

THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS

Review of the Huntsville Police Department's  
Off-Duty Employment Policy

A Policy Research Project  
Submitted in Partial Fulfillment  
of the requirements for the Professional Designation  
Graduate, Management Institute

by  
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November, 1996

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## **ABSTRACT**

In the past 40 - 45 years, it has become more and more common for police officers to work extra-duty jobs. This type of employment has been referred to as moonlighting, off-duty employment, and secondary employment among other names. Based on the research, it appears that the term "extra-duty employment" is the most appropriate description in modern policing.

This paper examines several aspects of extra-duty employment in general and will more specifically examine the current Huntsville Police Department policy regulating such employment.

This paper does not deal with the civil liability issue of extra-duty employment, but rather examines the legality of the practice, assesses the consistency of Huntsville's policy with the law and determines if it falls within accepted practices of the law enforcement community. State statutes and Attorney General Opinions do indeed authorize police officers to engage in such employment. Additionally, it is determined that Huntsville's policy falls well within the parameters of accepted law enforcement practices. Aside from updating the terminology, there appears to be no reason to significantly change the Huntsville Police Department policy governing extra-duty employment.

# **REVIEW OF THE HUNTSVILLE POLICE DEPARTMENT'S OFF-DUTY EMPLOYMENT POLICY**

## **INTRODUCTION**

The purpose of this project is to provide documentation to the Chief of Police of the Huntsville Police Department regarding acceptability of Huntsville's current Off-Duty Employment policy. This project examines the legality of Huntsville's policy as well as it's compatibility to policies of other law enforcement agencies throughout the State of Texas.

In addition to determining the legality of extra-duty employment in general, and the Huntsville Police Department's policy in particular, several other issues are addressed in order to determine the compatibility of Huntsville's policy with those of other agencies. These issues include the question of whether or not police officers should be allowed to wear their department's uniform while engaged in extra-duty employment. Similarly is whether or not to allow officers to use assigned personal equipment such as radios, batons, handcuffs, etc. in the performance of their extra-duty employment. Still another issue discussed is the question of allowing officers to work in establishments in which the primary source of income is the sale of alcoholic beverages. In an effort to insure that officers are not too tired to work their regular assigned police duties, the question of whether or not officers should be limited in the amount of hours that they can

work at an extra-duty job is examined. In addition, this project reviews the appropriateness of requiring departmental approval in order to work an extra-duty job.

The information in this project was accumulated from various sources, including legal opinions, books, journals, departmental policy manuals, and personal interviews.

The intended result of this project is to provide the Huntsville Police Chief with information regarding the legality and compatibility of Huntsville's Off-Duty Employment policy. In an effort to maintain the high quality of the Police Department and to provide effective law enforcement services to the community, it is essential to insure that all policies are of the highest caliber and in line with accepted law enforcement practices.

#### HISTORICAL AND LEGAL CONTEXT

The first issue to be clarified in this project is the proper terminology to be used. A 1984 Texas Attorney General's Opinion notes that, "a commissioned peace officer is 'on-duty' at all times with regard to his obligation to prevent any breach of the peace that he observes in his jurisdiction" (Maddox, JM-140 p.1). Referring to that opinion in a letter to former Houston Police Chief Lee P. Brown, Texas Attorney General Jim Maddox wrote, "references in this decision to 'off-duty' employment are for convenience only; such references do not approve an 'off-duty' status" (Maddox, Open Records Decision No. 456 p.1). Because of

these decisions, it would appear that "extra-duty employment" is the most appropriate term when referring to police officers working for any person or business other than their primary police employer (Garner). Except when quoting another source, this term will be utilized throughout the remainder of this paper.

As noted in a report from the National Institute of Justice, officers have not always been allowed to participate in extra-duty employment. Referring back as far as the late 19th century, the report notes that "many departments refused to permit it, largely on the grounds that an officer was obliged at all times to enforce the law and to be available for duty when summoned" (Reiss 5). A century later, most departments still expect their officers to be available for emergency recall after their regular tour of duty. One author noted, "Current crime trends and public disappointment with the Criminal Justice system may have contributed to the increasing employment of off-duty police" (Vardalis 210). Because of this, many departments now view officers working extra-duty jobs as a resource. The NIJ report notes that, "One clear advantage to secondary employment of uniformed police officers working for private employers is that at any given time of their employment, they are a substantial addition to both the visible police manpower and available for mobilization and deployment" (Reiss 80).

The next issue to be explored is the legality of allowing police officers to participate in extra-duty employment opportunities. Referring specifically to the Texas Department of Public Safety, the Texas Government Code directs DPS to "adopt

reasonable guidelines relating to acceptable off-duty employment" (Vernon's Texas Code 411.0077 [b])). The law goes on to authorize DPS officers to purchase an official Department of Public Safety uniform "to be used by the officer while providing law enforcement services for a person or entity other than the department" (Vernon's Texas Code 411.078).

The Texas Board of Private Investigators and Private Security Agencies Act also refers to police officers involved in extra-duty employment. It says that "this Act does not apply to:

(3) a person who has full-time employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, who receives compensation for private employment on an individual or and independent contractor basis as a patrolman, guard, or watchman if such person is:

(A) employed in an employee-employer relationship;  
or

(B) employed on an individual contractual basis;

(C) not in the employ of another peace officer; and

(D) not a reserve peace officer" (Morales, DM-287

p.1).

In a legislative debate of "a bill that added language to the [Texas Board of Private Investigators and Private Security Agency] Act", then-Representative Carl Parker answered questions from the floor clarifying certain issues regarding the bill. One of the questions asked was, "How does this affect the policeman who, in off-duty hours, serves as a guard at a 7-Eleven, or grocery store,

or whatever it may be?" Then-Representative Parker responded that " . . . he is specifically exempted by language that was drafted in conjunction with me and the representative of the Texas Municipal Police Association" (Morales, DM-287 p.2).

In 1993 Texas Attorney General Dan Morales was requested to render an Attorney General's Opinion regarding extra-duty employment. The case specifically dealt with the extra-duty employment of peace officers by the local school district. In the opinion, Mr. Morales wrote, " . . . we conclude that Odessa City Police Officers and Ector County Sheriff's Deputies are not as a matter of law prohibited from serving as part-time security officers for the Ector County Independent School District" (Morales, DM-212 p.4).

Based on the language used in the statutes, the Attorney General Opinions, and the legislative debates, we must conclude that our legislators and other key government officials are well aware of, and even specifically authorize, the extra-duty employment of peace officers in the State of Texas.

#### REVIEW OF LITERATURE AND PRACTICE

Today, many police departments authorize their officers to engage in extra-duty employment (Sullivan 32). In reviewing the practices of other departments, copies of extra-duty employment policies from eleven law enforcement agencies across Texas were examined. These policies range from generic to very complex in



content. When comparing the policies, one important consideration was the fact that officers in all eleven departments are required to seek supervisor approval prior to accepting any extra-duty employment (appendix 1). This is consistent with *Isola v. Borough of Belmar* which reads in part, "rules regarding off-duty employment fall within the wide range of regulations adopted for the internal discipline of the police force" (Rhyne 29).

Another area in which all of the policies are consistent is the officers' ability to wear the department uniform while engaged in extra-duty employment (appendix 1). It should be noted that even though Texas Department of Public Safety officers are allowed to wear the DPS uniform, it must be purchased by the officer desiring to work extra-duty jobs (DPS 36.03 3 f). Similarly, all eleven departments allow officers to utilize assigned personal police equipment during the course of their extra-duty employment. This equipment includes batons, handcuffs, chemical spray, police radios, and firearms, if supplied by the agency (appendix 1). The noted exception to this is again the Texas Department of Public Safety. Troopers may utilize all of their equipment with the exception of State issued police radios. They may, however, utilize police radios that are issued by the county in which the Trooper is assigned (Thomas). All of the areas mentioned thus far are consistent with Huntsville's policy regulating extra-duty employment.

When comparing the Huntsville Police policy with the policies of the other eleven agencies, the greatest distinctions are found

in the area of "time restrictions" (appendix 1). Time restrictions refer to any qualifiers the individual department may place on officers regarding how much of the time they are allowed to participate in extra-duty employment. Huntsville's policy stipulates that "officers will not be permitted to work more than six (6) hours at a second job prior to beginning a tour of duty during their scheduled work week. Nor will officers be permitted to work a second job which will afford less than eight (8) hours rest between their scheduled tour of duties (HPD 5.15.3 A). Of the eleven other departments examined, only four have some type of time restrictions in their policy (appendix 1). These restrictions range from twenty hours extra-duty employment per week (San Marcos 4.13.04) to thirty-six hours extra-duty employment per week (Conroe 200-7 p.6). The remaining seven departments have no time restrictions listed in their policies (appendix 1). It would appear that, regarding this issue, the Huntsville Police policy goes above and beyond that of the majority of the other agencies that were examined. This additional restriction helps to insure officers are well rested when they begin their regular tour of duty.

The other area in which there appears to be some disparity is the allowance of officers to work in establishments that serve alcohol. The Huntsville policy does not prohibit officers from working in such places. Seven of the eleven other examined agencies likewise allow their officers to work in these establishments (appendix 1). Of the four departments that do not

allow officers to work these type of extra-duty jobs, the reasons are not stated within their policies. It appears that Texas DPS officers are not allowed to work at locations that serve alcohol because these establishments are closely regulated by the State and it may appear as a conflict of interest (Thomas).

#### DISCUSSION OF RELEVANT ISSUES

Police administrators along with the International Association of Chiefs of Police agree that written departmental policies for extra-duty employment "are a must for every department" (Peach 28). As mentioned earlier, different departments have varying policies regulating where an officer may accept extra-duty employment. Although there are some disagreements among police administrators about allowing their officers to work at certain kinds of establishments, almost all agree that officers should be barred from any extra-duty employment "that:

1. might create a potential conflict of interest with their duties as police officers;
2. might threaten the status or dignity of policing as a profession; or
3. involve an unacceptable risk of injury that would limit their return to regular duty" (Burden 93).

Questions about conflict of interest arise "when there is a perception that police powers are being used to serve strictly private interests. For example, many departments prohibit

moonlighting as bill collectors or process servers on grounds that the person being served would assume that the officer was acting with his police authority" in a job where he normally has no police authority (Burden 93). In keeping with this philosophy, Huntsville's policy authorizes officers to engage in extra-duty employment provided that it "does not bring the Department into disrepute, reflect discredit upon the officer, does not constitute a conflict of interest, or does not impair on-duty efficiency" (HPD 5.15).

Because four out of five law enforcement agencies permit some form of extra-duty employment opportunities, it should be imperative for them to have guidelines governing such employment (Burden 92). This would enable the officers to be aware of their extra-duty employment limitations. A top private security agency official noted that obviously an officer's "first and foremost duty" when working and extra-duty job is the police agency for which that officer is normally employed. This official went on to say that police officers should be aware of actions that would demonstrate a conflict of interest and should face stiff disciplinary sanctions for such actions (Keely 11). This can be very easily accomplished through a thorough departmental policy that specifies what will and will not be accepted.

It would appear that there is a definite benefit in allowing police officers to work extra-duty jobs. Police officers in St. Louis, Missouri were credited with helping to prevent crime in a specific neighborhood where they worked. These officers were

extra-duty employees who were working for the local neighborhood association. Although they were not allowed to use police cars, these officers were allowed to wear their police uniforms to "keep the criminals aware of their presence" (St. Louis Post-Dispatch) When speaking of uniformed officers working extra duty jobs, John Keely wrote that he believes "the best interest of the City is served by having as many uniformed officers on the street as possible" (Keely 12). Professor Albert Reiss of Yale University expounded on this, "Uniformed officers working for outside employers provide, at any given moment, a substantial addition to police manpower. They thus may serve deterrent and preventive objectives of the department" (Burden 92).

Even though hiring a police officer sometimes costs two to three times more than a security guard, many private employers would rather employ officers. This is because of the greater public respect and confidence these citizens have in their police (Burden 92).

#### CONCLUSION / RECOMMENDATIONS

As previously stated, the purpose of this project is to provide documentation to the Huntsville Police Chief regarding the acceptability of Huntsville's current Off-Duty Employment policy. The research for this project was conducted in an effort to determine the legality of the policy as well as it's compatibility to policies of other police agencies in Texas. In determining the

compatibility of the policy, several key issues were examined. These issues dealt with the use of police uniforms and equipment by officers involved in extra-duty employment as well as whether officers should be allowed to work in establishments that serve alcoholic beverages. In addition, time restrictions and the necessity of seeking supervisor approval for extra-duty employment were examined.

During the research for this project, a side issue of terminology was discovered and briefly addressed. It was discovered the more appropriate terminology for what is commonly called "off-duty" employment would be the term "extra-duty" employment (Garner).

Based on the research materials, it is apparent the Huntsville Police Department is within the law by allowing officers the opportunity to participate in extra-duty employment. It further appears that Huntsville has a policy that complies with the parameters of accepted law enforcement practices. Huntsville's policy closely monitors officers' activities during extra-duty employment (appendix 2).

As long as this and other policies continue to be enforced, the citizens of our community will continue to receive the quality of law enforcement services they expect and deserve. Other than updating the terminology, there appears to be no reason to significantly change this particular Huntsville Police Department policy.

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## ***APPENDIX 1***

	Can uniforms be worn at the extra job?	Can other issued personal equipment be used at the extra job?	Are there any time restrictions on extra-duty employment?	Can officers work where alcoholic beverages are sold?	Is prior supervisor approval required to work extra?
Carrollton PD	YES	YES	NO	NO	YES
College Station PD	YES	YES	YES	NO	YES
Conroe PD	YES	YES	YES	YES	YES
Corsicana PD	YES	YES	NO	NO	YES
Greensboro PD	YES	YES	NO	YES	YES
Houston PD	YES	YES	NO	YES	YES
Irving PD	YES	YES	NO	NO	YES
McKinney PD	YES	YES	NO	YES	YES
Midland PD	YES	YES	YES	YES	YES
San Marcos PD	YES	YES	YES	YES	YES
Texas D.P.S.	YES *	YES * *	NO	NO	YES
HUNTSVILLE PD	YES	YES	YES	YES	YES

SHADED AREAS SHOW COMPATIBILITY WITH HUNTSVILLE'S EXTRA-DUTY EMPLOYMENT POLICY.

\* DPS officers must purchase department uniforms to wear on extra-duty employment.

\*\* DPS officers can use all equipment with exception of State issued radios. If they have radios issued by the county they are stationed in, they may use them.

## ***APPENDIX 2***

## HUNTSVILLE POLICE DEPARTMENT

DIRECTIVE NUMBER: 5.15

Page 1 of 4

DATE OF ISSUE : JUNE 05, 1989

EFFECTIVE DATE : JUNE 19, 1989

INDEX AS : EXTRAJOB

LAST REVIEW : JANUARY 19, 1996

REVISED DATE : MARCH 22, 1992

REPLACES : GENERAL ORDER 14

SUBJECT : OFF-DUTY EMPLOYMENT

### PURPOSE

The purpose of this directive is to establish guidelines concerning off-duty employment by police officers.

### POLICY

It is the policy of the Huntsville Police Department and the City of Huntsville that an officer may be employed in any lawful capacity in any other business, trade, occupation, or profession provided such employment has been approved by the Chief of Police and does not bring the Department into disrepute, reflect discredit upon the officer, does not constitute a conflict of interest, or does not impair on-duty efficiency.

#### 5.15.1 GENERAL

- A. Any Huntsville municipal officer employed in a secondary job in the capacity of a police officer is subject to the rules, regulations, policies and procedures of the Huntsville Police Department. The City of Huntsville retains control of the officer and he may not perform tasks outside law enforcement duties.
- B. If an officer is hired for any reason other than to function as a police officer, the secondary employer

retains control and the officer may not use any police equipment or perform any law enforcement duties.

#### 5.15.2 EMPLOYMENT APPROVAL

- A. Officers desiring to engage in off-duty employment must submit a memorandum through the command chain to the Chief of Police listing:
1. the place of employment;
  2. the type of duties performed;
  3. the number of hours of work required daily/weekly;
  4. any other information which may be necessary for consideration.

An officer must also submit a memorandum if there is a change in status of the off-duty employment or if the employment is terminated.

- B. The original copy of the memorandum will be placed in the officer's departmental personnel file. A copy of the memorandum will be returned to the officer with an approval or, if denied, the reason for denial of the request.
- C. Officers may accept off-duty employment after approval has been received from the Chief of Police or his designee.
- D. Temporary off-duty employment which has been approved and posted by the department will not require a memorandum.
- E. Officers who receive a request of temporary employment must notify the division commander in charge of off duty employment.

#### 5.15.3 PROCEDURES

- A. Officers will not be permitted to work more than six (6) hours at a second job prior to beginning a tour of duty during their scheduled work week. Nor will officers be permitted to work a second job which will afford less than eight (8) hours rest between their scheduled tour of duties.

- B. Officers will not engage in any outside business or occupation which limits their effectiveness in discharging official duties or which may present a conflict of interest with the Department.
- C. Officers will not use their official position to the direct benefit of a private business in which they may have an interest, and will perform their duties within the framework of all applicable Federal and State statutes, City Ordinances, and police procedures.
- D. Officers under suspension, whether with or without pay, will not be allowed to accept any outside employment involving the use of police powers.
- E. Probationary officers must successfully complete six months of employment, after being sworn in as police officers with the Huntsville Police Department, prior to engaging in off duty employment in any law enforcement capacity.
- F. Officers on sick leave or assigned light duty due to illness or injury will not be allowed to work off-duty.
- G. Officers will not be permitted to engage in off-duty employment, in a law enforcement capacity, outside the city limits of Huntsville unless approved by the Chief of Police.
- H. Off-duty employment at events or establishments where alcoholic beverages are consumed will require a minimum of two (2) officers in uniform.
- I. Officers working off-duty, in uniform, are prohibited from engaging in any type activity which is not police related or would discredit the department.
- J. Officers will not be permitted to work at events or establishments which operate illegal activities or by the nature of their operation would bring discredit upon the department.
- K. Officers will not serve eviction notices in off-duty employment.
- L. Officers working off-duty are subject to the supervision of any ranking officer and/or the on-duty supervisor of equal rank.

- M. Any officer working an extra job who observes an offense or incident requiring a report will make the required report. It is the responsibility of an arresting officer, working off-duty, to give the necessary information to the on-duty officer who will transport and process the prisoner. All reports will be the responsibility of the officer making the arrest or observing the offense and must be completed by the end of the shift in which the incident or offense occurred or at the end of the extra job.
- N. Officers are responsible for working job assignments they have signed up for. If an officer finds that he cannot work the assignment due to a conflict in non-mandatory departmental or personal activities, it will be their responsibility to find a replacement prior to removing their name from the list. Any officer who signs up to work off-duty and fails to show up for the assignment will be subject to disciplinary action and loss of off-duty employment privileges.

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Chief of Police