

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 149 (AMENDED)**

The question is whether the proposed outside employment of a detective in the Honolulu Police Department [HPD] as a polygraph examiner would conflict with his official duties.

The Ethics Commission [Commission] understands the facts to be as follows:

1. The detective was sent to school by the HPD to learn to be a polygraph examiner.
2. At some time in the future the detective will probably be assigned to the Polygraph Section but, at the present time, he is assigned to another section.
3. The detective requested approval to start a business which would use his knowledge gained at the school, but the request was denied.
4. The detective requested in a memorandum reconsideration of that denial. In the memorandum he indicated that he would handle pre-employment, "periodic," and "specific" tests as an examiner. He indicated that the "periodics" are periodic tests of company employees designed to discourage thefts and that "specifics" are tests given to identify the person responsible, after a theft has occurred. With regard to pre-employment tests, he stated: "If, during pre-employment tests, the subject reveals a commission of a serious crime to the examiner, this information will definitely be acted upon and reported to the proper agency." With regard to periodics and specifics, he stated that if a crime is uncovered (periodics) or if the person responsible for a theft is uncovered (specifics), the information obtained by the examiner will be given to the company official with a recommendation that the authorities be notified. He adds that the final decision on whether or not the company would wish to pursue the incident or file a complaint would be made by the company officials.
5. Pursuant to the SHOPO Agreement, a denial of outside employment is appealable to the Commission, so the detective filed a request for an advisory opinion.
6. The detective later filed an addendum to his original request on the advice of his attorney. He stated in the addendum that he would only handle pre-employment and periodic tests and that he would not handle tests at the request of a private attorney or a private investigator, or tests of any individual suspected or accused of a crime. He further stated that he wished to clarify that if he became aware during his outside employment that a

crime had been committed, he would act in accordance with the same standards as apply to any police officer witnessing a crime when off-duty.

7. HPD has the following rules and procedures which are relevant to consideration of this matter:

a. The Rules and Regulations of the Honolulu Police Department include under "Professional Conduct and Responsibilities" the regulation that "officers shall at all times take appropriate action to identify criminal offenders and criminal activity and, where appropriate, apprehend offenders and participate in subsequent court proceedings."

b. HPD General Order on "Reports - Procedure" states that:

Any information, regardless of the source, the truth or accuracy, that may come into possession of any officer or employee with reference to any violation, accident, occurrence, or investigation being made, shall be reported through proper channels.

The standards of conduct found in Article XI of the Revised Charter of Honolulu 1973 (1983 Ed.) state in Section 11-102 that:

No elected or appointed officer or employee shall:

....

2. Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

HPD denied the detective's request for outside employment on the basis that the proposed employment was incompatible with the proper discharge of his official duties and may tend to impair his independence of judgment in the performance of his official duties, and the Commission concurs.

In reaching this decision, the Commission is bound by the existing Rules and Regulations of the Honolulu Police Department in determining what constitutes the detective's official duties.

Pursuant to those Rules and Regulations, a police officer has an obligation both on and off duty to enforce and report criminal activity. If he came across evidence of crimes in the course of conducting his polygraph business, he would be obligated as a police officer to report those crimes to HPD in accordance with the reports procedure cited previously. The client/employer for whom he was performing the polygraph tests may not wish to report the matter to the author-

ities. This would create a conflict that might impair his independence of judgment in the performance of his official duties. He would be torn between the wishes of the client/employer and his obligations as a police officer. Even though he indicated in his addendum that he would report crimes he became aware of during his outside employment, the conflict still exists. As a detective, he might be assigned to investigate cases involving clients or potential clients of his business. Such a situation might well impair his independence of judgment in the discharge of his official duties. In addition, his effectiveness as a polygraph examiner could be undermined if persons to be tested knew that any evidence of crimes would be turned over to HPD. Knowing that his effectiveness would be diminished would further impair his independence of judgment.

As a police officer, he has access to confidential information not available to the general public or other examiners. This presents another conflict of interest because confidential information could be very useful to the officer in his outside employment as an examiner. As indicated previously, RCH Section 11-102.2 prohibits the disclosure of confidential information gained by reason of employment for the personal gain of anyone. For the reasons stated above, the Commission upholds the decision of HPD to deny the outside employment of the police officer as a polygraph examiner.

Dated: November 26, 1985

GILBERT A. GIMA  
Chair, Ethics Commission