

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 191**

The question is whether the Police Department [the Department] has properly denied an officer's request to join the Military Reserves [Reserves].

In general, the Commission believes the Department should allow its personnel to join the Reserves.

The Commission understands the facts to be as follows:

Officer X became an employee of the Department in (date). He has twice requested Department approval of his request to join the Military Reserves. The Department has denied his requests because more than 5% of the Department's personnel are already in the Reserves. The Department has an internal regulation that membership in the Reserves may not exceed 5%.

According to the Department's administrative officer, the 5% limit is necessary to preclude problems in scheduling work shifts within the Department should a natural disaster occur. In accordance with federal law, the Department does hire new employees who are already in the Reserves, whether or not 5% limit is exceeded.

The Department's position is that the Commission may decide whether a certain kind of outside employment is proper under the City's standards of conduct but not whether the Department may limit participation in a kind of outside employment.

The Commission believes its jurisdiction extends to such limitations. Accordingly, the questions presented by these facts under Section 11-104, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.) [RCH], relating to fair and equal treatment, are as follows: Whether a City agency may, for administrative reasons,

- I. limit the percentage of employees engaged in a category of outside employment;

or

- II. deny a category of outside employment to current employees and allow the same employment to new employees.

The standard of conduct that governs the Commission's responses to both questions is Section 11-104, RCH, which states:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

The Commission believes that this standard prohibits City agencies or personnel from 1) using official positions or status to secure a) non-City benefits from sources outside the City or b) benefits from official City actions not available to every member of the public, and 2) applying personnel regulations in a discriminatory manner.

The two questions presented are discussed separately and in light of the Commission's interpretation of Section 11-104, RCH.

**I. Whether a City agency may, for administrative reasons, limit the percentage of employees engaged in a category of outside employment.**

The general rule is that administrative reasons are ordinarily not sufficient to limit the percentage of employees engaged in a category of outside employment. This rule is derived from Advisory Opinion No. 75 [AO #75], the facts of which are the same as those at hand.

In that case, the Police Department denied an officer's request pursuant to an internal regulation in order to preclude similar requests from other officers and the problems that would result in scheduling work shifts. The police chief at that time stated these reasons in his request for reconsideration of the Commission's decision. The Commission denied the request for reconsideration because administrative problems do not involve ethical considerations. Enclosed are copies of AO #75 and the request for reconsideration.

In this case, the general rule should apply to allow any officer or employee of the Department to join the Reserves because such outside employment is consistent with the City's standards of conduct. The reasons the Department has provided in this case for denying an employee's request are the same as those given by the Department in its request for reconsideration of AO #75. Then and now the Department denied the requests pursuant to an internal regulation established for administrative reasons, including the scheduling of work shifts. Therefore, the Commission follows its precedent of AO #75 and advises that the Department should allow its personnel to join the Reserves, despite administrative problems that may occur.

In sum, outside employment in the Military Reserves by any City personnel is consistent with the City's standards of conduct, and as a general rule the Department should not deny such employment to its personnel for administrative reasons. The Commission recognizes that the Department may choose to retain the 5% rule, as it did after AO #175 was issued by the Commission. If the Department does retain this rule, the Commission believes it should allow you to join the Reserves for a second reason, presented below.

**II. Whether a City agency may, for administrative reasons, deny a category of outside employment to current employees and allow the same employment to new employees.**

The 5% limit on outside employment in the Military Reserves is essentially a personnel regulation that the Department is applying in a discriminatory manner. The Department applies the 5% limit to current police officers, but it allows new recruits to remain in the Reserves whether or not the 5% limit is exceeded in elements where the new recruits are assigned. By doing so, the Department is granting special treatment to new recruits beyond that which is available to current police officers. This appears to be a violation of Section 11-104, RCH. Although allowing new recruits may be necessary in order to comply with federal law or to obtain qualified recruits, the Department is granting recruits special treatment. Therefore, if the Department retains the 5% rule over the Commission's advice, it should still allow current employees and new recruits an equal opportunity to join or remain in the Reserves.

In conclusion, the Department has twice denied Officer X's request to join the Military Reserves pursuant to an internal regulation, which establishes a 5% limit on membership in the Reserves within an element of the Department. The Department does, however, allow new recruits to remain in the Reserves, whether or not the 5% limit is exceeded. The Commission believes that the 5% rule should be abolished because it is inconsistent with Section 11-104, RCH, relating to fair and equal treatment. If the Department chooses to retain this rule, the Department should nevertheless allow current officers to join the Reserves because new recruits are allowed to remain in the Reserves, whether or not the 5% rule is exceeded. Applying the 5% rule in such a manner secures for new recruits a special advantage not available to current officers and therefore appears to violate Section 11-104, RCH.

Dated: October 3, 1988

JANE B. FELLMETH  
Chair, Ethics Commission