

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 Consequently, the analysis reflected in the opinion may be outdated.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 4-2-6-1(7)

40 IAC 2-1-9

40 IAC 2-1-8

SEC outlined the appropriate activity for an attorney to engage in who was on contract to a county welfare department but held a foster home license from the DPW in the same county at the time he was hired and wished to continue to hold the license in that county or in a different county.

**90-I-26: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision September 6, 1990)**

FACT SITUATION

An attorney on contract to a county welfare department when hired held a foster home license from the Indiana State Department of Public Welfare in the same county and wished to continue in that county or in a different county. The agency also wanted to know if another employee besides an attorney could receive children as a foster parent from that county. On July 1, 1990, the attorney was hired on contract with the State Department of Public Welfare to provide legal services for a county welfare department in matters involving child welfare (e.g., juvenile court proceedings and CHINS cases, determination of parental rights) and matters pertaining to foster home licensing. The attorney was the only attorney for the county, but if there was a conflict of interest, the attorney could ask someone of his choosing or have a neighboring county attorney handle the case. Placements in foster homes occur through several sources including the County Department of Public Welfare, Department of Mental Health, and the Court Probation Department. There is a shortage of foster homes and a need for foster parents with specialize skills and training. There are times when an attorney might be involved with foster homes. For example, the county welfare attorney might be consulted by the county welfare department in determining non-compliance with a regulation relating to licensing of a foster home. The attorney would represent the county welfare department if a foster home appealed a negative licensing action. The attorney might be involved if there were some legal issues involving a foster parent who had in the past been unable to work toward the case plan or to work with the birth parent.

QUESTIONS

- 1) Is an attorney under contract with the State Department of Public Welfare to provide legal services for a county welfare department permitted to hold a foster home license in the same county and receive children from that county?
- 2) Is the attorney permitted to hold a foster home license in a different county and receive children from that county?
- 3) Is an employee of the county welfare department other than an attorney permitted to hold a foster care license in the same county and receive children from that county or another county?

OPINION

The State Ethics Commission rendered the following opinion:

- 1) An employee employed in a county welfare department may be licensed as a foster home provided that the employee is not licensed by the same county in which he or she is employed (may be licensed by

another county or a private agency) and does not accept placement of children from the same county's welfare department.

2) The attorney, who was licensed in the same county before accepting employment as a county attorney on contract effective July 1, 1990, may take non-welfare placements from the same county (but not welfare placements) or placements from a different county or private agency. He shall not represent the county in any licensing matter having to do with his own license nor choose the attorney who does.

JURISDICTION

The State Ethics Commission decided it had jurisdiction over this attorney, even though the attorney would be working for a county welfare department because the attorney falls under the State Ethics Commission's definition of employee even though the attorney does not fall under other definitions of employee. This opinion could apply to any person who works for the county welfare department (caseworkers) provided that they fall within the following definition (IC 4-2-6-1(7)):

"Employee' means an individual, other than a state officer, who is employed by an agency. The term includes an individual who contracts with an agency for personal services for more than thirty (30) hours a week for more than twenty-six (26) weeks during any one (1) year."

The attorney in this case was employed by the agency, i.e., is under contract, with the State Department of Public Welfare being a party to the contract. The contract was required to be approved by the Commissioner of the Indiana State Department of Public Welfare, the Commissioner of the Indiana State Department of Administration, State Budget Director, Attorney General, and the Governor.