



Dual Employment: Regulating Public Sector Jobs for Legislators

By Peggy Kerns and Luke Martel

States limit employment for legislators.

Many state legislators balance their public office with other employment, although they face regulations that address the type of jobs they may have. Legislatures have enacted statutes and citizens have passed constitutional provisions that curb employment opportunities for legislators.

Dual Employment. Legislators have imposed restrictions on themselves related to employment in another public sector job. Dual employment—also known as double dipping—is the practice of drawing two government incomes. Examples include a state legislator who also is a state employee, a city firefighter or a public school teacher. This definition does not include legislators who also draw a pension for military service or a retirement pension paid by public funds.

An appointive or elective position is considered a public office.

State Action **State Definition of a Publicly Funded Job.** Regulations hinge on a state's definition of public office and public official. Generally, appointive or elective positions are considered to be a public office. In many states, employment as a law enforcement official—such as a police officer, state trooper or sheriff—is considered a public office. In other states, only top law enforcement officials fall under dual employment restrictions.

State dual employment laws fall into six categories.

Six Categories. State laws regarding dual employment vary considerably but generally fall into six categories.

- Twenty states place no restrictions on state legislators holding another job at the state or local level.
- Seven states allow legislators to hold state (and political subdivisions thereof) employment as long as the legislator is not paid more than once for coincident hours of the workday.
- Two states allow legislators to hold employment at the state or local level as long as the legislator was hired before being elected to office. Arkansas also describes the types of employment promotions and salary increases allowed while the employee serves as a legislator.



- Six states ban employment that could conflict with legislative duties.
- Four states prohibit public employment for legislators except for public school jobs.
- Nine states and three territories prohibit state legislators from holding any employment at the state and local levels. Two other states—Alaska and Nebraska—ban employment at the state level but not at the local level. In Nebraska, the law is unclear whether legislators can hold local employment.

Other Job Regulations. In most states, legislators cannot hold another publicly elected office. Twenty-nine states have revolving door laws that require a certain amount of time to elapse before former lawmakers can lobby before the legislative body they just left. At least 40 states restrict current legislators from having a contract with state government. Many states also restrict legislators from representing a client before state government. All but three states and all territories require legislators to file financial disclosure reports so the public has access to information on their sources of income.

Conflict of Interest. Legislators who also hold a job in government may face situations where they have a conflict of interest. Scott M. Matheson Jr., author of *An Essay on Separation of Powers, Politics, and Constitutional Policy*, said that holding both a legislative and an executive position “...poses the risk of conflict of interest because such a person may face decisions as a legislator that affect his role in the legislature.” Examples include legislators who vote on their department's budget, superiors who attempt to influence a legislator's vote, or legislators who use legislative power to influence their superiors. Matheson says that conflicts of interest also may arise when a legislator holds a private sector job: “Legislators who represent private interests with a stake in legislation or who contract to provide services to the state or who engage in business subject to state regulations all can be put in a conflict of interest position depending on the issue before the legislature.”

The Dilemma. Most state legislatures are in session part time, and the pay is low. Because an elected official's interest often lies in public service, some naturally gravitate toward other public service jobs. In 2002, more than 21 million people held public employment, representing approximately 7.5 percent of the total U.S. population. Restrictions would seem to limit the opportunities for legislators to find employment.

Paula Franzese, professor of law at Seton Hall Law School, believes people should not combine public office with another public job. “Politics should be rooted in public service, not personal enrichment,” she says. Karl Kurtz, director of state services at the National Conference of State Legislatures, believes the outside jobs held by members of a citizen legislature are rich sources of expertise for the legislature. “A legislator who also holds a job in local government brings valuable intergovernmental experience to the lawmaking process, just as a farmer, a teacher or a nurse does. We should value that knowledge rather than outlaw it.”

Resources

Matheson, Scott M. Jr. “Eligibility of Public Officers and Employees to Serve in the State Legislature: An Essay on Separation of Powers, Politics, and Constitutional Policy.” Salt Lake City: *Utah Law Review*, 1988.

U.S. Census Bureau. “2002 Census of Governments, Vol. 3, Public Employment,” (GC02(3)-2). *Compendium of Public Employment: 2002*. Washington, D.C.: U.S. Census Bureau, September, 2004.

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NCSL Ethics Website
www.ncsl.org/ethics/conflicts_of_interest/dual_employment

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