

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 Consequently, the analysis reflected in the opinion may be outdated.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) Conflict of interests

40 IAC 2-1-8 Moonlighting

40 IAC 2-1-9(f) Use of state property

The DOE's Director of Division of School Traffic Safety wanted to join the faculty of a nonprofit training company to teach seminars on school traffic safety issues and be reimbursed for travel expenses. SEC found this arrangement would not violate the Code of Ethics so long as the Director observed certain conditions.

**94-I-9, Conflict of Interest, Moonlighting, Use of State Property
(Decision October 20, 1994)**

FACT SITUATION

The director of the Division of School Traffic Safety, Department of Education, wanted to know if he could become a member of the faculty of a nonprofit training company, be paid to teach seminars on topics in the area of school traffic safety, and be reimbursed for travel expenses. The director's main duties for the division were to provide training classes for the certification of school bus drivers and assist schools in formulating disaster plans, fire drill plans, motorcycle safety programs, and high school driver education programs. State law required school bus drivers to attend a pre-service training class for which the director's division of the Department of Education provided the curriculum and instructors. Another law required all school bus drivers to have annual in-service training. The Indiana State School Bus Committee and the Indiana State Police were involved in that training. The director served as the State Superintendent of Public Instruction's representative on the School Bus Committee. The director's division developed the program and selected the materials drivers received on behalf of the committee. Training sessions for Indiana school districts were done without cost to the district.

The private for-profit company which had contacted him produced tapes and handbooks. It was creating a nonprofit entity to offer seminars on topics in the area of school traffic safety. The nonprofit invited the director to become a member of its faculty and teach at seminars and training sessions. It offered to pay the director for participating in the seminars and to reimburse travel expenses. The invitation also stated that if the director agreed to join its faculty, the nonprofit would need a copy of the director's updated resume and a small black and white photograph. This information would be added to a brochure the nonprofit mailed to potential future clients. The nonprofit company made this invitation because the director was the president of an organization of his peers and well known in his field. The nonprofit training company said it would not allow faculty professionally employed by state or county government agencies to lead seminars or training sessions in the state of their employment.

The for-profit parent company's clients for tapes, handbooks and other materials would likely include school districts, private contractors, and others in the school transportation business, including those in Indiana. Participants in the nonprofit training company's seminars would range from bus drivers to supervisors or administrators of the school transportation program. The for-profit company had made efforts to sell products in Indiana. It would provide the materials used in teaching at the nonprofit company's seminars. The director said he would not use a curriculum utilized in his state job at the nonprofit company's seminars. Prior to seeking advice from the Commission, the director had informed the nonprofit training company that he would not teach within Indiana and would only teach on weekends or vacation time.

While the for-profit company had sent some of its materials to the director to be previewed for potential use, the division had never purchased materials from it. The division had purchased materials from companies in Maryland and California.

QUESTION

May the director of the Division of School Traffic Safety of the Department of Education become a member of the faculty of a nonprofit training company, be paid to teach seminars on topics in the area of school traffic safety and be reimbursed for travel expenses?

OPINION

The Commission found that it would not be incompatible with the director's state duties nor a conflict of interest for the director to participate in seminars sponsored by a nonprofit training company outside of Indiana and accept reasonable travel expenses if the following conditions were satisfied:

- 1) Neither the director's name, state title, photograph, nor biographical information could appear in any training video or curricular materials produced by the for-profit parent company;
- 2) Neither the director's name, state title, photograph, nor biographical information could appear in any advertising brochure distributed by the for-profit parent company to potential customers, but a program which identified the director as a speaker or a teacher given to registrants who attended a particular nonprofit training company class or seminar could include such information;
- 3) While the director could accept actual travel expenses from the nonprofit training company for his participation in its training seminars, he could not accept additional compensation, and his participation at such seminars was to be done on his own time;
- 4) Any appearance the director made at the nonprofit training company's functions outside of Indiana must be accompanied by both oral and written disclaimers the director was appearing on behalf of the state of Indiana or was providing any endorsement of the for-profit parent company's products or services through his appearance; and
- 5) The director must be willing to accept invitations to appear at comparable functions sponsored by competitors of the for-profit parent company at which the above-enumerated conditions would also apply concerning any such appearances.

The relevant statutes and rules are as follows:

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

40 IAC 2-1-8 on moonlighting and other activity 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."

40 IAC 2-1-9(f) on use of state property provides, "A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use."