

Multiple jobholding

James P. O'Drain  
City Attorney, Richmond  
Tuesday, October 24, 1961  
9:30 A. M.  
Police Chiefs' Section

... "MOONLIGHTING" - LEGAL ASPECTS.

[Address before the League Conference, October 24, 1961.]

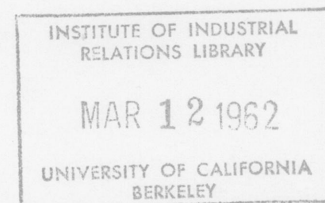
My purpose is to discuss the legality of the prohibition or regulation of outside employment for public employees. There is not a large body of case law on this subject. However, it is clearly established that the prohibition of outside employment by police and fire employees is valid.

With regard to outside employment by other types of public employees, it is my opinion that a prohibition by charter, ordinance, civil service or personnel rule would be upheld on the basis that the conditions of employment of city employees is a "municipal affair". Thus the home rule provision in Article XI of the State Constitution would allow the municipality to regulate this subject.

Rhyne, Municipal Law, at page 161, states the rule as follows:

"Municipal employment is subject to reasonable regulation in the public interest, and regulations governing the outside activities of employees are invalid only if arbitrary or in excess of the powers granted. Thus, a statute may provide that a public officer who sells or is a member of a firm who sells goods or services to the owner of a track at which pari mutuel racing is conducted may be removed from office; a municipal civil service board may prohibit employees from selling alcoholic beverages or engaging in any other enterprise inconsistent with their duties; members of the police or fire departments may be prohibited from accepting outside employment;" (Numerous cases cited.)

As indicated above, there are various ways in which a regulation or prohibition may be adopted.



[Berkeley, League of California cities, 1961.]

(1) Charter provision - A charter provision must be approved by the electors of the city. It then must be approved by the State Legislature, at which time it becomes the law of the city. Many cities in California do not have charters - they are known as "general law cities" and operate under powers enumerated in the Government Code. These cities, of course, could not use the charter method.

(2) Ordinance - Any city may adopt an ordinance regulating employees rights to outside employment.

(3) Civil service or personnel rule - Many cities handle these regulations through a civil service or personnel board. Generally the board holds hearings and recommends adoption of rules by the Council. The Council may then adopt rules by ordinance or resolution. This is probably the best way to regulate outside employment, since the civil service board would give serious study to the problem and recommend to the politically elected council.

(4) Department regulation - Nearly all police and fire departments have their own departmental manuals and regulations governing conduct of their employees. Since these are semi-military in nature they are generally placed in effect by the Chief. Of course, these regulations would be improper if they were contrary to a civil service rule, ordinance or charter provision, unless the superior law delegated authority to the police or fire chief to adopt them.

I would like to suggest that where outside employment is allowed, the amount of time and type of work be clearly defined. Also, some

provision should be made to assure that the employment will not create sick leave or workmens compensation claims against the city. It is sometimes very difficult to determine whether a policeman was injured while driving a truck during outside employment or while in the line of duty. I would further suggest that the regulation should contain assurances that sufficient off-duty employees are available in the city in case of emergency.

The question of competition with private employment is a serious one. Pressures obviously arise in times of high unemployment.

Finally, adequate provision should be made to assure that no conflict of interest arises, i.e., policemen should not engage in activities which they may have to regulate - liquor industry is a good example.

Some persons may argue that the prohibition of outside employment constitutes a violation of the constitutional rights of the employee. I believe that the following language of the California Appellate Court makes an important distinction which must be remembered when considering the rights of public employees:

"The courts have long recognized that a policeman's tenure of office may be terminated for derelictions far less serious than violation of the criminal statutes governing citizens generally. He may be discharged for violation of a rule which requires prompt payment of his debts. (Cleu v. Board of Police Commissioners, 3 Cal.App. 174 [84 P. 672]). . . Even exercise of the constitutional right against self-incrimination

may constitute unofficerlike conduct and be grounds for discharge. (Christal v. Police Commission, 33 Cal.App. 2d 564 [1939])."

McCain v. Sheridan (1958) 160 C.A. 2d 174, 324 P 2d 923