

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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Advisory Opinion No. 2002-1

I. Summary

Volunteers are not necessarily subject to the city ethics laws, which apply to city officers and employees. However, under state law, a volunteer is required to comply with the guidelines and policies of the agency which he or she serves. When those policies or guidelines incorporate the city ethics laws, the volunteer must comply with the city's standards of conduct.

II. Facts

On July 23, 2001, Honolulu Police Department (HPD) Chief Lee Donohue requested an opinion from the Ethics Commission (Commission) whether a reserve police officer, Mr. Vladimir Devens, may provide legal representation to HPD employees on behalf of the State of Hawaii Organization of Police Officers (SHOPO) before city agencies and/or against the interests of the city. Mr. Devens is also an attorney. He had represented an HPD officer who had been terminated by HPD. Representation of his client placed Mr. Devens in the position of appearing before HPD to advocate his client's interest in remaining employed and representing the client against the city's interest in terminating the officer.

A reserve police officer serves for no pay, but receives reimbursement for a automobile fuel expended in the service of HPD and is covered under the city's workers compensation and disabilities programs. The job description for a reserve officer is similar to that of a regular officer. Like a regular officer, a reserve officer must follow HPD's Standards of Conduct, is issued and carries a firearm, carries a badge, wears the standard HPD uniform, possesses and uses all the authority of a police officer and receives supervision from HPD. A reserve officer is limited in the number of hours available to work and there is no promotion available. There are about 75 reserve officers at HPD.

At the April 23, 2002 Commission meeting, Mr. Devens put forth several arguments supporting his position that he is not in violation of the city ethics laws in representing SHOPO

members. Representatives of HPD were present and offered comments at the hearing.

II. Questions presented

The first issue to be resolved is whether a reserve police officer is a volunteer, not an employee of the city, so that the city ethics laws do not apply. Second, if the reserve officer is not an employee of the city, do the HPD Standards of Conduct and other HPD policies apply to limit the reserve officer's employment outside HPD?

III. Analysis

A. Whether reserve police officers are volunteers or “employees” or “officers” of the city

Mr. Devens' basic argument is that the city ethics laws apply only to officers and employees of the city as those terms are defined in §13-101, Revised Charter of Honolulu (RCH).¹ He notes that reserve police officers are not employees but only volunteers, and that volunteers are not deemed employees of the city when acting for an agency in their capacity as volunteers. See, § 2-27.5(c), Revised Ordinances of Honolulu (ROH). The Commission agrees with Mr. Devens that volunteers are not officers or employees of the city.

B. Whether Mr. Devens is prohibited from representing private interests against the interests of the city or before a city agency

¹ RCH § 13-101.3 defines an “employee” as “. . . any person, except an officer, employed by the city or any agency thereof, but the term shall not include an independent contractor.” RCH § 13-103.4 states that an “officer” includes:

- (a) Members of the Council, the mayor, the prosecuting attorney, and the managing director.
- (b) Any person appointed as an administrative head of any agency of the city or as a member of any board or commission.
- (c) Any person appointed by a board or commission as the administrative head of the agency.
- (d) The first deputy, any other deputy, or a division chief appointed by the administrative head of any agency of the city.
- (e) Deputies of the corporation counsel and the prosecuting attorney.

The relevant ethics law is RCH § 11-102, which requires that:

No elected or appointed officer or employee shall:

- (e) Represent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any city agency;

ROH § 3-8.2(c) similarly prohibits city officers and employees from appearing before any city agency on behalf of private interests.

Although we agree with Mr. Devens that volunteers are not officers or employees of the city, our analysis whether prohibitions stated in RCH § 11-102(e) and ROH § 3-8.2(c) apply to Mr. Devens does not end there. We must determine if any other law would require the application of the specific ethics laws at issue in this case. §90-3(c)(3), Hawai'i Revised Statutes (HRS), requires a volunteer to "[f]ollow the guidelines and policies established by the agency."² Therefore, as a reserve officer, Mr. Devens must abide by HPD's Standards of Conduct and other policies. We next examine those policies.

HPD General Order (GO) No. 86-18 (July 8, 1986), entitled "Reserve Officer Program," at Article V, A,1, mandates a reserve officer to follow HPD's Standards of Conduct while on- and off-duty. HPD's Standards of Conduct, at Article VII, C, 2, in turn, require that "[o]fficers and civilian employees shall observe and obey all laws and ordinances. . . ." Reading these orders together, without any other relevant policies, a reserve police officer must obey the city ethics laws.

At the hearing on the matter, Mr. Devens submitted HPD GO No. 86-15³, entitled "Outside Employment." This policy restricts certain types of employment for regular police officers, including employment that violates the HPD Standards of Conduct. *Id.* at Article V, B. Critical to the decision in this case, however, GO No. 86-15 exempts reserve police officers from the restrictions on outside employment. *Id.* at Article XI.

Based on GO No. 86-15, we conclude that reserve police officers are expressly exempt by from the employment restrictions placed on regular police officers and any similar restrictions imposed by HPD's Standards of Conduct. Therefore, the HPD Standards of Conduct cannot be used to limit Mr. Devens' employment. In other words, HRS §90-3(c)(3) requires that volunteers follow departmental policies and HPD's own policies exempt a reserve officer from the limits on outside employment stated in the HPD policies. The HPD policies that limit employment of

² This section applies to both state and county agencies. HRS § 90-1.

³ GO No. 86-15 has renumbered and is now HPD Human Resources and Training Policy No. 3.19 (March 29, 2002).

regular police officers based on the Charter and ordinance do not apply to reserve officers. As a result, Mr. Devens is not required to comply with the prohibitions against representing private interests against the interests of the city or before city agencies contained in RCH §11-102(e) and ROH § 3-8.2(c).

C. What ethics laws do apply to reserve police officers?

We have stated that HPD's own policies exempt reserve police officers from the restrictions on outside employment, including RCH § 11-102(e) and ROH § 3-8.2(c). The rationale behind not overly restricting a volunteer's employment options is understandable because volunteers should not be unduly restrained from business and financial activities their chosen vocations. On the other hand, we believe that to foster public trust and avoid an ethics double standard between regular and reserve officers, reserve police officers should follow all other ethics laws. Therefore, we recommend to HPD that it review its policies pertaining to reserve officers to ensure that there are no unintentional exemptions from the city ethics laws for reserve officers.

To illustrate this point, we pose a worst case scenario, but one that could be argued under HPD policies as currently written. GO No. 86-15 reads, at Article V, A:

Outside employment must not be inconsistent or incompatible with the employee's duties and responsibilities with the department, and must not interfere with their proper discharge.

Does the fact that GO No. 86-15 exempts reserve officers from the outside employment restrictions mean that a reserve officer could have outside employment that is inconsistent or incompatible with his or her HPD duties? Could a reserve officer who is also an attorney represent criminal defendants even if HPD considers such representation inconsistent or incompatible with a reserve officer's duties to HPD and the public? HPD may want to clarify its policies regarding what ethics laws apply to reserve officers, especially the exemptions in the employment area.

IV. Conclusion

For the foregoing reasons, we advise that Mr. Devens does not violate the city ethics laws when he represents members of HPD in employment matters where he appears before a city agency or in proceedings against the interests of the city.

Dated: August 27, 2002

/S/
ROBIN DAVID LIU, Chairperson
Ethics Commission