County Technical Assistance Service

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Off-Duty Employment

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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The current state of the law regarding off-duty employment by law enforcement officers indicates that law enforcement agencies may constitutionally restrict or prohibit their law enforcement officers from engaging in secondary employment during off-duty time if, at the time in question, the agency had a clear policy restricting or prohibiting such employment and if the agency can articulate how its policy is rationally related to a legitimate government interest (the "rational basis" test). Courts treat cases involving the issue of secondary employment of law enforcement officers on a case-by-case basis. However, generally speaking, if the two requirements stated above are met, courts have upheld restrictions or even prohibitions on secondary employment set by law enforcement agencies. Op. Tenn. Atty. Gen. No. 01-075 (May 8, 2001).

In two cases, the plaintiffs had worked in the outside employment positions before that employment was prohibited by the public employer, “yet the courts nevertheless held that the plaintiffs' due process rights were not violated by the prohibition.” *Allen v. Miami-Dade County*, 2002 WL 732108, *3 (S.D. Fla. 2002) *citing Ammon v. City of Coatesville*, 1987 WL 15032, *4 (E.D. Pa.) and *Ft. Wayne Patrolmen's Ben. Assoc. v. City of Ft. Wayne*, 625 F.Supp. 722, 730 (N.D. Ind. 1986). *See also Shelby County Deputy Sheriffs' Ass'n v. Gilless*, 2003 WL 21206067 (6th Cir. 2003) (Sheriff’s regulation prohibiting full-time deputy sheriffs from wearing uniform while performing off-duty work was not unconstitutional.); *Campbell v. City of Fort Worth*, 69 Fed.Appx. 657 (5th Cir. 2003) (Prohibition on off-duty work by a suspended police officer did not infringe on any interest protected by the Due Process Clause.); *Davis v. Carey*, 63 F.Supp.2d 361 (S.D. N.Y. 1999) (The regulation of police officers' off-duty employment is commonplace and lawful.); *McEvoy v. Spencer*, 49 F.Supp.2d 224, 227 (S.D. N.Y. 1999) (holding that "plaintiff does not have any interest of constitutional dimension in being a private investigator in his off-duty hours" and therefore dismissing the plaintiff's due process claim); *Puckett v. Miller*, 821 S.W.2d 791 (Ky. 1991) (It is widely recognized that the rights of public employees may be abridged in the interest of preventing conflicts with official duties or promoting some legitimate interest of the governmental employer.); *Decker v. City of Hampton*, 741 F.Supp. 1223 (E.D. Va. 1990) (City police department regulation limiting types of off-duty work in which officers could engage did not deny due process to police detective who wanted to moonlight as private investigator.); *Bowman v. Township of Pennsauken*, 709 F.Supp. 1329 (D. N.J. 1989) (While it may be true that economic factors have forced police officers into the practice of moonlighting, a township has a legitimate interest in regulating its police department, including the off-duty activities of its officers. It is clear that such goals as reducing mental and physical fatigue, limiting litigation and lessening liability insurance expenses serve as legitimate government interests supporting regulation. Because of these legitimate goals, it is also clear that a municipality can regulate and even prohibit off-duty work.) (citations omitted); *Ammon v. City of Coatesville*, 1987 WL 15032 (E.D. Pa.), *aff'd* 838 F.2d 1205 (3d Cir. 1988) (The majority of courts considering the validity of regulations that in someway restrict the outside employment of government employees have upheld the regulations.); *Allison v. Southfield*, 432 N.W.2d 369 (Mich. 1988) (holding that secondary employment rule was not void for vagueness and did not violate due process or equal protection, where police officers were unambiguously prohibited from secondary employment unless prior approval had been obtained); *Rhodes v. Smith*, 254 S.E.2d 49 (S.C. 1979) (Regulations prohibiting all outside employment have been upheld.).

“[P]rivate employers may be held vicariously liable for the acts of an off-duty police officer employed as a private security guard under any of the following circumstances: (1) the action taken by the off-duty officer occurred within the scope of private employment; (2) the action taken by the off-duty officer occurred outside of the regular scope of employment, if the action giving rise to the tort was taken in obedience to orders or directions of the employer and the harm proximately resulted from the order or direction; or (3) the action was taken by the officer with the consent or ratification of the private employer and with an intent to benefit the private employer.” *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 724 (Tenn. 2000).


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