

073-467—December 17, 1973

ALCOHOLIC BEVERAGES

EMPLOYMENT OF OFF-DUTY POLICE OFFICER BY BEVERAGE
LICENSEE DERIVING MORE THAN 50 PERCENT
OF ITS INCOME FROM BEVERAGE SALES

To: *Bryan W. Henry, City Attorney, Tallahassee*

Prepared by: *Wallace E. Allbritton, Assistant Attorney General*

QUESTION:

May an establishment which derives more than 50 percent of its income from the sale of alcoholic beverages for consumption on the premises compensate an off-duty police officer for directing traffic and providing security services in a parking lot not owned by said establishment but used with the consent of the owner?

SUMMARY:

An establishment which derives more than 50 percent of its income from the sale of alcoholic beverages for consumption on the premises may not compensate an off-duty police officer for directing traffic and providing security services in a parking lot not owned by the establishment but used with the consent of the owner.

Section 561.25, F. S., provides:

561.25 Officers and employees prohibited from being employed by or engaging in beverage business; exceptions; penalties.—No officer or employee of the division, and no sheriff or other state, county or municipal officer with state police power granted by the legislature, shall be permitted to engage in the sale of alcoholic beverages under the beverage law; or be employed, directly or indirectly, in connection with the operation of any business licensed under the beverage law; or be permitted to own any stock or interest in any firm, partnership or corporation dealing wholly or partly in the sale or distribution of alcoholic beverages. Any person violating this provision of the beverage law shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083, and shall be automatically removed or suspended from office. However, nothing herein may be construed to prohibit the said police officers, excluding officers or employees of the division, from rendering security services when off duty to any business establishment licensed under the beverage laws to sell beverages, provided that in excess of fifty percent of said business establishment's gross income is from a source other than the sale of alcoholic beverages for consumption on the premises and the written approval of the chief of police, sheriff, or other appropriate department head is obtained for the place and hours of such service. Any officer employed for the purposes of rendering private security services as permitted under this section shall not be paid less than the established prevailing wage.

Your question is answered in the negative. The intent and purpose of §561.25, *supra*, is to prohibit law enforcement officers from being licensed as dispensers of alcoholic and intoxicating liquors or from being connected with licensed premises in such a way as to interfere with or prevent the officer involved from enforcing the beverage law in an unbiased and unprejudiced manner. I agree with the opinion issued by one of my predecessors in office and quote with approval from AGO 058-16:

This [§561.25] would prohibit officers from acting as guards or bouncers at bars, taverns, night clubs, etc; however, it would not prohibit an officer from being employed by a hotel or racing plant as a security officer because in such cases dispensing alcoholic beverages is *merely an incident* to the principal business (State ex rel. Floyd v. Noel, 124 Fla. 852, 169 So. 549), and the officers' duties are not connected directly or indirectly with the operation of the liquor business. (Emphasis supplied.)

The sale of alcoholic beverages cannot be said to be "merely an incident" to the principal business of an establishment which derives more than 50 percent of its income from such sales.

The real question for determination, then, is whether a police officer employed as described in your question would be engaged, at least indirectly, in the business as prohibited by the statute.

It is difficult for me to escape the conclusion that an off-duty police officer so employed would be engaged, at least indirectly, with the operation of the business of said establishment. The mere fact that the establishment does not own the parking area where the officer would work is of no consequence. The statute does not require that the officer be employed on the premises to be a violation of the law. Certainly, the unlawful ownership of stock in such an establishment would not require the officer's presence on the premises. The prohibited conduct is the participation in the business of an establishment which derives more than 50 percent of its income from the sale of alcoholic beverages for consumption on the premises, and the geographic location of the person indulging in such prohibited conduct is not controlling.

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VOLUNTEER FIREMEN

LIABILITY OF FIRE DISTRICT FOR INSURANCE FOR VOLUNTEER FIREMEN

To: John M. Hackett, Jr., Commissioner-Treasurer, Lehigh Acres Fire Control and Rescue District, Lehigh Acres

Prepared by: Halley B. Lewis, Assistant Attorney General

QUESTIONS:

1. Does the Lehigh Acres Fire Control and Rescue District have any liability for accidental death benefits?
2. Is the district authorized or required to provide any type of accident insurance?
3. Is the district authorized or required to provide any group life, health, accident or hospitalization insurance?
4. Does the district have any liability for workmen's compensation benefits for volunteer firemen?

SUMMARY:

The Lehigh Acres Fire Control and Rescue District has not had imposed upon it any liability for accidental death benefits to its volunteer firemen and is neither authorized nor required to furnish any type of accident insurance or group life, health, accident, or hospitalization insurance for its volunteer firemen. The district is under duty to obtain a policy of insurance providing for workmen's compensation coverage for its volunteer firemen or to become a