if you have any questions.

Respectfully,



Deborah J. Moreau, Esq.
Commission Counsel