[Major revision: October 27, 2015]

Angelo State University
Operating Policy and Procedure

OP 52.31: **Multiple State Employment and Other Outside Employment**

DATE: October 27, 2015

PURPOSE: The purpose of this OP is to establish policy regarding dual and other employment by Angelo State University employees.

REVIEW: This OP will be reviewed in June every three years, or as needed, by the director of human resources with recommended revisions forwarded through the vice president for finance and administration to the president by July 15th of the same year.

POLICY/PROCEDURE

1. Multiple State Employment Defined

a. Multiple state employment occurs when either a full-time employee of Angelo State University accepts an additional appointment to a second position with another state or federal agency (other than Angelo State) or a full-time employee of another state or federal agency accepts an additional appointment to a second position with Angelo State. Another state agency is defined to mean agency, board, office, department, commission, council, or institution of the State of Texas.

b. A person who is on an unpaid leave of absence from one agency and working for pay at another agency is not considered to have multiple appointments for the purpose of this operating policy.

2. Multiple State Employment Law

a. Article XVI, Section 33 of the Texas Constitution provides:

(1) The accounting officers of this State shall neither draw nor pay a warrant or check on funds of the State of Texas, whether in the treasury or otherwise, to any person for salary or compensation who holds at the same time more than one civil office of emolument, in violation of Section 40.

b. Section 40 provides three major exceptions relative to state employees:

(1) Payment may be made to members of military reserves and persons retired from military service.

(2) Employees of Angelo State University may serve as members of governing bodies of school districts, cities, towns, or other local government districts so long as they do

not receive a salary for doing so. The State Attorney General has found that the term "salary" as it is used in Section 40 means "compensation" in any form. University employees who serve as members of the above mentioned organizations may not receive any form of payment, including per diem, benefits, etc. from these governmental bodies.

(3) Non-elective state officers or employees may hold other non-elective offices or positions of honor, trust, or profit under this state or the United States, if the other offices or positions are of benefit to the state or are required by law, and there is no conflict with the original office or position for which the employee received salary or compensation. The implementing legislation also requires the employee to obtain a finding from the appropriate governing board or agency head that these two requirements have been met. The employee's agency must make an official record of both of the above findings and of any compensation, including per diem, associated with the second position.

c. Chapter 667 of the current Texas Government Code provides:

A person who is legally employed by more than one Texas state agency or institution of higher education may not receive benefits from the state in excess of those provided for one full-time employee. The person is subject to the following provisions and must be informed of them before the person becomes employed by more than one agency or institution:

(1) Separate vacation and sick leave records must be maintained for each employment. An employee who works more than 40 hours per week while employed in multiple positions may not accrue sick leave, vacation leave, or holidays at a rate that would exceed that for a full-time, 40 hour per week employee. When the person terminates from one employment, the person's leave balances that were accrued under that employment may not be transferred to the remaining employments.

(2) The person accrues state service credit for all purposes as if the employee had only one employment.

(3) The total state contribution toward the person's group insurance is limited to the amount specified elsewhere in the General Appropriations Act for a full-time active employee.

(4) Overtime compensation accrues to an employment independently of every other employment with the following exception. If the person is subject to the overtime provisions of the Fair Labor Standards Act of 1938 (FLSA) in an employment, the employing agencies and institutions of higher education shall ensure that the person is compensated for all combined time actually worked in excess of 40 hours per week in accordance with the overtime provisions of the federal law. The agencies and institutions shall cooperate to determine which agency or institution is responsible for ensuring that the employee is properly compensated according to those provisions.

An employing agency or institution may not use multiple employments of an employee within the same agency or institution for the purpose of:

(a) Paying the employee for working more than 40 hours in a week instead of earning compensatory time in accordance with state law; or

(b) Paying the employee a greater salary than is allowed for either of the employee's positions.

(5) The person must inform the person's employing state agencies or institutions of higher education before accepting an additional employment with another agency or institution.

(6) Special provisions for institutions of higher education:

A university system may establish a policy that defines a person's employment as the total hours the person is assigned to one component of the system or, alternatively, the total hours the person is assigned to all components of the system. This policy may apply to a person only if the person is employed by more than one institution of higher education and all employing institutions are within the same university system.

3. Outside Employment

Outside employment is defined to be any compensated service or employment by any entity, other than Angelo State University, of an ASU employee.

The provisions and conditions for outside employment by all employees, including administrative officers, shall be consistent with the Texas Tech University System Regents' Rules and Regulations.

The primary responsibility of ASU employees is the full and complete execution of all assigned duties, the fulfillment of those professional obligations not ordinarily reduced to written assignment, and the maintenance of current professional skills. Outside employment must be compatible with the interests of ASU and the TTU System, and of such a nature that it will not detract from the effectiveness and performance of the employee.

Outside employment does not require administrative approval except in cases involving dual office holding or multiple employments as provided below. However, all outside employment must be reported to the immediate supervisor who has the responsibility for determining whether or not the outside employment has an adverse effect on the employee's performance of university duties. Should it be so determined, the employee will be requested to resign the outside employment voluntarily, or the supervisor may recommend other action, including termination of employment.

The use of university equipment or facilities by any employee of the university is prohibited in connection with outside employment.

4. Non-elective Offices

An employee desiring to accept an offer to serve in other non-elective offices or in a position of honor, trust or profit with the State of Texas or the United States should submit a letter of request through administrative channels for Board of Regents' consideration.

5. Elective Offices

Employees may hold non-salaried public elective offices provided they meet their primary responsibilities to Angelo State University.

An employee who is elected or appointed to another position, which pays a salary, per diem, or benefits and in instances where the two positions are such that they cannot be held at one time by the same person, qualification and acceptance of the second position will automatically be considered as a resignation of employment with Angelo State University.

6. Multiple Positions with Angelo State University

Under certain conditions Angelo State University employees may hold multiple positions with the university.

a. Conditions:

(1) Approval from the supervisor of the employee's primary position allowing the employee to work in another position is required and must be obtained *prior to* the employee beginning work in other positions.

(2) If the employee's primary supervisor determines that a secondary position would result in a decline in work performance, inability to complete assigned duties, or would cause undue hardship to the department, the supervisor may deny the employee's request.

(3) If the employee is working multiple positions during normal business hours, they will not receive any additional salary for these positions. The employee's salary will be distributed between the employing departments in proportion to the workload performed in each position when possible.

(4) All hours worked by hourly (non-exempt) employees are to be combined for the purposes of assessing overtime compensation. Hourly employees who work in excess of 40 hours per week must be compensated in accordance with normal overtime or additional compensation policies. Refer to OP 52.28 Hours of Work, Overtime, and Compensatory Time for more information.

(5) An employee who works more than 40 hours per week while employed in multiple positions may not accrue sick leave, vacation leave, or holidays at a rate that would exceed that for a full-time, 40 hour per week employee.

b. Restrictions:

(1) A salaried (exempt) employee cannot work or receive additional compensation from Angelo State University for hourly (non-exempt) work performed outside of his or her salaried position.

(2) A university employee cannot be employed as an hourly (non-exempt) staff employee and work in a faculty position simultaneously.

(3) Regular part-time hourly employees hired under the R2 employee class code are limited to less than 20 hours per week. These employees may be employed in multiple positions, but the combined total of hours worked in all positions may not exceed 20 hours per week.

7. Multiple Employment with Other State Agencies, Institutions (Other than ASU)

a. Multiple Employment Policy

(1) Any person who holds a position with Angelo State University and wishes to accept an appointment with another state or federal agency, which may result in multiple employment must obtain a finding, and an official record thereof, from the Board of Regents:

(a) That holding the additional position will be of benefit to the State of Texas or is required by law;

(b) That there is no conflict between holding the two positions; and

(c) That states the specific compensation to be received for the second position.

(2) Any person who holds a position with another state or federal agency and wishes to accept an appointment with ASU, which may result in multiple employment must obtain a finding, and an official record thereof, from the governing body or, if there is none, the executive head of that agency, which covers the same three items required above.

b. Multiple Appointment Procedures

(1) Regular Angelo State Employee

(a) A person who desires, or is required, to accept an additional position with another state or federal agency will obtain approval to do so by submitting a request through normal administrative channels to the appropriate divisional vice president or comparable administrator. The request will specify: the agency involved, the position to be held, the period for which the appointment is to be made, and the details of the compensation to be received. The request will also explain how the appointment will benefit the State of Texas and confirm that there is no conflict created by holding the two positions.

(b) The divisional vice president, or comparable administrator, after coordination with the General Counsel and approval, will prepare and process an order to obtain the required finding by the Board of Regents at their next meeting.

(c) A copy of the official record of the finding will be provided to the vice president for finance and administration (VPFA) by the person obtaining the Board order. The VPFA will provide copies to those offices involved in processing personnel action forms and payrolls. The official record of the finding must be filed in these offices before the effective date of the additional appointment.

(2) Regular Employee of Another Agency

(a) When an Angelo State University administrator desires to appoint a person employed by another state or federal agency to an additional position with ASU, the proposed details of the additional appointment will first be agreed to by the parties involved. The administrator will then obtain approval for the proposed appointment by submitting a request through normal administrative channels to the appropriate vice president or comparable administrator.

(b) The vice president or comparable administrator, after coordination with the General Counsel and approval, will prepare and process an order to obtain a Board of Regents finding at their next meeting. At the same time the order is prepared, the administrator will then notify the proposed appointee of this approval and request that a copy of the official record of the finding by the appointee's agency, which satisfies the requirements above be provided.

(c) Copies of these findings will be attached to the appointee's personnel appointment form at the time the ASU appointment is made. Reference to these findings will also be made in the "Explain" section of the form. Copies of these findings must be filed in the Payroll Office before any salary payment is made to a multiple employed person.

c. Fringe Benefits

(1) The pay and fringe benefits of a regular ASU employee will not be affected when a second compensated appointment with another state or federal agency is accepted. The employee should obtain information from the other state or federal agency as to the payroll deductions and/or fringe benefits, which may be applicable to the additional compensation paid by that agency.

(2) Compensation and fringe benefits paid to a regular employee of another state or federal agency holding a second compensated position with ASU will be subject to the following:

(a) Federal income tax will be withheld in accordance with federal law and Angelo State University policies and procedures.

(b) All ASU earnings will be subject to retirement deductions and state matching contributions. If the other agency is a state agency, the employee will be required to participate in the same retirement program with the same carrier at both agencies.

(c) The employee will be required to participate in the group insurance program and receive premium sharing contributions, if any, from the primary agency and will not be eligible to participate in Angelo State University's program or receive premium sharing from ASU unless ASU is the primary agency.

(d) The employee will be entitled to receive longevity payment for only one employment provided that the employment is a full time position eligible for longevity pay. An individual partially employed/paid by one institution or agency, and partially by another, does not meet the "full-time" employment requirement to

be eligible for longevity pay. ASU work hours are aggregated for longevity eligibility purposes. If an employee is eligible for longevity pay, the employee's primary agency will be responsible for payment of longevity pay.

(e) The employee will be eligible for holiday leave from Angelo State University based upon the holiday schedule for ASU.

(f) Vacation and sick leave records will be maintained by ASU without regard to similar records maintained by the other agency. Upon termination of ASU employment, any leave balances accrued will not be transferred to the other agency and must be taken prior to the termination date.

(g) Workers Compensation Insurance Benefits will be provided by the agency at which the employee is injured. Wages, for the purpose of determining the weekly benefit rate, shall be the wages received from the agency where the injury occurred. Sick leave, for the purpose of determining the weekly benefit start date, shall be the sick leave received from that agency.

(h) Unemployment Compensation Insurance benefits will be paid based upon the pro rata share of employment by the agencies during the base benefit

(i) The employee will be eligible for travel payments from Angelo State University based upon the assigned duties and responsibilities at ASU, but will not be eligible for travel payment from both agencies for the same period of time. The employee will not be eligible for travel payments from ASU for travel between the two agencies.

(j) Compensatory time, military leave, Family Medical Leave Act (FMLA) leave, parental leave, jury duty leave, and other miscellaneous leave benefits will be administered and provided by Angelo State University in accordance with normal procedures applicable to other employees.

d. Obligation to Inform

In accordance with Texas Government Code, Section 667.007, an employee must inform his/her employing state agencies or institutions of higher education before accepting additional employment with another agency or institution.

By signing the *Employee Acknowledgement and Certification* form, ASU employees confirm that they have been apprised of their obligations and responsibilities to inform both initial and second employers of their intent to accept additional employment with the state.

8. Procedure

Each administrative officer shall be responsible for devising procedures and/or other appropriate methods for enforcement of this policy within their individual areas of responsibility.