

## OPINION NO. 127

The director of an agency requested an advisory opinion relating to the outside employment of enforcement officers by a private employer to perform duties related to their state function. The outside employment would occur during off-duty hours and the employee would not be expected to use any state vehicle or other state equipment in the performance of the duties for the private employer.

These enforcement officers are civil service employees, but because of the nature of their responsibilities, they must be flexible in their working hours. Work schedules are established approximately two weeks in advance by the department. Under such work schedules, the enforcement officers may be required to work on Saturdays, Sundays, or nights. Even when they are off duty, these enforcement officers have the authority and duty to arrest or cite individuals who violate the state laws and regulations which they enforce. If they do so, they report the transaction to the department and may claim overtime for the work performed.

These officers enforce certain state laws and regulations which apply throughout the State. However, these enforcement officers are generally limited in that they usually can only make arrests on public property unless they have authorization by a private owner to enter upon the private land. These enforcement officers, in the normal course of their duties, do not patrol private areas. Therefore, when the type of activity which is regulated by state law occurs on private land, the private landholder must assume the responsibility of patrolling the property.

We assumed, in this instance, that the owner of private land who permits this particular activity to occur on his property is law abiding and has a similar interest in upholding the state laws and regulations relating to this activity. The private employer, in this instance, had requested the services of a state enforcement officer to assure that individuals permitted on his land would observe not only his private rules and regulations, but the laws and regulations of the State of Hawaii as well. From a broad perspective, therefore, this type of outside employment by these state enforcement officers was advantageous to the State, for it would have assured the presence of these enforcement officers on the premises of the private landholder when activity of this type was most likely to occur.

The main ethics consideration here was that in the event the off-duty enforcement officer made an arrest or citation, he could, under state laws and regulations, claim compensation for the performance of his official duty. In doing so, he would be twice compensated for performing official responsibilities, a practice which we have consistently discouraged in the past. We have stated that compensation by both the State and a private employer for performance of official duty is a violation of HRS, §84-13, relating to the use of official position to obtain unwarranted treatment. Here, the enforcement officer could be using the authority of his office to obtain compensation both from his private employer and his public employer. Therefore, when an off-duty enforcement officer is hired by a private individual to perform responsibilities which overlap his state responsibilities, he should not be permitted to claim overtime also in cases where arrests are made.

We recommended that the department establish a procedure which would require the reporting of all outside employment involving similar or overlapping responsibilities. We called the department's attention to the procedure used by the Police Department, City and County of Honolulu, where special-duty assignments are controlled and assigned by the department. The department also establishes the pay rate and other matters relating to employee benefits when an

officer is serving on a special assignment and a special-duty policeman is not permitted to claim overtime in the event he makes an arrest while on special duty.

We indicated that the procedure could be adapted to meet the requirements of this department and we expressed confidence that a practical procedure could be developed which would be consistent with the ethical considerations stated above.

Accordingly, we advised that these state enforcement officers could accept outside related employment if the problem of overtime were resolved and if the following conditions were met:

1. The private rules of the private employer did not conflict with state laws and the state laws were enforced at all times.
2. The employee did not use his influence as a state officer to obtain the employment.
3. The employee did not use state time, facilities, or equipment; and
4. The department had determined that such outside employment would not interfere with the needs of the department or affect the quality of the work performed.

Dated: Honolulu, Hawaii, February 15, 1972.

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