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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: May 6, 2010

SUBJECT: Legislators Holding Other Offices

The following is our understanding of the limitations on legislators holding other public offices.

Constitutional limitation. Article V § 8 of the state constitution provides: "No senator or representative shall, while serving as such, be appointed to any civil office under this state; and no member of congress, or other person holding any office (except of attorney-at-law, notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office."

While each circumstance should be examined on its own merits, Colorado court decisions¹ suggest the use of the following general guidelines in applying this section:

- During their term of office, no member of the General Assembly can be appointed to a civil office in **state government**.
- Because the Colorado courts have not had occasion to specifically address the prohibition against holding other **state elective** offices and because of separation of powers concerns and possible conflicts of interest, perceived or real, we are less certain whether or not a member of the General Assembly could simultaneously hold **another elected** office in state government.

¹ See *Carpenter v. People ex rel. Tilford*, 8 Colo. 116, 5 P. 828 (1884) and *Hudson v. Annear*, 101 Colo. 551, 75 P.2d 587 (1938).

- However, it is clear that members of the General Assembly may hold an elected or appointed office in a local government.
- Legislators may also be **employed** by the state or a local government. An "employment," as opposed to an "appointment to a civil office," exists so long as the person is not required to exercise independent decision-making authority and is not entrusted with the sovereign power of the state.

While these guidelines indicate that a legislator **may serve** in certain other civil offices, because of the time demands of being a legislator and concerns about the possible appearance of a conflict of interest and the need to refrain from voting when a conflict exists², **most legislators decide not to serve in other public offices** during their term. There is the potential for a multiplicity of potential conflicts of interest between votes and positions taken as a member of the General Assembly while simultaneously holding another public office. In evaluating whether to hold another public office while a member of the General Assembly, it may be of benefit to consider the degree to which the state affects the other government entity's activities and the potential for conflicts between the members' roles. For example and not for purposes of limitation, there maybe a higher likelihood of conflict between large cities and counties and the state than for other types of government entities, like small towns and special districts.

Statutory limitation. Section 1-4-501(2), C.R.S. provides: "No person is eligible to be a candidate for more than one office at one time." A legislator **can't run for a legislative seat and for another state or local office** in the same election.

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 Created: 05/06/2010
 Reviewed: 09/18/20

² See article V § 43 of the state constitution, section 24-18-107, C.R.S., House Rule No. 21, and Senate Rule No. 17 (c).