



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • (304) 558-0444**

**Earl Ray Tomblin
Governor**

**Paul A. Mattox, Jr., P. E.
Cabinet Secretary**

August 23, 2016

MEMORANDUM

**TO: C&H Level Staff
District Engineers/Managers
Division Directors
DOT Agency Heads**

**FROM: Kathleen C. Dempsey, Director *KCD*
Human Resources Division**

SUBJECT: Secondary Employment/Certain Volunteer Activity

Transmitted herewith is the Division of Personnel's Secondary Employment/Certain Volunteer Activity Policy. Please ensure this policy is posted on bulletin boards in your organizations and that employees follow these procedures when considering secondary employment/certain volunteer activities.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact me.

KCD:r

**SECONDARY EMPLOYMENT/CERTAIN VOLUNTEER ACTIVITY**

- I. **PURPOSE:** The purpose of this policy is to standardize and simplify procedures for processing employees' requests for determinations as to whether secondary employment or certain volunteer activities may conflict with their primary employment with the State of West Virginia.
- II. **DISCLAIMER:** The information and procedures in this policy should not be construed to supercede any State or federal law or regulation. In the event of any inconsistencies between the policy and such law and/or regulation, the statutory and/or regulatory provisions shall prevail.
- III. **POLICY STATEMENT:** State service shall be the primary employment of every employee. Any secondary employment/volunteer activity must not: interfere with, conflict with, or have the appearance of a conflict with an employee's primary State employment; conflict with the interests of the State agency; interfere with the performance of the employee's official duties; use proprietary State information; create the appearance of official State action; or entail appearing before the State agency for which he or she is employed on behalf of the secondary employer or volunteer organization in any capacity. Exception: While on military leave, the military service is the employee's primary employment. Certain prohibitions, which are listed in Section V, Standards, apply to all employees covered by this policy.
- IV. **STANDARDS:** The Appointing Authority shall consider the following factors as to whether a review of the secondary employment/volunteer activity by the West Virginia Ethics Commission or the State Personnel Board is required.
 - A. An Ethics Opinion is required if the Appointing Authority has reason to believe that:
 1. The secondary employment/volunteer activity is with a person or business over which the employee directly, or through subordinates, exercises regulatory authority in his or her official capacity as a State employee.
 2. The employee will receive private pay for providing information or services that his or her public position requires him or her to provide to the public at no cost.
 3. The employee could access or use confidential agency information for the benefit of the secondary employer or organization for which he or she wishes to volunteer.
 4. The employee might use State time, supplies, or equipment to perform work for the secondary employer or organization for which he or she wishes to volunteer.
 - B. In instances where an employee desires to perform part-time services for a second State entity, the West Virginia Ethics Commission has determined an Ethics Opinion is not required. The Appointing Authority, however, must still evaluate the request to ensure that while working for the primary employer, the employee does not perform work for the secondary employer in violation of the Division of Personnel's *Administrative Rule*. The employee must designate which job is primary if he or she desires to work two part-time or two full-time State jobs.



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- C. The State Personnel Board's Decision is required if the Appointing Authority has reason to believe that:
1. The secondary employment/volunteer activity may be in conflict with the mission or goals of the agency.
 2. The secondary employment/volunteer activity may interfere with the performance of the employee's official duties.
 3. The employee will use, or appear to use, information obtained in connection with his or her official duties which is not generally available to the public.
 4. The secondary employment/volunteer activity may reasonably be regarded as official State action..

V. GENERAL PROHIBITIONS FOR ALL EMPLOYEES

- A. Employees shall not provide for personal gain any information or services to affiliated governmental agencies and/or units related to the duties and responsibilities of their primary State position.
- B. Employees shall not use State work time to perform work for the secondary employer or volunteer organization.
- C. Employees shall not use State work time, supplies or equipment to perform work for the secondary employer or volunteer organization.
- D. Employees shall not allow the duties of the secondary employment/volunteer activity to interfere with the assigned duties and responsibilities of the primary State employment.
- E. If applicable, employees must respond to any on-call demands of the primary State employment, as directed by their supervisors during periods of secondary employment/volunteer activity.
- F. Employees shall simultaneously inform the primary State employment immediate supervisor and the secondary employer or volunteer organization, if, at any time, there becomes a conflict between the two positions.
- G. Employees shall not use the primary State employment to motivate or provide preferential treatment to any particular person involved with the secondary employment/volunteer activity because of services being rendered to their family members by the employees' primary State employer.
- H. Employees shall terminate the secondary employment/volunteer activity at any time the employing State agency determines that the work performance at the primary State employment has become unsatisfactory or conflicts with the interests of the State employer.

- VI. **PROCEDURES:** Appointing Authorities shall notify all of their employees of the provisions of Section 17.1 of the Division of Personnel's Administrative Rule, and provide them with copies of this policy, or a means to access it, so that employees may submit timely requests for a determination



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regarding secondary employment/volunteer activities prior to engaging in such employment/activities. Upon receipt of an employee's request for a determination regarding secondary employment or certain volunteer activity, the employee's immediate supervisor shall advise the employee that, pursuant to Personnel's Administrative Rule, the Appointing Authority must make a determination as to the potential for conflict between the employee's primary State employment and the employee's proposed secondary employment/volunteer activity.

- A. State employees must obtain a determination from the State agency that there is no conflict with the primary State employment by completing the Request for a Determination Regarding Secondary Employment or Certain Volunteer Activity form prior to engaging in any secondary employment/volunteer activity.
 - 1. An employee shall notify the employer of his or her desire to begin secondary employment/voluntary activity by completing Part I and submitting the Request for a Determination Regarding Secondary Employment or Certain Volunteer Activity form to his or her Immediate Supervisor.
 - 2. The employee must complete a separate form to request approval for another review and determination regarding any conflict as a result of any change of duties in his or her current primary State employment or with his or her secondary employment/volunteer activity, or for each new position.
- B. After the request has been routed through the appropriate agency channels, the Appointing Authority or designee shall review the request and take the appropriate action, as outlined below.
 - 1. Notify the employee of a potential conflict with the employee's primary State employment and that the request requires further review as provided in Section IV of this policy.
 - 2. Determine there is no conflict with the primary State employment. Complete Part III of the form and forward it to the appropriate primary employing agency office.
 - 3. Determine there is no conflict with the primary State employment, but that certain limitations and/or restrictions are necessary. The limitations shall be noted on Part III, Step 3, of the form and forwarded to the appropriate primary employing agency office.
 - 4. Determine there is a conflict with the primary State employment.
 - a) Complete Part III of the form and provide a justification for the determination. This justification may be based on a determination by the West Virginia Ethics Commission or the State Personnel Board that the secondary employment/volunteer activity would be inappropriate or unacceptable.
 - b) Notify the employee that he or she must not commence, or must not continue, the secondary employment/voluntary activity.
 - c) Specify the deadline for termination of the secondary employment (based on the degree of conflict) or volunteer activity.



- d) If the employee chooses to commence or continue the secondary employment/voluntary activity after being informed that the request was denied, the employer shall notify the employee that his or her actions are deemed insubordination and that if he or she does not comply with the Appointing Authority's lawful directive, disciplinary action, up to and including dismissal, will follow. The employee may choose to resign from State employment.
- e) Forward the form to the appropriate primary employing agency office for processing.

VII. APPOINTING AUTHORITY'S RESPONSIBILITIES

- A. An Appointing Authority may modify the Request for Determination Regarding Conflict of Interest form to include appropriate internal review and approval levels, but must retain the specified content and criteria, as defined in the West Virginia Governmental Ethics Act and the West Virginia Division of Personnel's Administrative Rule.
- B. The Appointing Authority or designee shall complete Part III of the form and forward it to the appropriate primary employing agency office.
- C. The Appointing Authority or designee shall notify the employee and the Division of Personnel of the final disposition of the request.

VIII. REFERENCES:

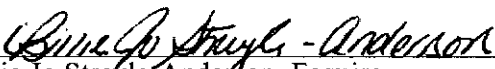
- A. *W. Va. Code* § 6B-1-1, *et seq.*, West Virginia Governmental Ethics Act.
- B. West Virginia Division of Personnel's *Administrative Rule, W. Va. Code R.* § 143-1-17.1, Employment Conflicts - Other Employment.

IX. EFFECTIVE DATE: October 1, 2003.

X. REVISION: May 1, 2007.

XI. POLICY NUMBER: DOP-P21.

Approved and Issued By:



Billie Jo Streyle-Anderson, Esquire
Director of Personnel

Date Signed: April 30, 2007.

INSTRUCTIONS FOR COMPLETION OF REQUEST FOR DETERMINATION REGARDING SECONDARY EMPLOYMENT OR CERTAIN VOLUNTEER ACTIVITY

A written determination of no conflict from the primary employing agency's Appointing Authority must be obtained prior to the commencement of secondary employment/certain volunteer activity.

This request is for a determination regarding whether the secondary employment/volunteer activity described interferes or conflicts with, or has the appearance of a conflict with, the duties and responsibilities of your primary State employment.

THE FOLLOWING PROHIBITIONS APPLY TO ALL STATE EMPLOYEES ENGAGED IN SECONDARY EMPLOYMENT AND/OR CERTAIN VOLUNTEER ACTIVITY

1. Employees shall not provide for personal gain any information or services to affiliated governmental agencies and/or units related to the duties and responsibilities of their primary State position.
2. Employees shall not use State work time to perform work for the secondary employer or volunteer organization.
3. Employees shall not use State work time, supplies or equipment to perform work for the secondary employer or volunteer organization.
4. Employees shall not allow the duties of the secondary employment/volunteer activity to interfere with the assigned duties and responsibilities of the primary State employment.
5. If applicable, employees must respond to any on-call demands of the primary State employment, as directed by their supervisors during periods of secondary employment/volunteer activity.
6. Employees shall simultaneously inform the primary State employment immediate supervisor and the secondary employer or volunteer organization, if, at any time, there becomes a conflict between the two positions.
7. Employees shall not use the primary State employment to motivate or provide preferential treatment to any particular person involved with the secondary employment/volunteer activity because of services being rendered to their family members by the employees' primary State employer.
8. Employees shall terminate the secondary employment/volunteer activity at any time the employing State agency determines that the work performance at the primary State employment has become unsatisfactory or conflicts with the interests of the State employer.

TO THE EMPLOYEE:

1. Be sure to type or print all information on the form.
2. A separate request must be completed for each proposed secondary employment/volunteer activity.
3. If there is a change of duties in the secondary employment/volunteer activity, you **must** submit a new request for a determination as to whether the revised duties would conflict with your primary State employment.
4. In the description section of Part I, you must note if the secondary employment is dual employment with the State or whether the volunteer activity is for a State agency.
5. You must fully complete Part I and forward the request form to the appropriate primary employing agency representative.

TO THE EMPLOYER:

1. After evaluating the request, the Appointing Authority/immediate supervisor will complete Part II and forward the form to the Appointing Authority or designee for completion of Part III and final determination.
2. The appropriate primary employing agency office shall notify the employee and appropriate agency staff (Part IV) of the agency's final determination by forwarding a copy of the completed request form.
3. The original completed form shall be retained in the employee's agency personnel file, with a copy forwarded to the Division of Personnel.

**REQUEST FOR DETERMINATION REGARDING
SECONDARY EMPLOYMENT OR VOLUNTEER ACTIVITY**

NOTE: Agencies may modify this form to include appropriate internal review and approval levels, but must retain the specified content and the criteria as defined in the *West Virginia Governmental Ethics Act (W. Va. Code § 6B-1-1, et. seq.)* and the Division of Personnel's *Administrative Rule, (W. Va. Code R. § 143 1-1, et. seq.)*.

This request is for (check one - a separate form is required for each employment or volunteer activity)

SECONDARY EMPLOYMENT

CERTAIN VOLUNTEER ACTIVITY

PART I – TO BE COMPLETED BY EMPLOYEE (please print or type):

Employee Name	Last Four Digits of Social Security No.
Job Classification	Functional Job Title (if applicable)
Employer (List Agency, Division, Section, and/or Unit, as appropriate)	
Work Location/Mailing Address	Work Phone
Immediate Supervisor	Division Director

Description of Primary State Duties and Responsibilities - attach a copy of your current position description form.

This request is for (check one - a separate form is required for each employment or volunteer activity)

SECONDARY EMPLOYMENT

CERTAIN VOLUNTEER ACTIVITY

Name of Secondary Employer/Volunteer Organization	Type of Business/Organization
Description of Secondary Employment/Volunteer Duties and Responsibilities - attach additional pages if necessary.	

Employee's Signature	Date Completed
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PART II - TO BE COMPLETED BY APPOINTING AUTHORITY/IMMEDIATE SUPERVISOR:

<input type="checkbox"/> NO CONFLICT (Go to Part III, Step 3) <input type="checkbox"/> POTENTIAL CONFLICT - describe below (Go to Part III, Steps 1 and 2)	
Appointing Authority/Immediate Supervisor's Signature	Date Signed

This request is for (check one - a separate form is required for each employment or volunteer activity)

- SECONDARY EMPLOYMENT
- CERTAIN VOLUNTEER ACTIVITY

PART III – TO BE COMPLETED BY APPOINTING AUTHORITY/DESIGNEE:

STEP 1: WV ETHICS COMMISSION REVIEW IS WARRANTED - check all that apply:

- Employee will be advised that he/she must obtain a West Virginia Ethics Commission opinion, due to potential conflict with the Ethics Act as noted below:
 - Use of public office for private gain.
 - Association may result in prohibited interest in profits or benefits of State contracts.
 - May use confidential State information obtained in course of official duties.
 - May conflict with the agency's rate-making, application, or regulatory functions.
 - Constitutes employment by a entity regulated by the State agency.
 - Other: (Explain) _____
- Employee shall be advised that he/she must resubmit the original request to the employer representative with Ethics Opinion attached.

STEP 2: STATE PERSONNEL BOARD REVIEW IS WARRANTED - check all that apply:

- Appointing Authority or Designee must submit the original request and supporting documentation, including any Ethics Opinions, to the State Personnel Board for review and determination due to a potential employment conflict, as noted below:
 - Apparent conflict with the interests/mission of the State agency.
 - Potential interference with the performance of the employee's official State duties.
 - May use or appear to use proprietary information obtained through official State duties.
 - Secondary employment/volunteer activity may reasonably be regarded as official State action.
 - Other: (Explain) _____
- State Personnel Board Decision Received on _____ (Attached)

STEP 3: FINAL DECISION

- NO CONFLICT
- CONFLICT - provide detailed explanation below.
- CONFLICT - but secondary employment/activity will be permitted with the detailed limitations and/or restrictions stated below.

Appointing Authority/Designee Signature

Date Signed

PART IV – TO BE COMPLETED BY APPROPRIATE PRIMARY EMPLOYING AGENCY OFFICIAL:

MANDATORY NOTIFICATIONS BY AGENCY		Date Notifications Made: _____
<input type="checkbox"/> EMPLOYEE	<input type="checkbox"/> IMMEDIATE SUPERVISOR	<input type="checkbox"/> WV DIVISION OF PERSONNEL