

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 Consequently, the analysis reflected in the opinion may be outdated.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 found that a state trooper whose duties included road patrol and accident reconstruction could engage in outside part-time self-employment as an accident reconstruction specialist in civil cases outside his assigned state police district provided that he observed certain restrictions.

**90-I-20: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision August 10 and September 6, 1990)**

FACT SITUATION

An Indiana State Trooper who was also an accident reconstruction specialist for the Indiana State Police Department wanted to engage in part-time work as a self-employed accident reconstruction consultant whose clients would be insurance companies and attorneys. The trooper was assigned to road patrol on the northeast side of Indianapolis operating out of State Police District No. 52. The trooper was one of approximately twenty-three reconstructionists who received training on state hours and at state expense. The training included training at ISPD Academy advanced accident school, technical school, vehicle dynamics school, and accident reconstruction schools I and II. The state trooper said that although his job required him to be available twenty-four hours a day, he saw no possibility of the part-time employment affecting those duties. He said that he would not investigate as a reconstructionist accidents in which he or another trooper did the initial on-sight investigation as the primary investigator or as a secondary investigator. The trooper said that he would not be doing any of the part-time work while being paid by the state. If the trooper had already done reconstruction in his private capacity, a local department would be precluded from requesting his particular services, but that would not prevent another state police reconstructionist from responding to the local department's request. The trooper said that his part-time work would require him to be available as a witness for both criminal and civil actions, but that he would not wear a uniform to court. He would not use state property in any fashion in the investigations, drive his state police car, nor use investigative tools provided by the Indiana State Police Department.

QUESTION

Is a State Trooper whose duties include road patrol and accident reconstruction permitted to engage in outside part-time self-employment as an accident reconstruction specialist?

OPINION

The Commission rendered the opinion that a state trooper whose duties include road patrol and accident reconstruction may engage in outside part-time self-employment as an accident reconstruction specialist in civil cases outside his assigned state police district provided that:

- 1) the services are rendered on personal time;
- 2) no state equipment or confidential information is used;
- 3) the state police uniform is not worn in court or in his capacity as a part-time self-employed reconstructionist;
- 4) the trooper's availability twenty-four hours a day is not impaired;
- 5) services are not rendered when the trooper or another trooper did the

primary or secondary investigation;

6) if the trooper has done reconstruction in a private capacity, he is precluded from doing reconstruction for a local department on request for the same accident; and

7) the part-time employment does not impair full and effective discharge of state duties.

The relevant section of the Indiana Code of Ethics for the conduct of state business follow:

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 2-1-8 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."

A relevant rule from the State Police regulations, Section 9(A) says an employee shall:

"(2) Not engage in other activity, employment, business or trade that takes priority over obligations to the Department, or that would limit effectiveness in the discharge of official duties, or that would tend to reflect discredit upon the Department."

"(3) Immediately report all outside employment, business or trade to the Superintendent."