

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-8

40 IAC 2-1-9

SEC outlined the activities in which the Superintendent of the DMH's New Castle Development Center could engage as a part owner and stockholder in a company that offered services to individuals with developmental disabilities in the State.

**90-I-14: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision June 7, 1990)**

FACT SITUATION

The Superintendent of the New Castle Developmental Center, Department of Mental Health, had formed a corporation and wanted to know if the corporation could provide various services to individuals with developmental disabilities. The Superintendent and two physicians had incorporated as an entity wishing to be involved in health care enterprises. Although there was no specific enterprise in which the corporation was involved, the corporation might be interested in nursing homes, group homes, free-standing clinics, consultation services, medical group practice, and medical supply companies. The New Castle Developmental Center has over 220 patients, 507 employees and approximately 40 residents that are in community placement. A group home may elect not to take residents from a state facility. Clients are placed through case management or integrated field services, but they technically stay on the rolls of the facility until such time as they are discharged. Persons placed at New Castle State Developmental Center are wards of the state by a court commitment or voluntary admission. The Superintendent of the Center is in a position to inform the case management or integrated field services person that he believes a particular place does not provide the services they are supposed to and to recommend that residents not be placed at that facility. New Castle has done some direct placements into nursing homes but not into group homes. Individuals may be multiply diagnosed as both developmentally disabled and emotionally ill. The Commissioner of the Department of Mental Health has the authority to transfer patients from one institution to another within the state system. The Department of Mental Health has the authority to recommend staffing levels and staffing limitations for group homes, particularly those that are Medicaid certified. Medicaid certification is gained by a contract with the Department of Public Welfare, State of Indiana. That agency is one of four agencies that the Governor has recommended be amalgamated with the Department of Mental Health into one agency. Both group homes and nursing homes are licensed by the state; a corporation must show a Certificate of Need in order to develop a new nursing home. Integrated field services staff do not report to the Superintendent of the New Castle Developmental Center. A state statute providing for plans of discharge or placement says that the plan must include the "Superintendent's recommendation concerning the needs of the individual that may be met through the delivery of covered developmental or vocational services." The Superintendent's recommendation is made through case management or integrated field services.

QUESTION

Is it a conflict of interest for a corporation of which the Superintendent of the New Castle Developmental Center, Department of Mental Health, is a part owner and stockholder to provide services to individuals with developmental disabilities in the State of Indiana while continuing to hold employment as Superintendent?

OPINION:

The Commission rendered the opinion that the Superintendent of the New Castle Developmental Center may not:

1) Offer through his corporation services to developmentally disabled or mentally ill individuals who have been serviced by a state facility during the years of his state employment in the Department of Mental Health or its successor agency. This applies whether the facilities through which the services are offered are nursing homes, free-standing clinics, consultation services, medical group practice, or other facility.

2) Seek a license nor be interested in a corporation (shareholder, officer or director) for a group home from the Department of Mental Health.

3) Through his corporation sell medical supplies to state agencies.

4) Seek funding for facilities or programs from the State of Indiana, contract with the State of Indiana for payments or reimbursements for providing services to residents or clients, or receive Medicaid reimbursements through the State of Indiana.

The relevant rules are as follows:

40 IAC 2-1-9(A) provides, "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)."

40 IAC 2-1-9(F) provides, "No state officer or employee shall participate in any decision or vote of any kind in which he, his spouse, or his unemancipated children have an economic interest."

40 IAC 2-1-8 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."