

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 Consequently, the analysis reflected in the opinion may be outdated.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(e) Conflicts of interest

A DNR procurement officer wanted to offer for sale to state agencies, including DNR, hooks to hang items on the partition of new work stations. SEC found it was permissible for the procurement officer to do so provided the sale was made through the IDOA central purchasing authority using standard procurements practices in order to remove the potential for selling to his own agency.

91-I-23: Conflict of Interest, Moonlighting

Indiana State Ethics Commission

Official Advisory Opinion

(Decision November 14, 1991)

FACT SITUATION

When the Reclamation Division moved into the new Indiana Government Center South, there was no way to hang poster boards, pictures, or plaques on the partition walls. The procurement officer for the Division of Reclamation, Department of Natural Resources, was unable to find hooks for the partition walls from the partition manufacturer or office supply catalogs. He drew the design of a hook, went to his father-in-law to develop the hooks, and made the hooks available to his division and, subsequently, to other divisions of the Department from the extras left over in his division. The procurement officer wanted to produce the hooks himself, because his father-in-law was no longer interested in making the hooks.

The procurement officer said he had thought of three different approaches for contacting other agencies. One was to talk to purchasing agents, another was to send a mailing to purchasing agents who could purchase through a mail order system. A third was to go through the Stationery Store, selling to the Stationery Store, and then the Stationery Store could do a mailing to other agencies.

The procurement officer said he would do the work involved during free time such as lunch hour, break time, or after work. The hooks would be made at home in his garage.

QUESTION

Is a procurement officer for the Division of Reclamation, Department of Natural Resources, permitted to offer hooks to hang items on the partition of new work stations for sale to agencies of Indiana state government, including DNR?

OPINION

The Commission found it was permissible for the procurement officer of the Division of Reclamation, Department of Natural Resources, to offer hooks to hang items on the partitions of work stations for sale to state agencies through the Department of Administration, central purchasing authority, using standard procurements practices, in order to remove the potential for selling to his own agency, including other divisions of DNR and his own division.

The relevant rules are as follows:

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 judgment 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(e), on Conflict of interest provides, "No state officer or employee, in his personal dealings, shall receive compensation or economic benefit from the sale or lease of any property or service to the State of Indiana which exceeds that which the state officer or employee would charge or receive in the ordinary course of business."

The Department of Natural Resources has its own rule on file with the State Ethics Commission as follows: "DNR employees are permitted to provide a product or service for financial or other remuneration for a person or entity other than the DNR unless such activities:

1. reflect unfavorably on the Department;
2. adversely affect job performance;
3. utilized department time, materials or equipment; or
4. involve a public service provided free of charge by that employee's division.

Questions regarding permissibility of an activity should be directed by an employee to his or her immediate supervisor prior to engaging in such activities.

"Determination on the permissibility of 'moonlighting' activities will be based on the Indiana Code of Ethics and other pertinent laws and regulations, on the policy stated above and on the best interest of the department."