

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 121

The question is whether or not a police officer may conduct a business as a locksmith [locksmith business] during his off-duty hours.

The Ethics Commission's [Commission's] response is negative.

The Commission considers the following facts, obtained from the officer's testimony, to be germane to the applicable standard of conduct provisions found in the Revised Charter of Honolulu 1973 (1979 Supp.) [RCH], and the Revised Ordinances of Honolulu, 1978, as amended [ROH], and to the discussion, conclusions, and recommendation herein:

1. The police officer is a member of the X Division of the Honolulu Police Department, City and County of Honolulu [Police Department]. He is a supervisor assigned to Section Y of X Division. As a supervisor, he has Division members who are his subordinates and who are assigned to Section Y.
2. One of the officer's primary duties is to supervise the initial investigation of any criminal activity in his sector. To assist him in carrying out this function, he has access to crime analysis reports which statistically identify areas with a high incidence of crime in his sector. Also, as a field supervisor, he has a duty to issue traffic citations to drivers who have violated traffic laws or to arrest any person who has committed a crime in his presence.
3. The officer submitted a request to the Chief of Police to be a locksmith during his off-duty hours. This request was denied by the Chief of Police on grounds that such pursuit would be incompatible with his duties as a police officer. Based on the statements made by representatives of the Police Department, the reason is that any product he uses as a locksmith would be an endorsement of the product by the Police Department because he is a police officer. Also, a homeowner or businessman who has been a victim of a burglar may ask recommendations, from the supervising police officer at the scene of the crime, about how to prevent future burglaries. He, more often than not, is involved in such situations and would likely recommend installation of security devices by his business. The representatives stated that such endorsement or recommendation of a specific business is against the policy of the Police Department.
4. The officer testified that if he is permitted to be a locksmith, he plans to be listed in the Yellow Pages as a locksmith doing business as ABC Company. Initially, he plans to do one aspect of the locksmith business. This aspect is to move or rear-range the pins in a

lock when a homeowner either loses or misplaces a key for his home or desires a change in locks. Another service he hopes to render is to remove and repair car door locks. Subsequently, he intends to expand his business to include employees who would work with the public, while he stays in the background and manages the business.

The Commission is not impugning the officer's integrity or character, nor that of any other police officer in the Police Department, with the illustrations and discussion herein. The Commission's conclusion is bottomed on the rule of law in 63 Am.Jur .2d, *Public Officers and Employees* Sec. 281, which states:

It is generally held that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position which will subject him to conflicting duties or expose him to the temptation of acting in a manner other than in the best interests of the public. [At 794]

The basic issue in his case is whether the officer's locksmith business is incompatible with his official duties as a police officer. The Commission is of the opinion that it is incompatible. As such, Section 11-102.3, RCH, relating to incompatibility of a business or financial interest in relation to his official duties, bears examination. That section provides that no officer or employee shall:

[E]ngage 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.

An examination of the cited provision indicates that the officer may not have a business or financial interest which is incompatible with his duties so that his judgment may be impaired or cause him to improperly carry out his duties as a police officer.

The Commission believes that if the officer is allowed to do business as a locksmith, it is likely there will be situations in which he may not issue a traffic citation for violation of traffic regulations or arrest a customer who has committed a crime in his presence. The Commission submits two hypothetical situations to support the foregoing statement:

1. The officer notices a car going through an intersection when the traffic light is red. He pursues the driver and stops him. He then recognizes "X" as the driver. He is an executive vice-president of a hotel. He knows that he has "X's" consultant contract on his desk for his signature. The consultant contract is a contract between him and the hotel to replace all of the locks and keys for the doors of its guest rooms. The contract is for the sum of \$10,000.00. "X" knows that the police officer is the owner of the locksmith business. He met him at the time he was negotiating for the contract. Does he issue a traffic citation and lose a lucrative contract, or not issue a traffic citation and get the contract?
2. "Y" is a specialty contractor who installs security doors for high-rise buildings. He is also the police officer's customer for security locks on the glass doors. Numerous

burglaries have been committed in high-rise buildings in his sector. Upon examination of the security doors and locks in each case, the officer realizes that those doors were installed by "Y". Further examination of the locks reveals that they were installed in such a manner that such locks could be opened by an ordinary plastic card. He finds that many of the burglaries were done in high-rise buildings in which "Y" provided the security doors, with locks. He has proof that "Y" was connected with the burglary schemes because of the security doors and locks. He does not inform the detectives assigned to the case of his special knowledge. He does not pass on such information or arrest "Y" because he has purchased thousands of dollars of security door locks in the past, and he wants his continued patronage.

The Commission can relate other hypothetical situations because of the officer's locksmith business and his duties as a police officer, but the foregoing hypothetical situations point out the situations which can arise. The Commission has opined in the past that whenever financial gain is involved in the off-duty activities of a police officer, his judgment may be impaired or he may improperly carry out his duties as a police officer. The probability of either impairment of judgment or improper execution of duties is greater when the employee is a police officer than any other City employee with enforcement powers. The reason for the increased probability in the case of a police officer is because he is required to enforce all laws against all liable residents of this city and that any of the owners of a home, office apartment, industrial warehouse or other situations in which a lock is necessary, are potential customers of a police officer who is a locksmith. For example, the jurisdiction of a building inspector is limited. That is, his enforcement powers are limited to individuals who violate the building or zoning codes. Another example is a liquor investigator's jurisdiction, which extends only to individuals who have liquor licenses and employees involved in the dispensing or sale of liquor. If the Commission related the foregoing statement to the population within the City and County of Honolulu, the probable breakdown of persons subject to laws and potential locksmith customers may be as follows:

A. Police Officer

adult and juvenile population subject to all laws.....	750,000
potential locksmith customers as owners of houses, apartments, offices, and commercial establishments.....	400,000

B. Building Inspectors

persons subject to building and zoning codes.....	250,000
potential locksmith customers.....	250,000

C. Liquor Investigators

persons subject to liquor laws and Liquor
Commission Rules and Regulations.....75,000

potential locksmith customers.....75,000

Also, there are other elements connected with the locksmith business which may be incompatible with his duties as a police officer. As a general rule, no person invests in a business to lose money. To avoid such result, one of the activities relates to solicitation. Solicitation takes many forms, such as advertising in the Yellow Pages of the telephone directory or person-to-person promotion or "selling." He did testify that he would not reveal that ABC Company is owned by a police officer. However, in his person-to-person promotion and "selling," his identity as a police officer may eventually surface. Once his identity has been revealed, the growth of his locksmith business may be based on the fact that he is a police officer. Moreover, once such revelation has been made public, he may openly advertise his police connection to further enhance his locksmith business. In short, he would end up using his police connection and background for private financial gain. Another disadvantage of the revelation of his identity as a police officer/locksmith is that the public may perceive that his locksmith business was established for criminal purposes because the public generally connects locks with criminal activity. Therefore, the public's perception may cause them to lose their confidence in the police department.

Other activities which may result in the applicability of Section 11-102.3, RCH, involves the use of City time, equipment, or material. Conceivably, City time may be involved if he either uses a public pay telephone or personally checks on the activities taking place at his business address while he is on official duty.

The use of City equipment may be involved if he personally checks on activities at his business address while he is on duty with City cars or scooters. As to City materials, it may involve the use of expendable items, such as ball-point pens, pencils, or paper for his locksmith business while he is on duty. Should he use City time, equipment, or material under the foregoing circumstances, his locksmith business is incompatible with his duties as a police officer.

Another section which is applicable under the facts of the officer's case may be Section 6-1.2(2), ROH relating to official action by an officer or employee. That section provides that no City officer or employee shall acquire a financial interest in a business enterprise which he believes may come before him for his official action as a city officer or employee. The Commission refers to the two hypothetical situations related herein which are applicable to Section 6-1.2(2), ROH. In the first hypothetical situation, the officer's financial interest in a business enterprise is the locksmith business. If he does open his business, then he did acquire a business enterprise. Since "X" was a party in interest to execute his consultant contract for a security system, the consultant contract represented the business interest which may come before him. His official action is represented by the traffic citation he is required to issue. Also, an analysis of the second hypothetical situation shows that Section 6-1.2(2), ROH, may be applicable. The acquisition of a financial interest in a business enterprise is represented by his locksmith business, while his duty to arrest "Y" for conspiracy to commit a

burglary represents his official action. As to the matter which is to come before him, it is represented by the security door locks which he sold to "Y".

Other standards of conduct which may be applicable if the appropriate facts are present are Sections 11-102.2 and 11-104, RCH. For example, if the officer reveals to "Y" that in 24 hours he intends to reveal to his superiors who the burglars are and advises "Y" to leave the islands, is a case in point for Section 11-102.2, RCH. Also, the selective enforcement in both hypothetical situations is a violation of Section 11-104, RCH, because if "X" and "Y" were not his customers, more often than not he would have issued the traffic citation or made the arrest. In short, he is not enforcing the applicable laws fairly and equally.

As to the statements made by representatives of the Police Department regarding endorsements of products sold by the officer or recommendations of his locksmith business to the owner of a home which was burglarized, such endorsement or recommendation by him may be a violation of department policy, but such acts without additional facts are not a violation of the applicable standard of conduct. The additional facts which are necessary under the foregoing circumstances are actual omission or improper commission of his duties as a police officer. Examples of such omission or improper commission of his duties are shown in the hypothetical situations.

The Commission knows that the police officer would not let the hypothetical situations related herein or any other variation of those situations become a reality based on his testimony. However, he will agree that whenever a police officer engages in off-duty activities involving business or financial interests, the ingredients, especially financial gain and discretionary authority vested in a police officer to enforce all laws, are ever present, which may impair the judgment of a police officer or cause a police officer to improperly carry out his duties. Thus, the Commission's objective is to prevent the hypothetical situations from becoming a reality. Moreover, its recommendation and his acceptance of same should enhance the public's confidence in his integrity and that of his fellow police officers, which in turn may enhance the public's confidence in City government. Such objective is expressly prescribed in Section 11-101, RCH.

To summarize, the Commission concludes that the language "business or financial interest" found in Section 11-102.3, RCH, and Section 6-1.2(2), ROH, is represented by the officer's locksmith business. In a business, the bottom line is whether or not one makes a profit. Thus, if a police officer is involved in a business activity, his decision to enforce all laws against any liable resident of this City may be affected by his business interest. As such, he has a business which is incompatible with his duties as a police officer because his duties may be impaired, or he may fail to properly carry out his duties, as a police officer based on his overriding business interests. If the foregoing allegation is supported by probative evidence, Section 11-102.3, RCH, and Section 6-1.2(2), ROH, will apply. Also, Section 11-102.3, RCH, would be applicable if he happened to use City time, equipment, or materials for his business activity while he is on duty as a police officer. Two additional sections may apply in his case if appropriate facts become apparent. They are Section 11-102.3, RCH, relative to disclosure of confidential information, and Section 11-104, RCH, relating to fair and equal treatment. The Commission has related the hypothetical situations herein, indicating the applicability of Sections 11-102.2 and 11-104, RCH.

In view of the foregoing, the Commission recommends that the officer not conduct a locksmith business as his off-duty activity. The Commission believes that if he foregoes his locksmith business, he will remove the likelihood of any breach of applicable standards of conduct.

The Commission appreciates the police officer's cooperation in appearing before, and responding to the questions posed by, the members of the Ethics Commission. The Commission requests that his decision whether or not to accept its recommendation be filed in writing with this Commission within 15 days after the date noted on this advisory opinion. This deadline has been established by Section 3-2.4(e), ROH.

Dated: April 8, 1983

MAZEPPA K. COSTA
Chair, Ethics Commission