

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 Consequently, the analysis reflected in the opinion may be outdated.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

40 IAC 2-1-8 Moonlighting

40 IAC 2-1-9 Conflicts of interest

The Computer Center's Operations Manager, who was also chairing a committee to plan and design the State's new computer center, questioned whether he would be permitted to accept a part-time contract position as a technical consultant with a company that specialized in project management and consulting and was managing the construction of the new computer room complex for the State. SEC found such an arrangement would present a conflict of interest and the employee would therefore not be permitted to be employed by or negotiate for prospective employment with the contractor so long as he had job responsibilities in regard to the project.

91-I-10: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision April 11, 1991)

FACT SITUATION

The Operations Manager for the Information Services Division of the Department of Administration had served as an employee of the state for the past twenty-four and one-half years and expected to reach minimum retirement on August 22, 1991. The employee was considering whether to take an early retirement. Part of the employee's state duties were to serve as Chairman of the Data Processing Managers Group which was overseeing the construction of the computer center in the old State Office Building (Indiana Government Center North). As part of this group, the employee put together the requirements which the State Office Building Commission incorporated into specifications for those who bid on the project. The employee's duties included evaluating the work of the contractor to determine if the work was acceptable and met the specifications that were required. The contract with the contractor would be completed in July 1991.

The employee was asking if he would be able to take a part-time contract position as a technical consultant with the contractor in order to determine if he wanted to work for this company. He planned an early retirement, if he decided he did. The position was to be working outside normal working hours, from the employee's home, and on a contract basis. The job would be in the area of physical planning for computer centers, office space, air conditioning, electrical, and fire detection systems. It was to be mainly for private industry.

QUESTION

Is the Operations Manager over the Computer Center who was also chairing a committee to plan and design the new computer center which would be located on the fifth floor of the old State Office Building (Indiana Government Center North) permitted to accept a part-time contract position as a technical consultant with a company that specializes in project management and consulting and is currently managing the construction of the computer room complex for the state of Indiana?

OPINION

The Commission found that it was a conflict of interest for the Operations Manager of the Computer Center who was chairing a committee to plan, design, and evaluate the new computer center to be located in the old State Office Building (Indiana Government Center North) to accept a part-time contract position as a technical consultant with the company that is currently managing the construction of the computer center for the state of Indiana. The employee is not permitted to be employed by or negotiate for prospective employment with the contractor so long

as the employee has job responsibilities in regard to this project.

The relevant rules are as follows:

IC 4-2-6-9(a), on Conflict of economic 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."

The definition of financial interest at IC 4-2-1(9) says it means, "an interest:

(A) distinct from that:

(i) of the general public; or

(ii) as a state employee;

(B) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;

(C) involving property or services; and

(D) in which a state officer or an employee or that individual's spouse or unemancipated children may gain a benefit of two hundred fifty dollars (\$250) or more.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. (Emphasis added)"

40 IAC 2-1-8, on Moonlighting 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 judgement 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."

40 IAC 2-1-9, on Conflict of interest provides, "(A) 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)."