

State of Delaware Office of Auditor of Accounts

Dual Employment Agreed-Upon Procedures Engagement

Fiscal Year Ended June 30, 2011

Fieldwork End Date: September 14, 2012

Issuance Date: September 18, 2012

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

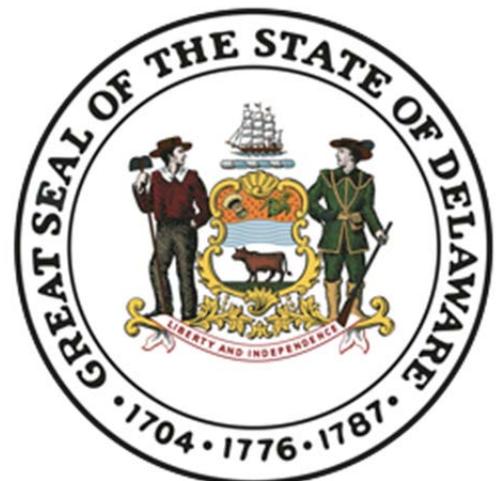


Table of Contents

Independent Accountant's Report	1
Appendix A: Attorney General Opinion Regarding Legislative Committee Meetings	5



STATE OF DELAWARE
OFFICE OF AUDITOR OF ACCOUNTS

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

PHONE: 302-739-4241
FAX: 302-739-4217

Independent Accountant's Report
on Applying Agreed-Upon Procedures

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

We have performed the procedures described below, which were agreed to by you, solely to assist the specified parties in evaluating compliance with 29 Del. C. §5821 and §5822, the Dual Employment Law. Management is responsible for their agency's or school district's compliance with those requirements for the period July 1, 2010 through June 30, 2011 (FY 2011).

This agreed-upon procedures engagement was performed in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States; 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 State Public Integrity Commission. 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.

A description of the procedures and any associated findings are as follows:

Procedure 1: Determine the population of employees working as State employees at agencies, departments, divisions, universities, and school districts that are dually employed, as defined by 29 Del. C. §5821 and §5822. Identify all dually employed State employees who received compensation greater than or equal to \$10,000 from multiple tax-funded sources during the review period. Using professional judgment, determine the sampling approach and coverage for testwork.

Using data analysis software, we identified the State Legislators and the State Board of Education members who received at least \$10,000 from multiple tax-funded sources.

Results: Our procedures disclosed the following:

The following elected officials met the above criteria:

- Senator Joseph Booth – Sussex Technical School District
- 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

The State does not have policies or procedures in place to identify and monitor dually employed individuals as dictated by 29 Del. C. §5821 (c).¹ As a result, we were unable to identify State employees who also serve in an elected position for a city, county, or municipality, as required by 29 Del. C. §5822.²

Procedure 2: Obtain dual employment and compensatory policies from departments/divisions/agencies that employ the individuals selected for testwork and review for completeness.

For each of the agencies listed above, we obtained dual employment and compensatory policies from the agencies and school districts and reviewed for completeness.

Results: Our procedures disclosed the following:

- I. As previously reported in the FY 2010 Dual Employment Agreed-Upon Procedures Report, the attendance records maintained by the State Senate and House of Representatives do not provide a sufficient level of detail that allows 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. For example, any legislators who remain at their primary State job in lieu of attending a scheduled meeting do, in fact, receive compensation from two State tax-funded sources, concurrently. The Attorney General’s Opinion, located in Appendix A, recommends the General Assembly revisit the Dual Employment statute to resolve this issue.
- II. New Castle County Vocational Technical School District’s Dual Employment Policy states “All leave time will be approved by the supervisor and submitted monthly to the Superintendent for final approval,” whereas the Dual Employment Law specifically requires supervisor verification every pay period.³

¹ Per 29 Del. C. §5821(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 [one] tax-funded source for duties performed during coincident hours of the workday.”

² Per 29 Del. C. §5822 (a), a dually employed individual is defined 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...”

³ 29 Del. C. §5822 (b) states “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.”

- III. Sussex Technical School District’s Dual Employment policy states, “At least once per year, the [time] logs will be reviewed to ensure the dual-employed individual is working the minimum number hours (37.5 hours average per week) for which they are being paid.” The use of annual averaging does not ensure compliance with the Dual Employment Law nor does it guarantee accurate time reporting.³

Procedure 3: For those employees who meet the criteria above, obtain the timesheets and attendance records maintained at both the State employee’s primary place of employment and the entity in which they are dually employed. Compare those records to ensure that officials did not inappropriately receive compensation for coincident hours.

For the officials identified in Procedure 1, we compared the employees’ timesheets and leave records from their primary place of employment to their corresponding Legislative attendance records to determine if their coincident time was appropriately accounted for with leave or docked pay.

Results: Our procedures disclosed the following:

I. Delaware Technical and Community College

For two employees at the College, AOA could not determine if leave was properly taken for coincident time because the College does not document the employee’s arrival or departure times, specifically on days when the employee attends legislative session. The number of hours worked for each day is indicated on the employee’s timesheets; however, the specific times worked are not indicated on the timesheets beginning in April 2011 for one employee and for the entire legislative period for another employee.

For the period when adequate leave records were available, the College had 1 out of 21 instances where the Representative’s leave was not properly reduced for .5 hours, or \$11.83, of coincident time in January 2011 due to an incorrect departure time on his timesheet. There was also one instance in April 2011 where the attendance record was not approved until December 2011. Further, the leave reports for both employees indicate that leave is often not presented for approval until several months after the fact, and the requested leave times do not agree to the actual time absent.

During the FY 2010 Dual Employment Agreed-Upon Procedures Report, we identified three hours of coincident time at the College that were not properly accounted for. The College did not correct this discrepancy until March 2012 when we requested the information, which was after the close of FY 2011.

II. Department of Labor

A Representative had 1 out of 35 instances where she was not docked for .5 hours, or \$9.25, of coincident time in January 2011. Another Representative had one 1 out of 41 instances where 4.0 hours of his pay was not docked in the same pay period where coincident time occurred in May 2011.

There was also one instance in December 2010 where a Senator incurred 4.0 hours of coincident time to fulfill his legislative duties; however, his leave was not adjusted until the following pay period.

III. New Castle County Vocational School District

During the period reviewed, we found 36 out of 36 instances where the Representative's pay was not docked in the same period in which the coincident hours occurred, including five instances in April 2011 where his pay was docked almost a year after the fact. AOA discovered this and brought it to the District's attention. These April 2011 timesheets were not submitted to the District's payroll department until April 2012 when AOA requested them.

In addition, there were 3.5 hours, or \$152.04, that was not docked from the Representative's pay.

IV. Red Clay Consolidated School District

All coincident time was appropriately accounted for either with leave or docked pay, which agreed to the Representative's timesheets and District's leave records without exception; however, pay was not docked in the same pay period 24 out of 33 times.

V. Sussex Technical School District

The District did not properly account for the Senator's coincident time while he was serving in his Legislative position. While the specific hours worked per the timesheets did not indicate the employee overlapped his primary job duties with his legislative duties, he was often paid for 7.5 hours per day when he worked less. For the FY 2011 Legislative Session, we found 38 out of 44 instances, totaling 74.25 hours, in which the Senator worked less than the standard 7.5 hours per day. There were also 4 instances in which the Senator worked more than the standard 7.5 hours, totaling 3.75 hours. This resulted in a net total of 70.50 hours, or \$2,151.62, of time that was not properly accounted for with leave or docked pay.

This report is intended solely for the information and use of the State 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, and Office of Management and Budget.

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.

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

September 14, 2012

Appendix A: Attorney General Opinion
Regarding Legislative Committee Meetings



JOSEPH R. BIDEN, III
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX (302) 577-6499
TTY (302) 577-5783

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).

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.”

The Honorable R. Thomas Wagner, Jr.
February 21, 2008
Page 2

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.

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.

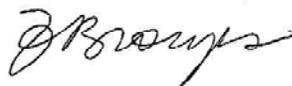
Senator Citro: Mr. President, I think I know what Senator Vaughn...you’re talking about the Senator misses a day, but if you look down on the first page, under Policy, it says any person employed by the State or county, who serves in a State or county elected or paid appointed position, shall have his 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.

The Honorable R. Thomas Wagner, Jr.
February 21, 2008
Page 3

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