

State of Delaware
Office of Auditor of Accounts

Dual Employment
Examination Engagement

July 1, 2011 through December 31, 2013

Fieldwork End Date: October 27, 2015
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R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts

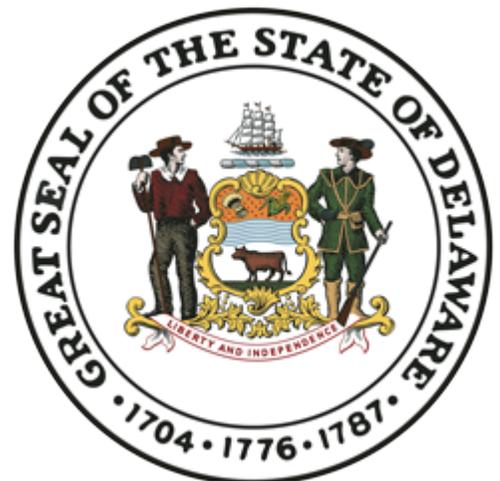


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Background

29 Del. C., c. 58 (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 government jurisdictions, are not paying employees or officials from more than one 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.

The Dual Employment Law mandates the State Auditor to conduct an annual audit of the time records "...to determine whether or not an employee was paid from more than one tax-funded source for working coincident hours of the day."¹ Any discrepancies found by the State Auditor will be reported to the Public Integrity Commission for investigation and the Office of the Attorney General for possible prosecution.

Historically, the Office of Auditor of Accounts (AOA) has encountered great difficulty in performing this engagement. The State does not have policies or procedures in place to identify and monitor dually employed individuals as defined by the Dual Employment Law. As such, AOA's previous engagements focused only on State elected officials who were also State employees instead of the much broader scope of "any political subdivision"² as described in the Dual Employment Law. In addition, the General Assembly has not maintained detailed time

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 A political subdivision is a government unit with the authority to levy taxes on real and tangible personal property or offers a service or benefit to the public. Source: www.ask.com

records that allow for the review of the hours spent at committee meetings or legislative sessions. Without this detail, it is not possible to determine, with precision, if a legislator incurred coincident time. These issues have been communicated to public officials repeatedly through AOA's reported findings, advice letters from the Office of the Attorney General, and advisory publications by the State Public Integrity Commission.

The inclusion of municipalities in the Dual Employment Law brings yet more difficulties in performing this engagement. Each municipality determines whether or not to compensate their respective elected officials. There being 57 municipalities in the State of Delaware³, little to no oversight, and historically a lack of response to requests for information, in addition to lack of detailed information from the General Assembly (see above), it is not possible to determine, with precision, coincident time.

³ www.delaware.gov/topics/municipalities



STATE OF DELAWARE
OFFICE OF AUDITOR OF ACCOUNTS

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

Independent Accountant's Report

Deborah Moreau, Esq.
Legal Counsel
State Public Integrity Commission
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We were engaged to examine the State of Delaware's compliance with 29 Del. C., §5821-5823 (the Dual Employment law) for the period July 1, 2011 through December 31, 2013. Management of the State of Delaware is responsible for compliance with the Dual Employment law.

As discussed in the *Schedule of Findings*, we encountered 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 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.

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 restrictions 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 was in compliance, in all material respects, with Dual Employment law for the period July 1, 2011 through December 31, 2013 based on criteria set forth in 29 Del. C., c. 58.

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

October 27, 2015

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., c. 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., c. 58, Subchapter II 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 populations of dually employed individuals from both the PIC and the Department of Elections; however, neither office was able 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. Currently, the Dual Employment law does not require all dually employed individuals to report any information to the PIC.

Effect

The State does not maintain a complete population of dually employed individuals for testing; hence, there is insufficient 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 record 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 has not maintained detailed time records that allow for the review of the hours spent at committee meetings or legislative sessions. Without this detail, it is not possible to determine with precision 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

Since the General Assembly does not maintain adequate time records for elected or appointed officials, 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 a determination of whether or not an employee was paid for coincident hours of the day.



STATE OF DELAWARE
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November 13, 2015

The Honorable R. Thomas Wagner, Jr.
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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 the time period July 1, 2011 through December 31, 2013. While PIC does not disagree with your findings, we would like to offer the following response:

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

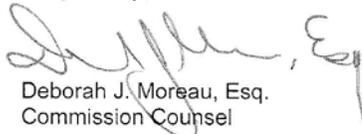
Response: (PIC) agrees that there are no mechanisms in place which could accurately capture the dual employment data described in 29 Del. C. § 5822(a). PIC only has statutory authority to gather Financial Disclosures (including sources of income) from Public Officers. 29 Del. C. § 5813(a). Falling within 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. Theoretically, the only State agency who may have that type of information would be the Delaware Department of Revenue.

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 logical but greatly over-estimates our ability, but not willingness, to provide such services. PIC's budget was cut by 2.6% for FY 2016. When considering the cut solely in terms of our operating budget (less than \$30,000 for the entire fiscal year), the budget cut exceeds 30%. Additionally, our database which gathers financial information from the Public Officers would require a major re-design and overhaul. With limited financial resources, and a two person staff, PIC does not have the resources to administer such a sweeping statutory change.

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