

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-10

A DMH employee inquired as to whether he could work on contracts for the Indiana Public Defenders Council after normal working hours. SEC found the outside employment did not give rise to a conflict with his full time employment with DMH as long as his contractual work did not involve any hours out of his full time responsibilities.

No. 11 Conflict of Interest, Moonlighting

FACT SITUATION

An employee of the Department of Mental Health has been asked to enter into a contract with the Indiana Public Defender Council. The Indiana Public Defender Council is an independent state agency housed in the judicial branch of government that provides training and support services to county-based public defenders around the state. The Council established the Alternative Sentencing Project (ASP). The ASP prepares comprehensive, individualized punishment plans at the request of public defenders in an effort to assist local courts in punishing non-violent offenders more effectively in the community as an alternative to lengthy incarceration. Private contractors perform most of the casework services for the ASP. These individuals are either self-employed in the sentencing services field or are employed full-time in other human service organizations. Due to budgetary constraints, no expansion of full-time staff is anticipated during the next biennium. The employee of the Department of Mental Health was recommended to their office due to his prior criminal justice experience, good reputation, and broad knowledge of available human service resources. The employee's responsibilities with the Department of Mental Health are as a program coordinator and working with certification of treatment programs, grant monitoring, and dealing mostly with institutions. The employee's work for the Indiana Public Defender Council would be done after normal working hours. It is anticipated that there would not be a loss of more than three hours time per month (for testimony in court) from his full-time position. The employee indicated that he would use vacation time for any necessary absences.

QUESTION

May an employee of the Department of Mental Health work on contracts for the Indiana Public Defenders Council after normal working hours or does this situation present a conflict of interest.

OPINION

The State Ethics Commission stated, based upon the evidence presented, that the Commission finds the request of the employee to enter into a contract with the Indiana Public Defender's Council is not in conflict with his full time employment with the Department of Mental Health as long as his contractual work does not involve any hours out of his full time responsibilities in which case he would have to use vacation time. With the facts as presented to the Commission, they did not see a likelihood of a conflict of interest or the likelihood of the need to disclose confidential information. If the employee gets into a situation where he would see some conflict between the two positions, or a need for the disclosure, or the possibility of him disclosing confidential information, this opinion does not cover those unanticipated circumstances. The opinion was based on the likelihood as it was perceived at the time.

Whenever the Commission issues an advisory opinion, 40 IAC 2-1-10(B) provides, "It shall be prima facie evidence of the intent to comply with this Code (40 IAC) when a state officer, department head or employee refers a matter as provided herein and such state officer, department head or employee thereafter abides by the decision or written advice thereby obtained unless material facts were omitted or misstated in the written statement."

4/19/89