

# Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #068

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 30th day of October, 2009, are as follows:

BY GUIDRY, J.:

2009-C -0093

CHARLES C. FOTI, JR., ATTORNEY GENERAL FOR THE STATE OF LOUISIANA  
v. SARAH HOLLIDAY (Parish of E. Baton Rouge)

Judge Benjamin Jones, of the Fourth Judicial District Court,  
assigned as Justice Pro Tempore, participating in the decision.

For the reasons stated herein, the judgment of the court of  
appeal is affirmed, and the case is dismissed with prejudice.  
AFFIRMED.

VICTORY, J., dissents for the reasons assigned by Justice Weimer.  
KNOLL, J., dissents and assigns reasons.  
WEIMER, J., dissents and assigns reasons.

10/30/09

**SUPREME COURT OF LOUISIANA**

**No. 2009-C-0093**

**CHARLES C. FOTI, JR., ATTORNEY  
GENERAL FOR THE STATE OF LOUISIANA**

**VERSUS**

**SARAH HOLLIDAY**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL  
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

**GUIDRY, Justice\***

We granted certiorari in this matter to address the issue raised in the exception of no cause of action subject of these proceedings. The peremptory exception poses the legal question of whether the State of Louisiana may recover reimbursement of salary and benefits paid to a former employee for the period the employee simultaneously held two full-time governmental positions in violation of Louisiana’s Dual Officeholding and Dual Employment Law, La. R.S. 42:61, *et seq.*, (hereafter, “DODEL”), when suit was filed after the employee vacated one of her positions. For the reasons that follow, we find reimbursement is barred when the prohibited dual employment is terminated prior to the filing of a petition seeking relief under the DODEL. Accordingly, the court of appeal’s ruling reversing the trial court and granting the exception of no cause of action filed by the defendant, Sarah Holliday, is affirmed.

**FACTS AND PROCEDURAL HISTORY**

On October 17, 2005, Sarah Holliday commenced full-time employment with the United States Small Business Administration’s Disaster Assistance Office. At the

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\* Judge Benjamin Jones, of the Fourth Judicial District Court, assigned as Justice *Pro Tempore*, participating in the decision.

time, Ms. Holliday was already employed on a full-time basis as a judicial assistant and deputy clerk for the Nineteenth Judicial District Court for the Parish of East Baton Rouge (hereafter, “19<sup>th</sup> JDC”). Ms. Holliday worked simultaneously for both unrelated governmental agencies until February 15, 2006, the date she resigned from her 19<sup>th</sup> JDC position.

On March 31, 2006, the State of Louisiana, through the Office of the Attorney General, (hereafter, “the State”), instituted summary proceedings against Ms. Holliday pursuant to La. R.S. 42:65 of the DODEL, which provides in pertinent part:

A. The attorney general, a district attorney, or any citizen of the state of Louisiana may by summary process petition for a declaratory judgment against a person alleged to be holding incompatible offices or employments or holding a combination of offices or employments prohibited in this Part. . . .

B. If the court declares that the person is holding offices or employments in violation of this Part, the court shall declare the office with the term first to expire or one of the employments vacant and shall enjoin the person from further carrying out the duties of that office or employment; however, a person holding an elective office shall continue to serve and perform the duties of that office until his successor has qualified.

C. The court may order the reimbursement to the appropriate governmental body of all pay or other compensation and all allowances, including all allowances and payments for travel and other expenses which have been received by the official or employee in the position vacated as provided in Subsection B hereof, during a period of time not to exceed six months preceding the filing of suit for declaratory judgment. . . .

Specifically, through its Petition for Declaratory Judgment and Reimbursement, the State seeks pursuant to Subsection (A) a judgment declaring Ms. Holliday engaged in conduct prohibited under La. R.S. 42:63<sup>1</sup> by virtue of her simultaneous retention

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<sup>1</sup> La. R.S. 42:63(A), entitled “Prohibitions,” enumerates those activities barred under the DODEL. In pertinent part, the provision states:

A. (1) Except as otherwise provided in this Subsection, no person holding an elective office, appointive office, or employment in any of the branches of state government or of a political subdivision thereof shall at the same time hold another elective office, appointive office, or employment in the government of a foreign country, in the government of the United States, or in the government of another state.

of incompatible governmental positions. Based on such a declaration, the State requests under Subsection (C) of La. R.S. 42:65 reimbursement of \$16,158.50, representing the salary and related benefits paid in connection with her judicial post for the period of her dual employment.

In addition to filing an answer to the petition denying a violation of the DODEL, Ms. Holliday filed a peremptory exception of no cause of action urging the State is barred from pursuing its suit and obtaining relief under La. R.S. 42:65. Applying a strict interpretation of La. R.S. 42:65, she advances any cause of action the State had under the DODEL became moot when she resigned from her state position. In support, Ms. Holliday contends the statute is couched in language that the wrongdoer must be engaged in the prohibited conduct at the time the litigation is instituted and the declaratory judgment is imposed. She relies on Subsection (A) of the provision, which provides that the State is afforded the right to file “a petition for a declaratory judgment against a person *alleged to be holding* incompatible offices or employments *or holding* a combination of offices or employments . . .” (emphasis added). As to the issue of reimbursement, Ms. Holliday contends monetary recovery pursuant to Subsection (C) is exclusively conditioned on the judicial declaration imposed under Subsection (B). The latter provision provides for the issuance of an order requiring that one of the offices be vacated and the defendant enjoined from

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(2) A person holding employment in the government of the United States and at the same time holding an appointive office in a political subdivision of the state shall not be in violation of this Subsection, unless the particular nature of his employment in combination with the duties and interests of his appointive office in a political subdivision of this state is otherwise prohibited by this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

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E. No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these. . . .

carrying out the related duties “[i]f the court declares that the person *is holding* offices or employment in violation of this Part . . . .” (emphasis added).

Following a hearing, the trial court rendered judgment in favor of the State overruling the exception of no cause of action. The court concluded Ms. Holliday’s simultaneous holding of the incompatible full-time positions giving rise to the instant proceeding was adverse to the public’s interest and, thus, prohibited under La. R.S. 42:63(A).<sup>2</sup> In the absence of citing statutory or jurisprudential support, the court determined it was within its discretion to order reimbursement pursuant to La. R.S. 42:65(C) for the violation. It assessed Ms. Holliday payment of \$16,158.60, constituting the salary and related benefits paid during the tenure of her dual employment.<sup>3</sup> Subsequently, the court denied Ms. Holliday’s request for a new trial.

The court of appeal reversed the trial court and granted Ms. Holliday’s peremptory exception. *Foti v. Holliday*, 08-0055 (La. App. 1 Cir. 11/18/08), 4 So. 3d 323, *reh’g denied* (12/15/08). While the court did not contest the trial court’s finding that Ms. Holliday’s dual employment violated La. R.S. 42:63(A), it applied a strict interpretation of La. R.S. 42:65 to qualify the State’s claim was only actionable while Ms. Holliday was engaged in the misconduct. The court reasoned Ms. Holliday’s resignation from her judicial position prior to the filing of the State’s petition precluded the commencement of proceedings under Subsection (A) of La. R.S. 42:65 because she was no longer simultaneously “holding” the employment positions prohibited under the DODEL. Further, the court of appeal recognized, in the absence of an action properly commenced under Subsection (A), relief could not be rendered

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<sup>2</sup> While Ms. Holliday did not contest she engaged in dual employment, she asserted her actions were not encompassed in the prohibited activities set forth in La. R.S. 42:63(A). She alleged she held an appointive office with the State of Louisiana and the particular nature of the employment, in combination with the federal employment, was not adverse to the public interest.

<sup>3</sup> The trial court recognized that it was not necessary to declare the office vacant under La. R.S. 42:65(B) because Ms. Holliday had already resigned from her state job.

through the issuance of a judicial declaration directing the termination of the dual employment and reimbursement pursuant to Sections (B) and (C), respectively. Based on its reasoning, the court of appeal determined the State failed to articulate a cause of action under La. R.S. 42:65 because the petition did not allege Ms. Holliday was holding offices or employments prohibited by the DODEL at the time suit was filed. The State filed an application for rehearing, which was denied by the appellate court.

We granted certiorari to review the correctness of the court of appeal's ruling reversing the district court's denial of the exception of no cause of action. *Foti v. Holliday*, 09-0093 (La. 4/3/09), 6 So. 3d 779. The Court has no objection to the lower courts' conclusions that Ms. Holliday's dual employment subject of these proceedings is violative of La. R.S. 42:63. Our review is premised on the narrow issue of whether the State has a viable cause of action for reimbursement under La. R.S. 42:65(C) when the prohibited conduct was terminated prior to the filing of the petition under the DODEL.

## **APPLICABLE LAW**

### *Exception of No Cause of Action*

The peremptory exception of no cause of action is designed to test the legal sufficiency of a petition by determining whether a party is afforded a remedy in law based on the facts alleged in the pleading. La. C.C.P. arts. 681 and 927; *Everything on Wheels Subaru, Inc. v. Subaru South, Inc., et al.*, 616 So. 2d 1234, 1235 (La. 1993). All well-pleaded allegations of fact are accepted as true and correct, and all doubts are resolved in favor of sufficiency of the petition so as to afford litigants their day in court. La. C.C.P. art. 865; *Kuebler v. Martin*, 578 So. 2d 113, 114 (La. 1991). The burden of demonstrating that a petition fails to state a cause of action is upon the mover. *Ramey v. Decaire*, 09-1299, p. 7 (La. 3/19/04), 869 So. 2d 114, 119.

The sufficiency of a petition subject of an exception of no cause of action is a

question of law. *Fink v. Bryant*, 01-0987, p. 4 (La. 11/28/01), 801 So. 2d 346, 349. We are mindful that a *de novo* standard is applied to the review of legal questions, wherein this Court renders a judgment based on the record without deference to the legal conclusions of the lower courts. *Cleco Evangeline, LLC v. Louisiana Tax Commission*, 01-2162, p. 3 (La. 4/3/02), 813 So. 2d 351, 353.

### *Statutory Construction*

In addressing the sufficiency of the State's petition, we must examine whether any statutory remedy is afforded to the State under the DODEL for Ms. Holliday's prohibited conduct. This inquiry turns on the proper interpretation of La. R.S. 42:65, which also involves a question of law. *Id.*

"[T]he paramount consideration in statutory construction is ascertainment of the legislative intent and the reason or reasons which prompted the Legislature to enact the law." *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 07-2371, p. 13 (La. 7/1/08), 998 So. 2d 16, 27, citing *State v. Johnson*, 03-2993, p. 12 (La. 10/19/04), 884 So. 2d 568, 575. It is well established that "[t]he starting point for the interpretation of any statute is the language of the statute itself." *Dejoie v. Medley*, 08-2223 (La. 5/5/09), 9 So. 3d 826, 829. When a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision is applied as written with no further interpretation made in search of the Legislature's intent. *Id.*; La. C.C. art. 9; La. R.S. 1:4. In the event the language of a statute is susceptible of different meanings, the interpretation must best conform to the purpose of the law. La. C.C. art. 10. When analyzing legislative history, it is presumed the Legislature's actions in crafting a law were knowing and intentional. *M.J. Farms, Ltd.*, 07-2371 at pp. 13-14, 884 So. 2d at 27. More particularly, this Court must assume the Legislature was aware of existing laws on the same subject, as well as established principles of statutory construction and the effect of their legislative acts. *Id.*

We now apply these criterion to address the merits of Ms. Holliday’s exception of no cause of action relative to whether the State is afforded a judicial remedy under La. R.S. 42:65.

### DISCUSSION

Applying the threshold requirement of statutory construction, we turn to the language of the provision at issue. *Dejoie*, 08-2223, 9 So. 3d at 829. A plain reading of La. R.S. 42:65 illustrates the statute is framed in language that the wrongdoer must be engaged in the conduct prohibited under La. R.S. 42:63 at the time the requested relief is rendered in favor of the plaintiff under Subsection (B) of La. R.S. 42:65. Logically, this encompasses the period when suit is filed. We rely on the critical wording in Subsection (A), which provides a summary process petition may only be filed against a person “*alleged to be holding*” or “*holding*” the simultaneous positions barred under the DODEL. Further, Subsection (B) allows for the issuance of a declaratory order terminating the dual employment “[i]f the court declares that the person *is holding* offices or employment in violation of this Part.” (emphasis added). While the State does not seek relief under Subsection (B) because the dual employment has already been terminated, Subsection (C) states that the reimbursement of salary and benefits is contingent on the imposition of a declaratory judgment pursuant to Subsection (B). Specifically, the Subsection (C) provides that “[t]he court may order the reimbursement to the appropriate governmental body of all pay or other compensation and all allowances, . . . which have been received *by the official or employee in the position vacated as provided in Subsection B hereof.*” (emphasis added). Thus, based on our threshold inquiry, we agree with Ms. Holliday and the court of appeal that a strict application of La. R.S. 42:65 would support the dismissal of the State’s petition.

Although we conclude La. R.S. 42:65 is clear and unambiguous, we must next

address whether the application of the provision as written leads to absurd consequences. La. C.C. art. 9; La. R.S. 1:4. Essentially, this warrants our consideration of the State’s primary objection that a strict application of the statute does not provide any penalty for a dual employment violation if the wrongdoer resigns from one position prior to the imposition of a declaratory judgment. Similarly, one of the two dissenting members of the appellate court panel characterizes the result from the majority’s interpretation of La. R.S. 42:65 as “illogical” insofar as it renders a court powerless to order reimbursement under Subsection (C) unless there is an order to vacate under Subsection (B). Moreover, he asserts the result is “absurd” in that it allows an employee’s resignation from one of the positions at any time after suit is filed, even up to the rendering of the judicial declaration. He reasons the court of appeal’s interpretation unjustly condones an employee’s manipulation of the judicial system in the absence of any accountability for the employee’s illegal actions.

In order to determine whether a strict application of La. R.S. 42:65 leads to a nonsensical result, we seek guidance from La. R.S. 42:61,<sup>4</sup> which sets forth the

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<sup>4</sup> La. R.S. 42:61, entitled “Declaration of Policy, provides:

A. It is essential to the maintenance of a democratic society that public officials and employees perform the public business in a manner which serves to promote and maintain in the general citizenry a high level of confidence and trust in public officials, public employees, and governmental decisions. The attainment of this end is impaired when a public official or employee holds two or more public offices or public jobs which by their particular nature conflict with the duties and interests of each other. The attainment of a high level of confidence and trust by the general citizenry in public officials, employees, and governmental decisions is further impaired by the excessive accumulation of governmental power which may result from public officials or employees holding two or more public offices or public jobs.

B. It is the purpose of this Part to implement a policy which will serve to maintain a high level of trust and confidence by the general citizenry in public officials, employees, and governmental decisions of the government of this state and of its political subdivisions by defining and regulating dual employment and by defining, regulating, and prohibiting dual officeholding.

(Emphasis added.)

purpose for which the DODEL was enacted. In pertinent part, Subsection (B) of La. R.S. 42:61 states that the DODEL was implemented “to maintain a high level of trust and confidence by the general citizenry in public officials, employees, and governmental decisions of the government of this state.” The court in *Arceneaux v. Treen*, 671 F.2d 128, 133 (5<sup>th</sup> Cir. 1982) interpreted La. R.S. 42:61 as follows:

Although Louisiana has advanced a host of rationales for [La. R.S. 42:63]'s prohibitions on dual public employment, we need not look any further than the statute's explicitly stated purposes in order to uphold the legitimacy of the state's goals. [La. R.S. 42:61] states the purposes of the Act's prohibitions. Restrictions on dual officeholding and public employment are not novel. . . . Louisiana is legitimately concerned with its citizens' perceptions of public employment. The Louisiana statute is obviously aimed the widespread perception that public employment—whether in federal, state, or local government offices—is merely a sinecure and that it is intolerable to give persons two slices of the public pie.

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It was also reasonable for Louisiana legislators to believe that dual low-level public sector employment creates an improper appearance of impropriety. . . .

*Id.*, 671 F.2d at 133-134 (citations omitted).

We note Subsection (A) of the provision articulates the two instances when the public's trust and confidence is “*impaired*”: when a public “employee holds two or more public offices or public jobs which by their particular nature conflict with the duties and interests of each other . . . [and] by the excessive accumulation of governmental power resulting from holding two or more public offices or public jobs.” In emphasizing the factors impairing the public's trust and confidence, the statutory language illustrates the Legislature's motive in enacting the DODEL was to eliminate the existence of the threat posed by the inherent conflict and the intangible accrual of power stemming from dual employment.

The court of appeal employed a strict interpretation of La. R.S. 42:65 to limit the causes of action and available relief that may be pursued under the DODEL to

instances where the defendant is actively engaged in the misconduct posing the threat to the public trust and confidence at the time judgment is rendered. Such a construction of the statute is entirely consistent with the language and the express purpose of the law, which is to eliminate the existence of those dual employments that compromise the public's interest due to inherent conflicts and excessive accumulation of governmental influence.

The State and the dissenting members of the court of appeal are correct that a literal application of La. R.S. 42:65 results in the absence of an available penalty under the DODEL to hold a wrongdoer accountable for his illegal actions when the prohibited employment is terminated prior to a judgment ordering the termination of the dual employment. More pertinent to these proceedings, we are cognizant of the the lack of a remedy under the DODEL for the State to obtain reimbursement of the governmental funds illegally received by Ms. Holliday during the period of the prohibited dual employment.

However, based on our review, we do not find monetary recovery of unlawfully received salaries and benefits by an employee engaged in dual employment was a driving motive in the legislative enactment of the DODEL. The policy for enacting the DODEL articulated in La. R.S. 42:61 makes no reference, express or implied, that an employee's receipt of dual salaries and benefits constitutes an impairment to the public's interest and confidence. Moreover, while La. R.S. 42:65 expressly rectifies the misconduct at issue through an issuance of an order to vacate pursuant to Subsection (B), the provision is not inherently penal in nature. In other words, there is no accountability for engaging in the illegal activity. While the Legislature does provide a remedy of reimbursement pursuant to Subsection (C), the penalty is imposed at the discretion of the court within limited circumstances (i.e., reimbursement conditioned on imposition of declaratory judgment). See *State v. Williams*, 00-1725,

p. 13 (La. 11/28/01), 800 So. 2d 790, 800 (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.”).

Additionally, an extensive review of the legislative history does not reflect in any respect that the Legislature enacted the DODEL with a concern for the financial benefits afforded to employees through salaries paid to the detriment of the State’s fisc. Rather, the history indicates the law was enacted for the inherent reasons professed in La. R.S. 42:61, specifically, to eliminate those dual governmental roles that give rise to the appearance of impropriety, in an effort to promote a positive perception of governmental employment.<sup>5</sup>

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<sup>5</sup> Since 1812, the Louisiana Constitution has directed the Legislature to enact laws relative to the dual officeholding by virtue of its powers endowed through La. Const. Art. 2, § 2. Currently, La. Const. Art. 10, § 22, entitled “Dual Employment and Dual Officeholding,” provides “[t]he legislature shall enact laws defining and regulating dual employment and defining, regulating, and prohibiting dual officeholding in state and local government.”

Prior to the turn of the 20<sup>th</sup> century through the 1950’s, the laws enacted to address simultaneous employments and officeholdings were criminal statutes subject to penalties of imprisonment and monetary fines. However, in the 1940’s, the lack of enforcement of the criminal provisions, among others, led to mass legislative reform of the state and local governments. Historical writings from this period provide the greatest insight into the policy behind the prohibition of dual employment. See *Exxon Pipeline Co. v. La. Public Service Comm.*, 98-1737, 98-1738, p. 8 (La. 3/2/99), 728 So. 2d 855, 860 (“It is undisputed legislative history of an act and contemporaneous circumstances may be helpful guides in ascertaining legislative intent.”).

Most notably, in a Special Report from Louisiana State Law Institute to Legislature of Louisiana (May 1940), the Law Institute recommended the enactment of a more effective criminal statute prohibiting dual employment and officeholding. Specifically, the Law Institute expressed legislation was necessary to eliminate any potential impropriety stemming from governmental servants having the ability to participate in the legislation or authorization of those issues in which they had a vested interest. The Law Institute’s Special Report provides, in relevant part:

In the midst of the public scandals that have wracked our State during the past eight months this committee was appointed to make recommendations leading to certain reforms in the substantive and procedural criminal law of the State. The investigations of official misconduct in the State has served to point out a very great weakness in that portion of criminal statutes which have for their object prevention and punishment of misconduct and dishonesty on the part of public officials and employees. . . . [T]he structure of our criminal law insofar as it relates to the misconduct of public servants is antiquated and has not had the attention of our lawmakers for two or three decades. During this period the mass of public servants in our State, as in the Federal Government, has vastly grown, bringing with it increased need for just such statutes as are lacking.

The reason is apparent, of course, as to why the punishment of offenses against the person and property of individuals has filled every session of our legislature while offenses against the public fisc and public property have no legislative attention. The reason is that in the former classes of cases there were individuals who are directly

As stated, the Court agrees the court of appeal's strict application of La. R.S. 42:65 furthers the Legislature's mission in promoting public confidence through the elimination of certain dual employment and officeholding. Notwithstanding, we concede it is objectionable the State lacks an available remedy under the facts. Seemingly, the recovery of governmental monies received by a salaried employee engaged in dual employment would have been of interest to the Legislature in enacting the DODEL. Nonetheless, we are constrained by the limitations of our judicial role. "While it is this Court's province 'to consider the reason and spirit of a law,' we are 'not free to rewrite the law to effect a purpose that is not otherwise expressed.'" *Naquin v. Titan Indem. Co.* 00-1585, p. 9 (La. 2/21/01), 779 So. 2d 704, 710, citing *Backhus v. Transit Cas. Co.*, 549 So. 2d 283, 291 (La. 1989). Particularly,

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and personally interested in the enactment of such statutes, whereas there has been great indifference to the commission of similar offenses by public officials against the State or its subdivisions or institutions.

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There has been a great hue and cry and just public indignation on the subject of dual office holding, and while the legislature has enacted statutes on this subject after the adoption of three past constitution, our present statute on the subject is woefully deficient and it is easy to understand why the public is confused and misled, and unable to understand why the constitution denounces dual office holding and yet it is so difficult to convict a person of this offense.

The public is naturally indignant at revelations of public officials and members of public boards having financial interests in public contracts . . .

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It seems to this committee that the coming session of the Legislature is a good time for the adoption for such reform criminal legislation. The public interest is aroused and the legislators will be interested in adopting measures that will tend to prevent a recurrence of the unhappy situation in which our State has been plunged. . . .

*Id.* at 5-7.

Although the reasons for proposing the legislation primarily reference concerns stemming from dual officeholding, the Louisiana Legislature in the 1940 Regular Session adopted verbatim, through the enactment of 1940 La. Acts, No. 259, the Law Institute's proposed criminal statute barring certain dual employment, as well as dual officeholding. It was subsequently amended through 1942 La. Acts, No. 37, § 1 and 1956 La. Acts, No. 290, § 1 to eventually provide for La. R.S. 42:31, *et seq.*, the first civil provisions that generally barred dual employment and officeholding. However, the statutes did not provide for any penalty or governmental remedy for a violation. In 1979, the Louisiana Legislature, through 1979 La. Acts, No. 700, §1 and § 8, repealed the criminal provision relative to dual office holding and dual employment, as well as redesignated and amended the civil provisions, to provide for a more comprehensive body of law in the area. Specifically, it enacted the DODEL as it reads today pursuant to La. R.S. 42:61, *et seq.*

“[w]e also recognize that it is not the function of the judicial branch in a civilian legal system to legislate by inserting penalty provisions into statutes where the legislature has chosen not to do so.” *Carter v. Duhe*, 05-390, p. 10 (La. 1/19/06), 921 So. 2d 963, 970. The fact that the Legislature could have drafted La. R.S. 42:65 differently, and failed to do so, does not permit the Court to abandon long-established tools of statutory construction. The Legislature is certainly aware of these rules and the limitations of our judicial function. *Johnson*, 03-2993 at 15, 884 So. 2d at 577. The dissenting view is that this result is unfortunate. However, it is for the legislative branch to remedy the deficiencies in the statutory scheme, if it should so desire.

### **CONCLUSION**

Accordingly, we conclude Ms. Holliday has satisfied her obligation under La. C.C.P. arts. 681 and 927 of proving the State is not afforded a remedy in law based on the facts alleged in the petition. There was no legal basis under the DODEL for the State to assert a cause of action since the prohibited dual employment at issue was terminated prior to the commencement of the suit seeking judicial relief. As such, the court of appeal did not err in reversing the trial court’s denial of Ms. Holliday’s exception of no cause of action and dismissing the State’s action.

### **DECREE**

For the reasons stated herein, the judgment of the court of appeal is affirmed, and the case is dismissed with prejudice.

**AFFIRMED**

10/30/09

**SUPREME COURT OF LOUISIANA**

**NO. 09-C-0093**

**CHARLES C. FOTI, JR., ATTORNEY  
GENERAL FOR THE STATE OF LOUISIANA**

**versus**

**SARAH HOLLIDAY**

**KNOLL, J., dissenting.**

I respectfully dissent, finding the majority opinion's interpretation of La. Rev. Stat. 42:65 leads to absurd consequences, *i.e.*, permitting a public employee who simultaneously held two full-time government employment positions in violation of Louisiana's Dual Officeholding and Dual Employment Law, La. Rev. Stat. 42:61, *et seq.*, ("DODEL"), to escape the reimbursement owed to the State for all pay or other compensation and allowances collected in violation of the statutes. In my view, the majority errs in its determination that its interpretation of La. Rev. Stat. 42:65C is consistent with the express purpose of the law and the legislative intent in enacting the DODEL.

Clearly, as evidenced by the instant case, a strict application of La. Rev. Stat. 42:65 leads to an absurd result by exclusively conditioning monetary recovery pursuant to Subsection (C) contingent upon the judicial declaration of dual employment under Subsection (B). Where, as here, the employee resigns her state position prior to the filing of the State's petition, the State is left without a remedy to recover the compensation collected in violation of DODEL.

The plain meaning of legislation should be conclusive, except in the rare cases wherein the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989); *Pumphrey v. City of*

*New Orleans*, 05-979, p. 14 (La. 4/4/06), 925 So.2d 1202, 1211; *State v. Benoit*, 01-2712, p. 3 (La. 5/14/02), 817 So.2d 11, 13. The object of the court in construing a statute is to ascertain the legislative intent and, where a literal interpretation would produce absurd consequences, the letter must give way to the spirit of the law and the statute construed so as to produce a reasonable result. *Richard v. Hall*, 03-1488, p. 25 (La. 4/23/04), 874 So.2d 131, 149; *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 2000-1695, p. 12 (La. 6/29/01), 808 So.2d 294, 302. The majority finds that the legislative intent, as expressed in La. Rev. Stat. 42:61 and gleaned from legislative history, does not evince reimbursement of government funds illegally received by an employee engaged in dual employment as a purpose of this legislation. To the contrary, the result reached by the majority in this case deviates from the legislative intent in enacting DODEL, despite the lack of language *expressly* declaring the receipt of dual salaries and benefits constitutes an impairment to the public's interest and confidence. In my view, the majority errs because the legislative intent of implementing a policy to maintain a high level of trust and confidence by the general citizenry in public employees, by defining and regulating dual employment, clearly extends to and *implicates* prudent administration of the public fisc and recovery of public monies when collected in violation of DODEL. Permitting a public employee, who illegally received government funds during the period of prohibited dual employment, to retain those funds erodes the high level of confidence and trust by the general citizenry in public employees essential to the maintenance of a democratic society. *See* La. Rev. Stat. 42:61. The effect of the majority opinion is to diminish the legislative intent of elevated standards of good government by allowing a public employee to benefit from illegal dual public employment.

As the majority correctly notes, the history indicates DODEL was enacted “in an effort to promote a positive perception of governmental employment.” The result

reached in the majority opinion contradicts this legislative intent.

10/30/09

**SUPREME COURT OF LOUISIANA**

**No. 09-C-0093**

**CHARLES C. FOTI, JR., ATTORNEY GENERAL  
FOR THE STATE OF LOUISIANA**

**VERSUS**

**SARAH HOLLIDAY**

*On Writ of Certiorari to the Court of Appeal, First Circuit,  
Parish of East Baton Rouge*

**WEIMER, Justice**, dissenting.

I respectfully dissent.

In my view, a narrow interpretation of the provisions of LSA-R.S. 42:65 loses sight of the primary purpose of statutory construction: to discern and enforce the intent of the legislature. **Pumphrey v. City of New Orleans**, 05-979, p. 10 (La. 4/4/06), 925 So.2d 1202, 1209 (“The fundamental question in all cases of statutory interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the Legislature to enact the law.”).

According to well-settled rules of statutory construction, the meaning and intent of a law is determined by considering the law in its entirety and all other laws on the same subject matter and by placing a construction on the law that is consistent with the express terms of the law and with the obvious intent of the legislature in enacting the law. **SWAT 24 Shreveport Bossier, Inc. v. Bond**, 2000-1695, p. 11 (La. 6/29/01), 808 So.2d 294, 302; **Succession of Boyter**, 99-0761, p. 9 (La. 1/7/00), 756 So.2d 1122, 1129. A statute must be applied and

interpreted in a manner that is logical and consistent with the presumed purpose and intent of the legislature. *Id.*

While I agree that the starting point in the interpretation of any statute is the language of the statute itself, **Touchard v. Williams**, 617 So.2d 885, 888 (La. 1993), that language must not be construed so narrowly as to defeat or undermine the clear intent of the legislature. **State v. Shaw**, 06-2467, p. 15 (La. 11/27/07), 969 So.2d 1233, 1242. Thus, where a literal interpretation would produce absurd consequences, the letter must give way to the spirit of the law and the statute construed so as to produce a reasonable result. **SWAT 24 Shreveport Bossier, Inc.**, 2000-1695 at 12, 808 So.2d at 302.

Here, the purpose of the Dual Officeholding and Dual Employment Law (“DODEL”) is clearly set forth by the legislature:

It is the purpose of this Part to implement a policy which will serve to maintain a high level of trust and confidence by the general citizenry in public officials, employees, and governmental decisions of the government of this state and of its political subdivisions by defining and regulating dual employment and by defining, regulating, and prohibiting dual officeholding.

LSA-R.S. 42:61(B). By its terms, the purpose of the law is remedial. It is designed to correct “the widespread perception that public employment – whether in federal, state, or local government offices – is merely a sinecure” and to affirm the principle “that it is intolerable to give persons two slices of the public pie.” **Arceneaux v. Treen**, 671 F.2d 128, 133 (5<sup>th</sup> Cir. 1982). Given its remedial purpose, the law should be construed consistently with that purpose so as to remedy the wrong that the legislature sought to ameliorate – the erosion of public trust and confidence in government produced by an illegal and unwarranted draw on the public fisc.

To construe the provisions of LSA-R.S. 42:65 in a strained manner produces, as Judge McDonald points out in his dissent in the court of appeal, the untenable result that an employee or officeholder in violation of the law could easily manipulate the system, and reap the benefits of his or her illegal action, by simply resigning prior to a court ruling. Such manipulation, and the erosion of public confidence in government that arises as a result thereof, is precisely the type of conduct that DODEL was enacted to remedy.

I cannot ascribe to an interpretation of the statute that would subvert its stated goal. Louisiana Revised Statute 42:65, as drafted, contains three subsections. Subsection A confers upon the attorney general, a district attorney, or any citizen of the state a right to proceed against a person alleged to be in violation of the prohibition against dual employment or officeholding. When a violation is found, Subsection B confers upon the court the authority to declare vacant the office or one of the employments and to enjoin the individual found to be in violation from further carrying out the duties of the office or employment. Subsection C allows the court to order reimbursement of all pay or other compensation received by the employee or official found to be in violation of the law to the appropriate governmental body – that body under whose auspices the office or employment is vacated.<sup>1</sup>

The reimbursement provision of Subsection C is clearly intended to serve as a disincentive for dual employment or officeholding. The majority's interpretation, which eviscerates this disincentive, is inconsistent with the express purpose of

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<sup>1</sup> In this respect, the reference in Subsection C of the statute to “the position vacated as provided in Subsection B hereof,” merely serves to identify which of the two employments or offices to which reimbursement is properly directed. In other words, Subsection B dictates that the judge declare one of the two positions vacant and reimbursement under Subsection C is owed to the vacated office or employment.

DODEL, which is to bolster public confidence and trust in government employees and officials.