

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 Consequently, the analysis reflected in the opinion may be outdated.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

DNR's Director of Management Information Systems questioned whether he had a financial interest in a computer company that had responded to a DNR RFP since he was a vested member of the company's retirement program. SEC found the Director did not have a conflict that would prevent him from participating in the RFP process with the company since the retirement program would not fluctuate with the company's performance and the company had only a small amount of its own stock in its portfolio.

**93-I-1, Conflict of Interest
(Decision March 18, 1993)**

FACT SITUATION

The Director of Management Information Systems in the Department of Natural Resources had a major role in requests for proposals and selecting computer systems for the department. DNR sent out an RFP that was to be responded to by a number of vendors, one of which could have been a certain large computer company. The total bid would be about one million dollars, and the part in which this computer company would be involved was about a quarter of a million dollars. The director was in a position of developing and evaluating criteria for the RFP. The RFP contained many different elements. A committee of five people developed the criteria for assessing the proposals by deciding on the number of points to be given and weighing different criteria for evaluating the responses. The proposals were to be rated according to the criteria.

The director had worked for the computer company for over twenty years but chose to leave it. He had also marketed for two other computer companies. The director was receiving a pension from the computer company. He had vested rights in the pension. No contributions to the pension plan were made by employees; all the contributions were from the computer company. Less than one half of one percent of the total retirement fund was invested in its own stock. The employees did not control the fund; the fund was controlled by the company. The director had an established level of benefits (defined benefit as opposed to defined contribution). He did not have an employee stock ownership plan or a tax deferred savings plan.

QUESTION

Does the Director of Management Information Systems in DNR have a financial interest in a computer company due to being vested in the retirement program of the computer company?

OPINION

The Commission found the Director of Management Information Systems in the Department of Natural Resources did not have a financial interest in the computer company that would prevent his participation in the formulation of criteria to evaluate proposals or the actual evaluation of the proposal submitted due to his interest in a defined benefit pension plan which is controlled by the computer company, which does not fluctuate as a result of the company's performance, and which has a small amount of its own stock in its portfolio.

The relevant statute is as follows:

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."