

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-9(B)

40 IAC 2-1-9(C)

SEC found it was improper for merit state employees, who were working in local private agencies on contract with the local Private Industry Council to deliver employment and training services, to receive incentive awards, incentive pay, commissions or bonuses.

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No. 90-I-1

FACT SITUATION

A local contracting agency that delivers employment and training services for a Private Industry Council (PIC) was offering all employees, both state merit staff and non-state staff, incentive awards for informing potential applicants of the services provided by the local office. For contacting 50 people, the awards were a value of about \$25. The choices were four General Cinema Theater tickets, a Cross pen and pencil set, dinner for two at the Olive Garden, or an engraved business card holder. For contacting 150 or more, the awards were a value of about \$50. The choices of awards were dinner for two at the Old Spaghetti Factory and a carriage ride through downtown Indianapolis, leather monogrammed portfolio, personalized engraved desk clock, or a \$50 gift certificate from L. S. Ayres. State employees working in the area of employment and training services for the state of Indiana are housed in local private agencies on contract with the local PIC to deliver employment and training services under the Job Training Partnership Act (JTPA). These local service delivery entities, independent of the state's system, have more latitude than state agencies do with respect to how they use job training funds.

Another local merit agency executive director on contract with another local PIC desired to make salary adjustments analogous to incentive pay for certain merit service state employees working in his agency. The executive director had written the state Personnel Department requesting an opinion and was informed by the deputy director that 31 IAC 2-4-2(F)(6) forbids merit service employees from collecting commissions for work performed while on duty.

QUESTIONS

- 1) May a state merit employee who works in a local private agency on contract with the local Private Industry Council to deliver employment and training services receive incentive awards?
- 2) May a state merit employee who works in a local private agency on contract with the local Private Industry Council to deliver employment and training services receive performance incentives or bonuses?

OPINION

The Commission rendered the opinion that under current law merit state employees working in local private agencies on contract with the local Private Industry Council to deliver employment and training services may not receive incentive awards, incentive pay, commissions or bonuses.

THE RELEVANT RULES FOLLOW:

IC 4-2-6-5 says, "No state officer or employee shall solicit or accept compensation other than that provided by law for such office or employment for the performance of his duties; it shall be unlawful for any person, other than state officers or employees performing their duties in making payments to state officers or employees as provided by law, to pay, or offer to pay, any state officer or employee any compensation for the performance of his official duties."

40 IAC 2-1-9(B) says, "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(C) says, "No state officer or employee, other than in performing his duties in making payments to other state officers or employees as provided by law, shall pay or offer to pay any state officer or employee any compensation for the performance of his official duties."