

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 Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-9(a) Conflicts of interest

40 IAC 2-1-8 Moonlighting

SEC found it was not a conflict of interest for a DFCS County Director to sell real estate part-time provided that she observed certain specific limitations.

**92-I-3 Conflict of Interest, Moonlighting
(Decision February 20, 1992)**

FACT SITUATION

The County Director of the Clay County Division of Family and Children Services (formerly Welfare Department) wanted to have a part-time position selling real estate. The Director had overall responsibilities for the services provided to county residents by her office. The agency programs included food stamps, aid to families with dependent children, aid to families with dependent children with unemployed parents, special needs children, child welfare (both investigation of abuse and neglect), wards who are in institutions, eye treatment, and hospital care for the indigent. There were twenty-one employees in the office, all of whom reported to the Director.

After the Director obtained a real estate license, she was offered a part-time position with a firm in Terre Haute. The company was interested in the Clay County market and that was one of the reasons they offered the position to the Director. Should the Director accept the position, she would not limit herself to residential real estate. The Director said she would ask someone else from the real estate agency to deal with any client, seller or buyer, who was an employee or client of Clay County Division of Family and Children Services.

The Clay county office of the Division of Family and Children Services was in leased space which they moved into three years earlier. The decision to lease space and what space to lease would start with the county office.

QUESTION

Is the County Director of the Clay County Division of Family and Children Services permitted to have a part-time position selling real estate within Indiana, including Clay County?

OPINION

The Commission found it was not a conflict of interest for a County Director of the Division of Family and Children Services to have a part-time position selling real estate provided the Director not offer services

- 1) in regard to leasing the county welfare office,
- 2) to welfare employees, or
- 3) to clients of the county agency who are currently receiving services and their family members.

In addition, the Director was not permitted to use in her real estate activities state time, materials, or receive telephone calls during the day at the office.

The relevant rules are as follows:

40 IAC 2-1-8 on moonlighting provides, " A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity

must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties."

IC 4-2-6-9(a) on conflicts of interest provides, " A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest."