

Juggling or Balancing: The Dilemma of Dual Office-Holding

By Peggy Kerns, Susan Huntley and Luke Martel

Most states regulate dual office-holding.

Can a state legislator balance all interests when holding a second elected office? Most states say "no," and restrict dual office-holding. This practice generally is defined as holding two elected offices at the same time at the state or local level, paid or unpaid.

State Action **Dual Office-Holding Restrictions.** States have taken three main approaches to restrict dual office-holding. The first, used in three territories and 47 states, categorically prohibits a legislator from holding another statewide elected office. The remaining states—Indiana, West Virginia and Wyoming—have limited exceptions.

In 47 states and three territories, legislators can hold only one statewide elected office.

Under the second approach, 25 of these 47 states and the three territories prohibit state legislators from holding any other elected office at the county or municipal level. In the third approach, followed by 18 states, a legislator may not hold a second state-level elected office but can hold a second county or municipal office if the offices are not "incompatible."

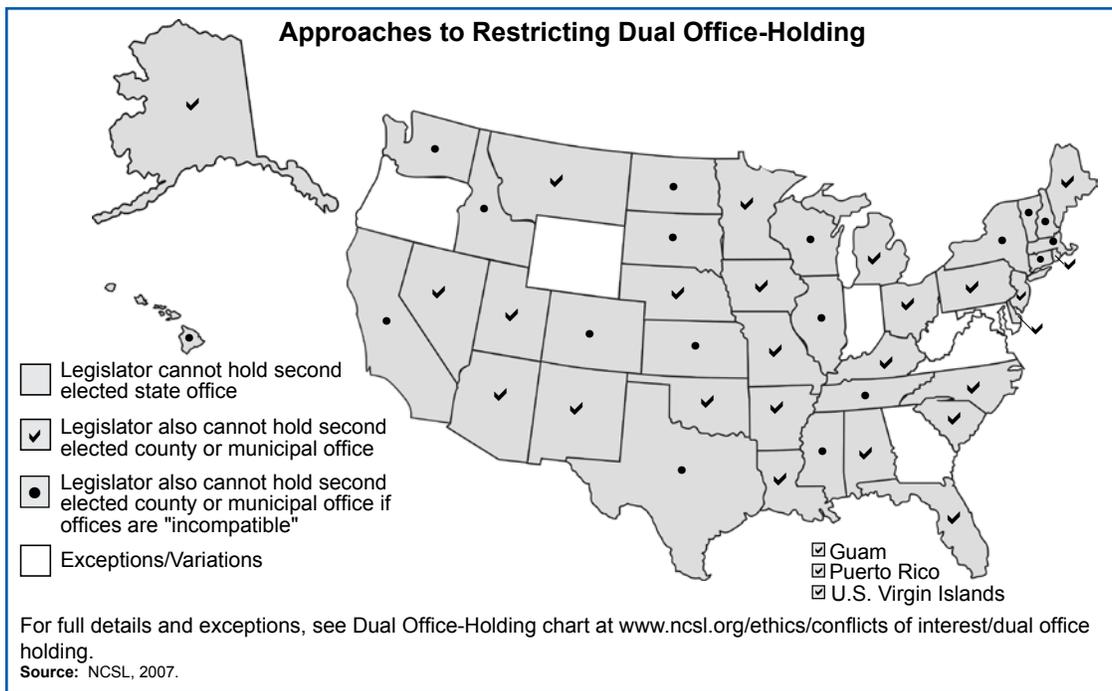
Further variations occur in Georgia, Indiana, Maryland, Oregon and Virginia, where a legislator is allowed to hold a second elected county or municipal office only when the second office is not considered lucrative. Generally, an office is considered lucrative when the office holder receives compensation or remuneration beyond reimbursement for actual expenses incurred.

West Virginia adds another element, saying the second elected position cannot be lucrative or incompatible. Wyoming prohibits a state legislator from holding any other public elective office that receives state funding.

In some states, dual office holding is decided in the courts.

Doctrine of Incompatibility. In states that do not address the legitimacy of holding two elected offices at the same time by statute or constitution, the issue generally is addressed by state courts. Most state courts base their ruling on the "doctrine of incompatibility of office," where the court compares the specifics of the two elected offices, examines the duties of the two offices, and decides if one office is subordinate to the other or if inconsistencies exist between the duties of the two offices. If so, the offices are "incompatible," and a legislator cannot hold both positions at the same time.

It is difficult to definitively answer the question of how many states permit a state legislator to hold a local elected office. The response depends upon whether the particular state court has ruled or decides to rule that the two offices at issue fall under the doctrine of incompatibility.



Recent Legislation. A New Jersey law passed in 2007 bans dual office-holding beginning Feb. 1, 2008. An exemption allows elected officials who hold two offices on that date to remain in office as long as service in those offices is continuous. However, a legislator cannot switch from one chamber to another and still qualify for the exemption.

Ethical Concerns. According to Thomas M. O’Neill, author of *One to a Customer: The Democratic Downsides of Dual Office Holding*, the practice appears to impede the system of checks and balances among levels of government. Because the public could see the obvious conflicts of interest and incompatibility of duties, such a system could erode confidence in government, he said.

In addition to the practical question of how someone could find time to do both jobs, ethicists and political science experts raise concerns about conflicting loyalties and the potential for abuse of power. Carol W. Lewis, professor of political science at the University of Connecticut, asks, “How does a dual office-holder handle the different definitions of ‘public’ as a person shifts from one office to another?” And, she adds, as demands on time and commitments pull even the most diligent public servant, ethical dilemmas occur. “Who and what get the short straw? Perhaps there is a warning in the simple fact that so many questions are raised,” she says. In short, it appears that the states have heeded this warning, either by prohibiting dual office-holding or by requiring close scrutiny and case-by-case analysis.

States may require close scrutiny and case-by case analysis of dual office-holding.

Resources

Lewis, Carol W., and Stuart C. Gilman. *The Ethics Challenge in Public Service*, Second Edition. San Francisco, Calif.: Jossey-Bass, 2005.

O’Neill, Thomas M. *One to a Customer: The Democratic Downsides of Dual Office Holding*. Trenton, N.J.: New Jersey Policy Perspective; New York, N.Y.: Demos: A Network for Ideas and Action, 2006. Joint project.

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