

The Bill Blackwood
Law Enforcement Management Institute of Texas

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Off-Duty Employment in Law Enforcement

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ABSTRACT

The purpose of this administrative research paper is to examine police related off-duty employment in law enforcement in the state of Texas. Most law enforcement agencies in the state of Texas and across the country allow their officers to work in some capacity in off-duty employment. The off-duty employment by officers in most cases is used to supplement their pay, and agency administrators see this as an additional benefit for their officers and allow the off-duty employment, however, most all agencies have a written policy that addresses off-duty employment. This research will also determine the duties for an off-duty employment coordinator and it will address the way that the police-related off-duty employment is distributed.

Police officers have engaged in the practice of working off-duty employment for years. There are many reasons that officers choose to work in off-duty employment as well as there being many benefits to the officers agency for allowing it's officers to work in police related off-duty employment. In the absence of any written law that would dictate to any officer or police administrator any specific duties to be taken during police related off-duty employment, police administrators have chosen to control off-duty employment through the use of written policies. Time limits on off-duty employment were also a great concern for police administrators when writing such policies.

The Comal County Sheriff's Office has a current Policy regarding off-duty employment. Of the thirty-one (31) agencies surveyed, the question was asked, Does your agency have a written policy regarding off-duty employment? Only one (1) agency surveyed did not have a written policy regarding off-duty employment.

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INTRODUCTION

The purpose of this administrative research paper is to examine police related off-duty employment in law enforcement in the state of Texas. Most law enforcement agencies in the state of Texas and across the country allow their officers to work in some capacity in off-duty employment. The off-duty employment by officers in most cases is used to supplement their pay, and agency administrators see this as an additional benefit for their officers and allow the off-duty employment, however, most all agencies have a written policy that addresses off-duty employment. Most agency administrators also see the benefit of allowing its officers to work in an off-duty capacity as a means to curb some crime trends at certain areas or locations that may require additional patrols, thus a benefit to agency manpower restrictions.

This research will determine if there is a need for the Comal County Sheriff's Office to update their existing policy or implement a new policy altogether. The Comal County Sheriff's Office has a written policy that currently allows its officers to work in some capacity in off-duty employment, but it currently limits its officers on the number of hours allowed to be worked within a specific work week, the locations to be worked, and who is responsible for filling the available positions. This research will also determine the duties for an off-duty employment coordinator and it will address the way that the police-related off-duty employment is distributed.

The research for this paper will include the examination of different written policies from numerous law enforcement agencies in differing sizes and from various regions across the state of Texas. This research will further describe the times, locations and if there are any other limitations or restrictions placed on officers performing off-

duty employment by different agencies. This research will review any and all justifications or reasons documented for a particular agency placing a particular limitation or restriction on an officer's off-duty employment. It will also examine if there are any liabilities for the officer or the agency in allowing its officers to engage in police related off-duty employment.

This research will be conducted by the review of other agencies written policies and/or procedures. There will also be a survey that will be distributed to various law enforcement agencies in the state of Texas in order to gather information from those agencies regarding their off-duty employment and the way that the police related off-duty employment is obtained and distributed to its officers. Research will also be conducted through the review of written articles, periodicals, other written documents, current state law in regards to law enforcement officers working off-duty employment, and any court decisions that may have been rendered relevant to this subject.

Upon the completion of the review of all of the research regarding this subject, it is hoped that this review will greatly affect the members of the Comal County Sheriff's Office in the way that it currently allows its officers to engage in off-duty employment, by way of a possible change in written policy. It will also determine if there is a better procedure or style to distribute the police related off-duty employment to all interested and available officers.

REVIEW OF LITERATURE

Police officers have engaged in the practice of working off-duty employment for years. Currently this type of activity has become commonplace amongst almost all police agencies, and these agencies recognize the fact that some if not all of their officers are going to work in some form of off-duty employment. Agency administrators now have written policies that dictate how, when, where, and how much an officer is allowed to work, and if the work is a police or non-police related job.

This was not always a recognized practice as it is today, over 100 years ago a New York City police officer was fired for his being involved in off-duty employment as the co-owner of a local cigar factory. He later filed what is believed to be the first wrongful termination suit related to off-duty employment. The city had concluded that the employee was unable to devote his attention to his police job and work at the other job simultaneously. The courts at that time ruled that the city was right in its decision to terminate the employee (Eichenberg, West 1996).

The times have definitely changed from over a century ago with regard to this activity. In 1993, former State of Texas Attorney General Dan Morales issued an opinion regarding off-duty employment in which he wrote in response to an inquiry, “Thus, 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” (Morales, 1993, p. 1125).

In 1994 the question was again posed to Texas Attorney General Dan Morales as to whether it was lawful for Police Officers and Sheriff’s Deputies to work police related off-duty employment. This time the question was whether any Peace Officer from the

State, working police related off-duty employment was in violation of Section 3 of the Texas Board of Private Investigators and Private Securities Act (“act”), article 4413 (29bb) of the Vernon’s Annotated Civil Statutes. The “act” in part, imposes a requirement for any person engaging in the business of or performing as a guard ..., the person performing such services must be licensed by the “act” (Morales, 1994).

Attorney General Morales issued his opinion, which has incorporated in it excerpts from the legislative debate of the bill that was presented before the 64th Legislature in 1975. In the opinion Attorney General Morales wrote that: “We therefore conclude that those provisions apply to only a person who is employed in an employee-employer relationship or on an individual contractual basis directly by the security recipient” (Morales, DM-287, page 1531). These decisions basically permit police officers to perform police related off-duty employment as a matter not in violation of any particular law, as long as it is permitted by a particular agency.

Recently however, there have been several serious incidents that have brought the issue of police related off-duty employment to come under great scrutiny of police administrators, as well as the state of Texas Ethics Commission, which interprets the state’s ethics laws. There have been some recent statements made from attorneys at the Ethics Commission who question whether or not, that, if an officer works in police related off-duty employment he may be in violation of the Texas Penal Code. The law in which the Ethics Commission is referring too, is a law that prohibits a public servant from accepting an honorarium, specifically stated “You can’t take a payment for a service you wouldn’t have been asked to provide but for your position as a public servant” (Texas Penal Code, Section 36.07)(Elliot 2003).

This practice however has not been specifically identified as being illegal, and there have been no formal opinions issued by the Ethics Commission, as per a telephone conversation with attorney Robert Mannis of the Ethics Commission. Therefore the practice will and should continue by the many officers that perform this function in the state of Texas (Mannis, January 4, 2004).

There are many reasons that officers choose to work in off-duty employment as well as there being many benefits to the officers agency for allowing it's officers to work in police related off-duty employment. Some of the reasons that officers engage in this type of activity is due to the fact that still today many officers are living on low wages and are working schedules that would allow more time for an officer to earn additional income by performing off-duty employment (Reiss 1988, page 5).

The agencies saw this trend as a way to accomplish at least two objectives that would be positive for both the officer and the agency. The first objective, placing uniformed off-duty officer at a particular area or location, then those off-duty officers could handle any situations that may arise that would need a patrol officer, thus leaving those on-duty patrol officers to answer other calls for service. The second benefit to the agency is that having the uniformed officers performing off-duty employment increases law enforcement visibility and presents a high presence image while the officers are being paid by private funds and not by public tax dollars (Vardalis 1992, page 212). Further stated "by supplying off-duty police they were increasing the individual welfare of the officers at the same time they were enhancing the collective welfare for public order. A public good seemingly was supplied at private cost" (Reiss 1988, page 8).

After observing some of the positive aspects, police administrators also cited several concerns of allowing police related off-duty employment. Some of the negative aspects noted were, liabilities to both the agency and the officer, is the officer covered under group insurance policies, should time limits be placed on how often or how long an officer can work on a particular day or during a particular work period (Sharp 1999, page 82). These concerns are not limited by the type or size of the agency, nor by any particular area in the country. Based on some of the studies done on this subject, one suggests that there should be a specific law that would detail the rights, limitations and obligations of all parties concerned regarding an officer and police related off-duty employment (Sullivan 1987, page 34).

In the absence of any written law that would dictate to any officer or police administrator any specific duties to be taken during police related off-duty employment, police administrators have chosen to control off-duty employment through the use of written policies. Again these written policies vary from agency to agency but most all will dictate to it's officers how, when, where, how much an officer is allowed to work, and if the work is a police or non-police related job. This is done so that the off-duty employment can be performed as long as it does not interfere with the officer's primary responsibility, which is to serve their agencies and the public (Burton 1997, page 12).

While writing these policies administrators had to look at some of the following reasons for making and placing restrictions on police related off-duty employment. Generally there were three types of prohibitions that administrators placed on officers. One being any job that would pose a potential conflict of interest between the officer's full time duties and the duties that are to be performed at the off-duty employment.

Second being any off-duty employment that would pose a threat to the status or dignity of the police officer or the police agency as a professional occupation. And the last being any off-duty employment that would place any officer in an unacceptable risk of temporary or disabling injury that would limit the officer's return to his regular duty obligation (Reiss 1988, page 19).

Some basic descriptions of prohibited duty that would be a conflict of interest duty would be a process server, bill collector, any function that there could be the possibility of accessing police information files, or any type of work with a bail-bonding company. A description of a job that would pose a threat to the status or dignity of a police officer or agency is a place of employment that would sell an illegal or prohibited item, or a place where the officer has to specifically sell alcohol to a person. The third prohibited off-duty location would be a place or assignment that would have to be looked at on a case-by-case basis, such as an extremely dangerous traffic directing assignment. While most traffic assignment could be potentially dangerous, some are especially dangerous (Reiss 1988, pages 19, 20, 21 and 22).

Time limits on off-duty employment were also a great concern for police administrators when writing such policies. There are no set guidelines for administrators to follow, but most agencies do place a cap on the amount of time that an officer may spend performing off-duty employment (Reiss 1988, page 28). Some police administrators used literature from clinical research to assist in their determining a maximum number of hours that an officer can do both on and off-duty employment.

Tired police officers can have serious negative effects as fatigue can worsen an officer's mood and cause them to be irritable and short-tempered, thus jeopardizing their

relationships with their agency, the community and their individual families. Research has shown that seventeen (17) hours of sustained wakefulness decreased a persons physical and mental performance to that equivalent to a person with a .05 percent blood alcohol concentration, while a person with twenty-four (24) hours of sustained wakefulness reduced a persons physical and mental performance to that equivalent to a person with a .10 percent blood alcohol content (Race 2001, page 25). In another publication on police fatigue it is written that it is known that a person experiencing sleep deprivation will produce counterproductive behavior and will show signs of impulsiveness, aggression and have angry outburst (Anonymous 2002, page 6).

In the publication the Private Employment of Public Police, Albert Reiss wrote that there are three primary models in which police related off-duty employment is received and distributed by agencies, they are the Officer Contract Model, in which an individual officer seeks out his/her own off-duty employment then independently contracts with the employer regarding the type of work, rate of pay, etc.. The officer then obtains permission from the agency to work at that location or job. The Union Brokerage Model, where the officers are organized into a collective bargaining unit, and that unit brokers all deals and then distributes the jobs to the officers. The last model is the Department Contract Model, is when the agency contracts with employers for paid details, the agency then pays the officer from reimbursements by the employers (Reiss 1988, pages 9, 10 and 11). None of these models are set in stone and there are several variations to each model.

Once the policy is written and the off-duty employment is received an agency should assign a off-duty coordinator to handle off-duty permits or requests, compensation

information and the assignment of the officers. The off-duty coordinator is assigned the primary task to match employer demand with the volunteer officer supply. Ensuring equity in the assignment in the off-duty employment is another key role of the off-duty coordinator. There are several ways to assign the employment, like maintaining a running list of officers or have each officer fill out an application for consideration for off-duty employment (Reiss 1988 pages 40 and 41).

METHODOLOGY

There were several objectives that were set out to determine as a result of this Administrative Research Paper. The main objective was to conduct the necessary research in order to determine if the Comal County Sheriff's Office has an appropriate, defensible policy in regards to off-duty employment. If it is determined that the policy is in need of a change, then through this research will supply the necessary information needed to make the changes deemed appropriate.

Some of the other areas that will be examined are limits if any that are placed on the number of hours that should be allowed to be worked within a specific week. If there are any restrictions that should be considered on the locations to be worked, and who has the responsibility for filling the available police related off-duty positions. Also to be determined will be duties for an off-duty coordinator.

At this point the Comal County Sheriff's Office has a policy and this research will show that it does in fact need to have its policy rewritten. It will need to update the hours that it's officers are allowed to work during a work week. It will also show the importance of having a person to coordinate all of the police related off-duty employment.

There will be the examination of different written policies from law enforcement agencies in differing sizes from across the State of Texas. There will also be a survey that will be distributed to various law enforcement agencies in the State of Texas in order to gather information from those agencies regarding their off-duty employment. This survey will be distributed and collected from the attendees of the Law Enforcement Management Institute of Texas, Modules One and Two.

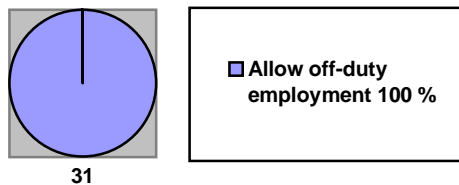
There will be research conducted through the review of written articles, periodicals, other documents, current State laws in regards to law enforcement officers working off-duty employment. This information will be obtained from the library at Sam Houston State University in Huntsville, Texas. Also there will be research conducted into any court decisions that may have been rendered relevant to this subject, this research will be conducted through the use of the internet by accessing legal web sites.

The questionnaires were distributed during Modules One and Two of the Law Enforcement Management Institute of Texas. They were distributed to thirty-one (31) separate agencies from the State of Texas, that vary in size, the smallest having ten (10) officers and the largest having twenty-eight hundred (2800) officers. Of the thirty-one (31) questionnaires that were distributed, thirty-one (31) questionnaires were returned, giving a return rate of one hundred (100) percent.

The information gathered during this research will be analyzed by comparing the information supplied by the agencies via the questionnaires to information that was obtained in the literature that was reviewed. The current state laws and legal decisions that have been rendered regarding this subject will also be analyzed to insure the legalities of performing police related off-duty employment.

FINDINGS

Based on the review of all of the literature and the examination of all of the questionnaires that were obtained supports the fact that almost all agencies perform some sort of off-duty employment. The extent to which public police are being employed through the use of private funds for police related off-duty employment may be a strong indicator of future policing (Vardalis 1992, page 210). After reviewing all thirty-one (31) questionnaires that were collected, all thirty-one (31) agencies, or one hundred (100) percent of the agencies surveyed, allowed their officers to engage in or participate in some form of off-duty employment.



The most important findings were the fact that persons had made inquiries to the State of Texas Attorney General for opinions as to whether police related off-duty employment was a legal act. In 1993, Attorney General Dan Morales issued opinion number DM-212, in which that opinion cleared the way for Police Officers and Sheriff's Deputies to serve as part-time security officers (Morales 1993, page 1125). The particular question that was posed in that inquiry was in regards to officers working for a public school function.

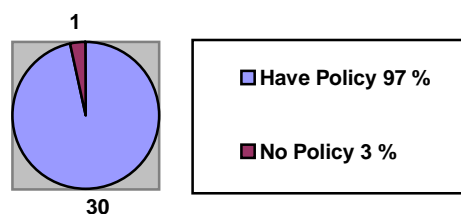
In 1994, a more specific question was posed to the Attorney Generals Office, and that question asked if any Police Officer or Sheriff's Deputy could perform any type of police related off-duty employment. The question was asked by Ms. Clema D. Sanders, the Executive Director of the Texas Board of Private Investigators and Private Securities Agency. There had been an "act" passed that had placed licensing requirements on persons performing security related jobs, and that particular agency was charges with enforcing the "act."

Former Attorney General Dan Morales issued opinion number DM-287 in response to that question, in which he indicated that the "act" does not apply to commissioned Police Officers and Sheriff's Deputies. Attorney General Morales went as far as obtaining the original transcripts from the debates regarding this bill during the Texas 64th Legislature in 1975. Attorney General Morales wrote in his opinion that the author of the bill number 431, then Representative Carl Parker answered questions in which he clarified that the exemption applied only to persons employed directly by the security recipient. "Q: How does this [House Bill 431] affect the policeman who, in off-duty hours, serves as a guard at a 7-Eleven, or grocery store, or whatever it may be? A: If he's just working on his own and hired to do security work for one employer and he doesn't employ people under him, it doesn't touch him top, side, or bottom; he is specifically exempted by language that was drafted in conjunction with me and the representatives of the Texas Municipal Police Association" (Morales 1994, page 1530).

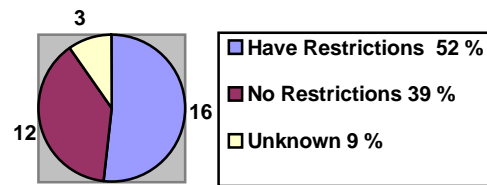
The opinions rendered by Former Texas Attorney General Dan Morales regarding this issue are clear and make it a point to indicate that there is no law being violated when a Police Officer, Sheriff's Deputy or any other full time Peace Officer identified in the

Texas Code of Criminal Procedure engages in police related off-duty employment. However, based on some current events that have occurred throughout the State of Texas, the issue of police related off-duty employment has again come under scrutiny, and Attorney's from the State of Texas Ethics Commission are looking into the issue of police related off-duty employment to determine if the practice is a violation of the Penal Code, Section 36.07. After discussing the issue with Attorney Robert Mannis of the Texas Ethics Commission, it has been determined to this point that the practice of Officers working in police related off-duty employment has not been specifically identified as being an illegal practice. Robert Mannis also stated that there have been no formal opinions rendered by the Ethics Commission regarding this issue. There were also no formal opinions located that may have been issued by the Attorney Generals Office regarding this particular question.

The Comal County Sheriff's Office has a current Policy regarding off-duty employment. However, the policy does not address all of the issues that may be raised in regards to this issue. Of the thirty-one (31) agencies surveyed, the question was asked, Does your agency have a written policy regarding off-duty employment? Thirty (30) of the agencies surveyed replied that they do have a written policy regarding off-duty employment. Only one (1) agency surveyed did not have a written policy regarding off-duty employment.



Currently the Comal County Sheriff's Office Policy regarding off-duty employment restricts its officers to twenty (20) hours of off-duty employment in any week, beginning and ending on midnight Friday. This hour restriction is in place whether an officer is working, on his days off or on vacation. Of the thirty-one (31) agencies surveyed, sixteen (16) agencies responded that they have restrictions placed on the number of hours that they can work in off-duty employment. Twelve (12) of the agencies responded that there are no restrictions to the number of hours to be worked in off-duty employment. There were three (3) agencies that it was unknown or unclear if there were restrictions placed on the number of hours that could be worked in off-duty employment.



After having reviewed literature and information on the primary models in which police related off-duty employment is obtained and distributed, the models that would best suit the Comal County Sheriff's Office would be a variation of the Union Brokerage Model and the Department Contract Model. These models and some variations to the models are described in the publication, *Private Employment of Public Police* (Reiss 1988). It was apparent that even though Robert Reiss wrote in his book and gave descriptions of the three off-duty employment models, information revealed in the questionnaires indicate that all agencies use a variation of the three models, and not one agency surveyed used the exact model.

CONCLUSIONS

The purpose of this administrative research paper was to examine police related off-duty employment in law enforcement in the State of Texas. This research will also look in to the how the Comal County Sheriff's Office currently allows it's officers to perform off-duty employment, the number of hours that are allowed to be worked within a specific work week. This research will also address the way that the police related off-duty employment is obtained and distributed.

Research shows that the Comal County Sheriff's Office policy regarding off-duty employment does in fact need to be updated and rewritten. The updated policy will need to update the hours that officers are allowed to work during a specified work week. The policy will also need to designate one (1) person to coordinate all of the police related off-duty employment.

Based on the review of the literature gathered and the examination of all of the questionnaires that were obtained, supports the fact that almost all agencies perform some form of off-duty employment and the Comal County Sheriff's Office should continue this practice. The Comal County Sheriff's Office Policy currently restricts officers to twenty (20) hours of off-duty employment in any week, regardless of the officers status, i.e. Days off, vacation, etc.. Based on the research and the survey of other agencies, the data supports the fact that the policy needs to be changed in this area to allow a greater number of hours to be worked, to benefit both the agency and the officer, but not so much as to effect the moral or the officers health and safety.

Research that had been reviewed on the models in which police related off-duty employment is obtained and distributed also indicated an area in which a policy change is warranted. The models that would best suit the Comal County Sheriff's Office would be a variation of the Union Brokerage Model and the Department Contract Model, and one (1) person should be charged with the administration of the off-duty employment.

Other important information that was found during this research could be changing with a determination by the State Ethics Commission or the Texas Attorney General as to an interpretation of the current law that has been questioned in regards to police related off-duty employment. If the determination is made by one (1) or both of these agencies that the practice of officers working in police related off-duty employment is a violation of the Texas Penal Code, Section 36.07, this could have a detrimental impact on law enforcement officers of the Comal County Sheriff's Office as well as officers from across the State of Texas that use proceeds from police related off-duty employment to supplement their incomes. The stoppage of officers performing police related off-duty functions would increase calls for service for agencies and would stop a financial benefit to officers.

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