

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

40 IAC 2-1-8

40 IAC 2-1-9

The IDOA environmental officer wanted to operate a consulting business that would bring together minority vendors with non-minority vendors. SEC found it was permissible for the officer to offer consulting services to service station owners and operators provided the officer observed certain conditions and did not violate other IDOA statutes.

**90-I-10: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision April 6, 1990)**

FACT SITUATION

The Environmental Officer for the Department of Administration wanted to operate a consulting business and "make marriages" of minority vendors with non-minority vendors. The Environmental Officer's responsibilities as a state employee were to look at, develop, and implement a plan to bring the Department of Administration, State Office Building Complex, and its warehouses into compliance with various environmental laws pertaining to hazardous materials and hazardous waste. The Environmental Officer was also to develop programs to deal with employee's handling of hazardous materials and to look at the risk or inherent liabilities of underground storage tank spills or hazardous waste incidents. The business venture the employee proposed to develop was a consulting business for clients who are service station owners or operators. The service would be writing and reviewing business plans, aiding clients in getting financing and insurance, and consulting on what the rules and regulations are, and what the state excess-liability fund provides in relation to underground storage tanks. The Environmental Officer's duties for the state do not include regulating underground storage tanks. However, advising clients about underground storage tank handling was part of the same thing the Environmental Officer did for the state, i.e., advising the state about underground storage tank handling. The Environmental Officer reviewed proposals from vendors for technical merit and made recommendations, but not the choice of a vendor.

QUESTIONS

- 1) May a state employee who is an Environmental Officer in the Department of Administration operate a consultant business outside of state time that writes or reviews business plans, aids clients in getting financing and insurance, and consults on management of underground storage tanks?
- 2) May a state employee who is an Environmental Officer in the Department of Administration recommend names of minority vendors to non-minority vendors who ask him and who a) do business with the state, and b) need expertise the minority vendor has in order to do business with the state?

OPINION

The Commission rendered the opinion that the Environmental Officer may offer consulting services to service station owners and operators so long as they are not doing business with or regulated by his agency; may not offer his consulting services to vendors he does business with for the state; may not recommend names of minority vendors to non-minority vendors if it involves anyone he reviews because that might impair his independence of judgment as to his official responsibilities; and may not use state time for private business.

The Commission reminded the Environmental Officer that there is a state statute which prohibits members of the Department of Administration from having financial interest or any personal beneficial interest "in any contract or purchase order for any supplies, materials, equipment, or services used by or furnished to

any agency of the state" (IC 4-13-2-16).

The relevant rules are as follows:

40 IAC 2-1-9(A) provides, "If in the course of the discharge of his official duties as a state officer or state employee he shall find himself in a position where his, or his spouse's or his unemancipated children's economic interest shall be substantial and material and in conflict with the interest of the people of this State, then such state officer or state employee shall be expected to resolve such conflict as provided for in Section 10 (40 IAC 2-1-10)."

40 IAC 2-1-9(B) provides, "No state officer or employee shall solicit or accept compensation other than that provided for by law for such office or employment for the performance of his official duties."

40 IAC 2-1-9(G) provides, "No state officer or employee shall engage in work other than the performance of official duties during working hours, except as permitted by agency, departmental, or institutional policy or regulation."

40 IAC 2-1-8 provides, "A state employee must not engage in outside employment or other outside activity not compatible with the full and proper discharge of his public duties and responsibilities. This outside employment or other outside activity must not impair his independence of judgment as to his official responsibilities, pose a likelihood of conflict of interest or require him or persuade him to disclose confidential information acquired by him as a result of his official duties."