

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 Consequently, the analysis reflected in the opinion may be outdated.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

40 IAC 2-1-9(F)

SEC found a conflict of interest existed for an INDOT Division Chief whose spouse was employed by a consulting firm that did design work for highway projects and whose division would review some of the statements and reports prepared by his wife.

No. 89-I-22

Indiana State Ethics Commission

Official Advisory Opinion

February/March 1990

At its meetings on February 1 and March 1, 1990, the State Ethics Commission considered a request for advice regarding the potential conflict of interest of a state employee who is a division chief for the Department of Transportation (INDOT). The information that the Commission received was that the Division Chief was married on November 4, 1989, to a woman who is employed by a consulting firm who does design work for highway projects. The Division Chief's responsibilities for the Department include approving design study reports, preliminary designs and participating in the selection of consultants who do design work for INDOT. He supervises about two hundred and ten people. His wife's responsibilities include preparing environmental impact statements and design study reports for a variety of projects, some of which are projects for INDOT. The environmental impact statements of the consulting firm are reviewed by a division other than the division that the Division Chief manages. But the project for which the environmental impact statement was prepared would be reviewed by the division over which the Division Chief has responsibility. People working under the Division Chief actually generate the initial recommendation for the selection of a consultant.

The consulting firm is one of the largest firms doing consultant work for INDOT and INDOT billings account for 12 percent of the consulting firm's total billings. The state pays the firm around five hundred thousand dollars a year out of a thirty million dollar budget.

At the February 1 meeting, the Commissioner of INDOT volunteered and the Commission moved to ask the Commissioner to put in writing what she proposed to do to protect the State from real and perceived conflict of interests. A copy of the proposal was mailed to all the Commissioners before the March 1 meeting. Briefly, the proposal states that a process has been established whereby the Division Chief would be bypassed during the reviewer sign-off of any work that is his wife's product. The Division Chief's boss would be responsible for the final review and sign-off of those reports. A memo would be sent to all division personnel cautioning against making decisions favorable to the consulting firm because of the relationship between the Division Chief and the firm, as well as inviting any person who feels any conflict to bring the matter up with the Commissioner directly. Staff recommended, after reviewing this proposal, the addition of

a requirement that a copy of any reports of protest that would come from outside state government or any state employee be sent to the Ethics Commission so that the Commission would know what kind of response this procedure was producing among either employees or "outsiders." This would enable the State Ethics Commission to look at the situation again, if necessary.

Following the discussion, the Commission based upon the information received, rendered the following opinion:

Because the Division Chief has the ability and opportunity to influence the decision of the consulting firm selected, and thereby affect the economic well-being of the firm for which his wife works, the State Ethics Commission finds a conflict of interest exists under IC 4-2-6-9 and 40 IAC 2-1-9(F).