

TELEMASP BULLETIN

TEXAS LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS PROGRAM

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Employment of Off-Duty Law Enforcement Officers

Introduction

A New York City police officer was fired approximately 100 years ago when he sold cigars while off-duty. As the co-owner of a cigar factory, he explained that he was simply taking care of his business interests. His supervisors, however, felt that if he was involved in personal business interests, he could not devote full attention to the agency and the public. In perhaps one of the earliest wrongful termination suits brought by a peace officer, the court sided with the agency (Goats, Engals and Eichenberg 1989). This attitude towards employment by off-duty law enforcement officers has changed considerably over the span of a century. In many communities, off-duty police officers employed as private security officers has become a useful addition to law enforcement operations. Off-duty security officers can provide extra protection to businesses located in high crime areas without straining public budgets. Additionally, off-duty security jobs are important to the incomes of many peace officers (Reiss 1988).

Despite the growing prevalence and importance of outside employment by off-duty peace officers, little information is available on the topic. Most

studies have concentrated on actual or perceived civil liabilities arising from public officers acting on behalf of private corporations in enforcing the law and providing protection (see for example, Trimble 1993 and Garner 1991). The purpose of this bulletin is to assess what is occurring in Texas law enforcement agencies regarding off-duty employment of sworn personnel. Questionnaires were sent to a sample chosen from all public law enforcement agencies in Texas. Forty agencies responded but one questionnaire was incomplete and thus not usable. This resulted in questionnaires from 39 agencies, consisting of 32 municipal police departments, six sheriffs' departments and one state agency. This bulletin is applicable to the reporting agencies and may or may not be reflective of practices and policies in other Texas agencies.

The Scope of Off-Duty Employment

Of the 39 responding agencies, 100 percent permitted their officers to work off-duty jobs, security-related or otherwise. Of the officers in these responding agencies, an average of 8 percent held non-security-related employment, and an average

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of 64 percent held security-related employment while off-duty. The percentages varied between agencies, with one agency reporting only 2 percent and one reporting a high of 18 percent of its officers engaged in non-security-related off-duty employment. Security-related off-duty employment ranged from a low of 40 percent to a high of 90 percent. The sheriffs' departments reported slightly higher overall levels of off-duty employment than the municipal agencies (see Table 1).

Table 1

Security Versus Non-Security Off-Duty Employment

Type of agency	% Security related	% Non-security related
Sheriff's department	71	10
Municipal agency	58	7
Average overall	64	8

Policies and Restrictions

All but one municipal police department stated that they had written policies governing off-duty employment. Agencies were queried as to specific policies regarding off-duty employment of their officers as private security personnel. Most agencies placed restrictions on the type of location where their off-duty officers could work. As shown in Table 2, most agencies did not permit off-duty officers to work in establishments where alcoholic beverages are sold or served but did permit officers to work in other types of establishments.

Agencies were also asked to estimate the percentage of their officers who worked security in each type of location. As shown in Table 3, few agencies reported a high percentage of officers

working in a specific type of off-duty assignment. This would seem to indicate that officers work in a variety of locations, without one particular location more highly favored over another.

Table 2

Location Restrictions for Off-Duty Private Security Employment

Location	Yes	No	Missing or N/A
Department stores	39	0	0
Apartment complexes	39	0	0
Shopping malls	38	1	0
Grocery stores	37	1	1
Liquor stores	11	27	1
Night clubs	10	29	0
Other	26	2	11

Table 3

Number of Agencies Reporting Percentage of Officers Working Off-Duty Security Positions

Location	0-25%	26-50%	51-75%	76-100%
Apartment complexes	29	7	0	0
Department stores	28	6	0	1
Grocery stores	28	2	3	0
Shopping malls	26	5	2	1
Liquor stores	17	1	0	0
Night clubs	15	2	0	0
Other	12	13	5	1

Agencies were asked if their officers were restricted to the number of hours per week in which they were permitted to work extra jobs. Of the 36 agencies who responded to this question, 18 reported no restrictions and the remaining reported restrictions ranging from 20 to 40 hours per week. Eight agencies set 20 hours per week as the maximum, three set the maximum at 24 hours per week, and the remaining seven agencies set maximum hours between 30 to 40 per week (see Table 4).

Table 4
Number of Agencies Restricting Off-Duty Employment Hours

Type of agency	No restrictions	20 hrs. per wk.	24 hrs. per wk.	30-40 hrs. per wk.
Municipal	15	6	3	5
Sheriff's department	2	2	0	2
State	1	0	0	0
Total	18	8	3	18

All agencies reported that if the need arose while working off-duty, their officers should identify themselves as law enforcement rather than security officers. Thirty-two agencies stated that such identification was required by departmental policy, while five stated that such identification was not required. All agencies permitted off-duty officers to exercise their power of arrest without the presence of an on-duty officer (one agency did not respond).

Thirty-six out of the 39 reporting agencies permitted their officers to wear departmental uniforms while employed in off-duty security positions. Of the agencies who permitted the wearing of departmental uniforms, 28 also permitted the carrying of a departmentally-issued weapon. Twenty-one

agencies permitted the use of agency vehicles while traveling to and from private security employment while 18 did not (see Table 5).

Table 5
Use of Departmental Equipment

Type of agency	Uniform		Weapon		Vehicle	
	Yes	No	Yes	No	Yes	No
Municipal	30	2	25	5	18	14
Sheriff's department	6	0	3	2	3	3
State	0	1	0	1	0	1
Total	36	3	28	8	21	18

Contracts and Wages

About one-half of the agencies (19) did not play a role in contracting private security positions for their officers. As shown in Table 6, seven agencies reported that all private security positions were contracted through the department while 13 agencies reported that the agency took responsibility for contracting some private security positions.

Table 6
Source of Contracts Through the Agency

Type of agency	None	Some	All
Municipal	13	12	7
Sheriff's department	5	1	0
State	1	0	0
Total	19	13	7

The vast majority (31) reported that no private security positions were contracted through a law enforcement association or union, while five agencies stated that some positions were contracted through such an organization. In one municipal agency, all private security positions were contracted through the officer's organization (see Table 7).

Table 7

Type of agency	Source of Contracts Through An Association or Union		
	None	Some	All
Municipal	27	4	1
Sheriff's department*	4	1	0
Total	31	5	1

*One missing

Agencies overwhelming (27 out of 33 responses) reported that their officers were required to obtain agency permission before accepting off-duty employment that offered reduced rent, paid utilities or other non-monetary compensation. This requirement may be based on the belief that such compensation may represent a gratuity rather than off-duty employment. If a service is compensated by free rent, it is less problematic from an ethical or managerial standpoint than if regarded as a gratuity. Thus, heightened scrutiny by agency management is appropriate. Six departments required officers to obtain agency permission prior to accepting any type of off-duty employment. Only three agencies required that officers report the amount of their off-duty earnings to the department, 34 had no such requirement, and one did not respond. There was a variety of responses regarding who determined the amount of money off-duty officers were paid. As reported in Table 8, fewer than one-half of the agencies left the amount of

payment solely up to the individual officer. The responses indicate that in most cases, an off-duty officer's salary is determined by agreement between two or more of the parties involved.

Table 8

Who Determines the Amount of Money Off-Duty Officers are Paid?

The department	18
Private employers	14
The officer only	13
Association or union	6
Other	3

The average wage paid to off-duty officers was \$15.47 an hour; however, there was much variation between agencies. The hourly wage ranged from a low of \$12.00 per hour to a high of \$25.00 per hour, with a median rate of \$18.50 per hour and a modal rate of \$15.00 per hour. Twenty-four agencies stated that their reported rate represented a minimum standard set by someone other than the individual officer.

In a set of questions related to employment of off-duty officers as security personnel, agencies were asked whether they utilized officers whose salaries were subsidized in whole or in part by a citizen's group, a community, or a subdivision (contractual law enforcement services). Of the 38 agencies responding to this question, four sheriffs' departments and one municipal agency reported that they did. Two of the four sheriffs' departments stated that these positions were currently filled by officers on an overtime basis. The municipal agency and two remaining sheriffs' departments stated that these positions were filled with full-time officers hired specifically for that purpose.

AMARILLO POLICE DEPARTMENT RULES AND REGULATIONS—OUTSIDE EMPLOYMENT

Prior to engaging in any outside business or employment, or volunteer employment, the officer or civilian employee shall submit a request for permission do so through the proper channels to the office of the chief of police. An APD form 70, Outside Employment Request, must be completed and approved prior to beginning outside employment.

After the request for outside employment is approved, the officer shall enter (or cause to have entered) the time and location of the outside employment into the computer Mainframe. This is accessed via the Miscellaneous Menu under option #17, ENTER/CHANGE PART TIME JOBS. This information can then be accessed by dispatch personnel in case of an emergency. Officers with outside employment are responsible for keeping their listing current, including deleting outside information.

Newly hired employees who are still on probation are not allowed to have outside employment, attend college, or participate in routine special assignments requiring them to work alone until they have completed the FTO program. In emergency situations such as natural disasters, new officers may be utilized, but they may not be assigned to duties in any case where they will not be under direct supervision of a supervisor or training officer. Officers and civilian employees shall not participate in outside employment where a conflict of interest may arise. No officer or civilian employee of the Amarillo Police Department shall accept employment with, or work in any business whose primary source of revenue, or primary service is the sale or serving, transportation, delivery, or manufacture of alcoholic beverages. These businesses would specifically include bars, package stores, and wholesale liquor, beer, and wine distributors.

Requests for outside employment or business activity will not be granted under the following conditions: when the duty would be incompatible or inconsistent with the performance of departmental police duties or interfere with their position as a police officer; when the duty or activity would be undignified or would tend to lower the prestige of the department; when the hours of such employment would impair the officer's ability to efficiently perform departmental duties; when the employment would be of such a nature or location that would make the officer unavailable for emergency call-back duty. Although the general requirements as to procedure outlined in these rules are not applicable to suspended officers, such officers are expressly prohibited from engaging in any employment or activity that would be incompatible with their status in the department or inconsistent with their return to duty as a police officer.

When an officer is assigned to light duty status for any injury or illness and desires to work a part time job off-duty, the following procedure will be followed: The officer shall submit in writing through the chain of command a request to work part time while on light duty. This request will be required even in those cases where prior permission has been granted to work a part time job. Such requests shall be sent up and returned to the officer with the appropriate answer before any work is performed.

Such special requests shall include, but not be limited to, place of work, activity to be performed, if the uniform is to be worn, if arrest procedures are likely to be necessary, and any other information that may be requested by the chain of command to, and including the chief of police.

Subject: Officers working off duty for an apartment complex.

1. The off-duty officer is prohibited from doing the following when working for an apartment complex as the security officer:
 - A. Handling complaints after consuming alcoholic beverages.
 - B. Handling tenant landlord disputes which are of a civil nature.
 - C. Collecting rent, or debts, or bad checks, or evicting tenants.
 - D. Going to the apartments while on duty and handling calls at the apartments unless the calls are assigned by the dispatcher.
2. The off-duty officer can do the following when working for an apartment complex as the security officer:
 - A. Patrol the complex.
 - B. Take action to stop or prevent criminal activity that falls within the normal duties of a police officer.
3. The purpose of this rule is not to prevent the off-duty officer from working security at an apartment complex. The purpose of this rule is to limit the activities of the officer to those areas in which the officer is trained.

The designated point of coordination or administration within the agency to oversee extra duty employment is the office of the chief of police. The process is as follows:

1. A company or individual calls the chief's office to request an officer for extra duty employment.
2. They must give the type of business, hours of work, and the function. The officers are paid directly by the business.
3. The chief's office personnel advises the company or individual the flat rate per hour. The type of clothing, civilian or uniform, is determined. If the duty involves a party, the individual is asked if alcohol is served. Normally if alcohol is served, officers will not be allowed to work.
4. The extra duty employment job list of officers is created by requests from the officers.
5. The APD-70 is filled out on the jobs the officers want to work.
6. The chief's office personnel contacts officers to advise them of extra duty jobs.

Civil Liability

Of the 39 agencies, 23 reported that they had never been named in a bonified law suit* resulting from an officer's enforcement of state law while employed in a private security position. Two agencies had been named in two civil suits, one agency was named in three, and one agency had been named in 12 such actions. The remaining agencies did not respond. One agency stated that in one case, the officer was found to be at fault. None reported that the agency itself had ever been found to be at fault; however, one-half of the reporting agencies did not respond to the questions regarding assignment of civil liability.

Agencies were queried as to their willingness to defend officers in lawsuits resulting from an officer's actions as a private security officer. Of the 37 agencies that responded to this question, four stated that they would defend an officer's actions in any type of civil case. Nine agencies stated that they would defend an officer only if the complaint resulted from an officer's enforcement of state law. Twenty-four agencies stated that they would defend an officer only if the complaint was the result of an officer's enforcement of state law and the officer was clearly acting within departmental guidelines at the time.

Summary and Conclusion

In summary, it appears that employment of off-duty law enforcement officers has become a standard feature of the police profession. Although salaries of law enforcement officers have increased over the past decade, due to inflation, many officers work off-duty to provide "extras" for themselves and their families. Some must work off-duty jobs in order to maintain a reasonable middle-class standard of living.

* For the purposes of this research, a "bonified lawsuit" is defined as one which was either litigated or settled by the department.

It is interesting to note that sheriffs' departments reported a higher percentage of their officers working off-duty than municipal agencies. This applied to both security and non-security related employment. In part, this may be due to the differences in salary ranges between county and municipal agencies. Typically, deputies in sheriff's departments are not paid as well as police officers in municipal agencies. However, other factors should also be considered. For example, deputies may have greater access to off-duty employment or their hours may be more flexible.

Most agencies regulate the location of off-duty employment, use of agency property, number of hours worked, wages, and off-duty job assignments. Despite concerns regarding agency liability for actions of off-duty officers, it appears that liability assessment to the agency is unlikely. It is suggested that actual agency responsibility for the actions of officers employed off-duty should be a topic of further research.

The issue of officer salaries and off-duty employment is critical to the future of the profession. Most likely, most officers work other jobs as a matter of economic necessity rather than for pleasure. Few other professions offer salaries so low that their employees must seek outside work to "make ends meet" or to purchase "extras" that persons in other occupations take for granted. Like the New York officer who was selling cigars, modern officers are also hard-pressed to balance the needs of their agency, the public, their families, and their off-duty job. Economics is an added stressor in an already stressful occupation.

In conclusion, outside employment of off-duty police officers will remain a viable means for officers to supplement their income and provide a heightened degree of security.

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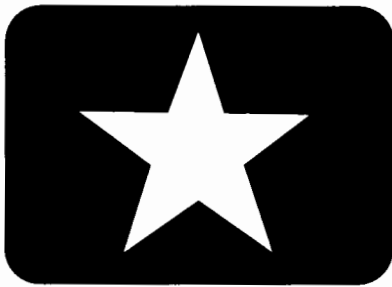
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