

**Outside Employment policy**

It is a violation of the law, OCGA§16-10-9 (a) (2), for members of the Judicial Branch of state government to accept or to hold office or employment in another branch of state government. Any outside employment public or private must be disclosed and is subject to approval by the Court. Employees of a judicial chambers and central staff attorneys must disclose any outside employment and obtain prior approval of their supervising judge for outside employment. An employee of the Clerk's office, Fiscal Office or Technical Services personnel must disclose outside employment and obtain prior approval for outside employment from the Clerk of the Court.

(Ga. L. 1959, p. 34, § 16; Code 1933, § 26-2311, enacted by Ga. L. 1968, p. 1249, § 1.)

## RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d. Public Officers and Employees, § 369 et seq. C.J.S. — 37 C.J.S., Forgery, §§ 28, 29. 67 C.J.S., Officers, § 257.

16-10-9. Acceptance of office or employment in more than one branch of government.

(a) It shall be unlawful for:

(1) Members of the General Assembly to accept or hold office or employment in the executive branch of the state government or any agency thereof or in the judicial branch of the state government;

(2) Judges of courts of record or their clerks and assistants to accept or hold office or employment in the executive branch of the state government or any agency thereof or in the legislative branch of the state government; or

(3) Officers or employees of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

(b) A person who knowingly disburses or receives any compensation or money in violation of this Code section is guilty of a misdemeanor.

(c) Nothing in this Code section shall be construed to apply to any officer or employee of the executive branch who has taken a leave of absence without pay from his post for temporary service as an employee of the legislative branch while it is in session and during the authorized stay-over period. (Ga. L. 1959, p. 34, § 7; Ga. L. 1961, p. 42, § 1; Code 1933, § 26-2309, enacted by Ga. L. 1968, p. 1249, § 1.)

Cross references. — Separation of legislative, judicial, and executive powers of government, Ga. Const. 1983, Art. 1, Sec. II, Para. III.

## JUDICIAL DECISIONS

Former Code 1933, § 26-2309 was an attempt to prevent obvious conflicts of interest inherent in situations where an individual serves concurrently in two branches of state government. *Galer v. Board of Regents of Univ. Sys.*, 239 Ga. 268, 236 S.E.2d 617 (1977) (see O.C.G.A. § 16-10-9).

Restriction imposed on employees of executive branch by former Code 1933, § 26-2309 were reasonable and justifiable. *Galer v. Board of Regents of Univ. Sys.*, 239 Ga. 268, 236 S.E.2d 617 (1977) (see O.C.G.A. § 16-10-9).

93-24

From: "Dennis Dunn" <ddunn@law.ga.gov>  
To: <martinw@gaappeals.us>  
Date: 2/16/2009 11:30 AM  
Subject: 1993 Op. Att'y Gen. 93-24

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF GEORGIA  
1993 Ga. AG LEXIS 25; 1993 Op. Atty Gen. Ga. 68  
93-24

September 30, 1993

Request By:

Mr. Henry G. Neal  
Executive Secretary  
Board of Regents  
244 Washington Street, S.W.  
Atlanta, Georgia 30334

Opinion

Opinion by: MICHAEL J. BOWERS, Attorney General

Prepared by: MARK H. COHEN, Senior Assistant Attorney General

You have asked for my official opinion regarding the legality of a member institution of the University System of Georgia entering into a contract for services to be provided by a state employee from another branch of government.

Member institutions of the University System of Georgia are under the direction and control of the Board of Regents of the University System of Georgia, an agency of the executive branch of state government. See *McCafferty v. Medical College of Georgia*, 249 Ga. 62 (1982); 1976 Op. Att'y Gen. U76-117; 1973 Op. Att'y Gen. U73-85. Article I, Section II, Paragraph III of the Georgia Constitution of 1983 provides that "[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided."

In recognition of the constitutional separation of powers principle, the General Assembly has made it unlawful for its own members, or judges of courts of record or their clerks or assistants, to accept or hold office or employment in the executive branch of state government. O.C.G.A. § 16-10-9(a). The constitutionality of this section was upheld in *Galer v. Board of Regents of the University System of Georgia*, 239 Ga. 268 (1977), wherein the court concluded that a member of the General Assembly had no right to continued employment with a member institution of the University System of Georgia. This office has opined on numerous occasions that it is a violation of the constitutional separation of powers provision for a member of one branch of state government to hold office or be employed by an agency in another branch. See, e.g., 1984 Op. Att'y Gen. U84-46 and 1983 Op. Att'y Gen. U83-58 (a member of the General Assembly cannot serve as a juvenile court judge or appointed judge pro tem of recorder's court); 1983 Op. Att'y Gen. 83-56 (a court reporter may not hold simultaneous employment with the State Board of Workers' Compensation and a superior court); 1976 Op. Att'y Gen. U76-117 and 1973 Op. Att'y Gen. U73-85 (a member of the General Assembly cannot hold employment as a faculty member of a member institution of the University System of Georgia).

It has been suggested that O.C.G.A. § 45-10-25(a)(15) may authorize the employment by an executive branch agency of an employee of another branch of state government under certain circumstances. That is not the case. O.C.G.A. § 45-10-25(a)(15) provides an exception to the general state law conflict of interest prohibitions, so as to enable an appointed public official or employee to sell services as a teacher or instructor of an evening course to a unit of the University System of Georgia if certain certifications are executed. In order to be constitutional, this Code section would have to be limited to appointed public officials or employees of the executive branch of state government. This statutory exception in O.C.G.A. Ch. 45-10 does not authorize a violation of the constitutional separation of powers prohibition.

Consequently, it is my official opinion that a member institution of the University System of Georgia may not contract for the services of an employee of an agency in another branch of state government.

This 30th day of September, 1993.



*The Court of Appeals  
of the  
State of Georgia  
Atlanta, Georgia 30334*

CHAMBERS OF  
CHIEF JUDGE M. YVETTE MILLER

(404) 463-3032  
millery@gaappeals.us

March 10, 2009

Ms. Carrie Anne Steele  
Accountant, Court of Appeals of Georgia  
47 Trinity Avenue  
Atlanta, Georgia 30334

RE: Violation of OGCA §16-10-9

Dear Ms. Steele:

Pursuant to my letter to you dated February 18, 2009 which served as an official reprimand to you for violation of the above code section, this is to inform you that a committee of the judges of the Court of Appeals of Georgia has reviewed the circumstances surrounding your violation of this code section. The above code section prohibits employment of Judicial Branch employees by the Executive or Legislative Branch of Government.

The committee met on Thursday, February 26, 2009 and on several other dates to discuss this matter, and after an extensive Executive Session, formulated a recommendation to the entire Court. All of the judges on the Court had an opportunity to review the committee's recommendation and a majority has voted to retain you as an employee under certain conditions.

The committee's report found there was a clear violation of the above statute, albeit, not a knowing violation. The Court strongly considered terminating you, but since the Court felt that you had not knowingly violated a statute, we have chosen not to terminate you and issue this letter of reprimand instead.

In addition to this reprimand, there will be a demotion in salary in the amount of 10 percent. Effective March 15, 2009, your salary will be \$46,514.57. There will be a period of one year probation where the Court will expect to see no further violations. Also, there will be counseling provided to you as to your roll as the Court's Accountant. The counseling will be conducted by your supervisor Mr. William L. Martin, III.

The Court directs that you accept no outside employment, public or private, without first revealing the offer of employment to and having approval from both the Clerk/Court Administrator and Chief Judge of this Court. We regret having to take this action, however, based upon the totality of circumstances, we feel that swift, certain and severe action is necessary considering your actions in this instance.

If you would like to discuss any of the terms of this reprimand or any other aspect of this letter, please feel free to contact your direct supervisor or me.

Sincerely,

  
M. Yvette Miller

cc: William L. Martin, III



*The Court of Appeals  
of the  
State of Georgia  
Atlanta, Georgia 30334*

CHAMBERS OF  
CHIEF JUDGE M. YVETTE MILLER

(404) 463-3032  
millery@gaappeals.us

March 10, 2009

Ms. Jan Kelley  
Fiscal Officer, Court of Appeals of Georgia  
47 Trinity Avenue  
Atlanta, Georgia 30334

RE: Violation of OGCA §16-10-9

Dear Ms. Kelley:

Pursuant to my letter to you dated February 18, 2009 which served as an official reprimand to you for violation of the above code section, this is to inform you that a committee of the judges of the Court of Appeals of Georgia has reviewed the circumstances surrounding your violation of this code section. The above code section prohibits employment of Judicial Branch employees by the Executive or Legislative Branch of Government.

The committee met on Thursday, February 26, 2009 and on several other dates to discuss this matter, and after an extensive Executive Session, formulated a recommendation to the entire Court. All of the judges on the Court had an opportunity to review the committee's recommendation and a majority has voted to retain you as an employee under certain conditions.

Indeed, the Court strongly considered terminating you, but since the Court felt that you had not knowingly violated the statute, we have chosen not to terminate you as the Fiscal Officer of the Court. We have chosen to issue this reprimand letter instead. Given your position with the Court of Appeals, the Court found that you have used extremely poor judgment in accepting an outside position without informing the Chief Judge of this Court.

In addition to this reprimand, there will be a demotion in salary in the amount of 15 percent. Effective March 15, 2009, your salary will be \$97,750.07. There will be two years of probation where the Court will expect not only to see no further violations but to see substantial improvements in the services provided by you to this Court and the judges. To ensure no further problems, counseling will be provided as the Executive Council deems appropriate.

The Court directs that you accept no outside employment, public or private, without first revealing the offer of employment to and having approval from both the Clerk/Court Administrator and Chief Judge of this Court. We regret having to take this action, however, based upon the totality of circumstances, we feel that swift, certain and severe action is necessary considering your actions in this instance.

If you would like to discuss any of the terms of this reprimand, please feel free to contact your direct supervisor or me.

Sincerely,

A handwritten signature in black ink that reads "Yvette Miller". The signature is written in a cursive style with a large initial "Y".

M. Yvette Miller

cc: William L. Martin, III