

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 Consequently, the analysis reflected in the opinion may be outdated.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

A DOE employee who certified and recertified school bus drivers wanted to develop coaching classes for individuals to prepare them to take the test for the new licenses to operate Commercial Motor Vehicles. SEC found it was permissible for the employee to develop the classes so long as he did not offer them to anyone in Indiana who was enrolled in certification or recertification classes.

**90-I-3: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision February 1 and March 1, 1990)**

FACT SITUATION

An employee with the Department of Education whose duty was to certify and recertify school bus drivers requested the Ethics Commission to determine if a conflict of interest would exist with a proposed business that he was developing. School bus driver's certification involves the individual attending a twenty-hour safety education preservice course together with demonstrated observation and behind-the-wheel driving which is conducted by the employer (e.g., the school corporation, not-for-profit agency, Head Start agency, and so forth). Drivers receive recertification for attendance at annual safety meetings or workshops conducted during the summer months and instructed by the employee of the Department of Education. The employee also provides bus safety programs for students, in-service seminars at the request of local schools, and technical assistance to transportation directors and school superintendents. Topics covered in the preservice course include relevant Title 20 statutes, pre-trip inspections, student management, loading/unloading of passengers, defensive driving techniques, evacuation procedures, first aid, firefighting and transportation of the exceptional child.

The business venture the employee proposed to develop was a coaching class for individuals to prepare them to take the test for the new license to operate a Commercial Motor Vehicle. In 1986, Congress passed the Commercial Motor Vehicle Safety Act. It requires the state to implement the Commercial Driver's License. The Indiana Bureau of Motor Vehicles is responsible for administering the act, providing the written examination, and issuing the Commercial Driver's License. The employee said the coaching class would consist of a study guide, lectures accompanied with pre-and post-tests, and appropriate video training materials. In order to legally drive a school bus in the state of Indiana, a person must hold both the appropriate driver's license and a certificate from the Department of Education that they have satisfactorily completed a preservice school bus driver's safety education training course.

QUESTION

Is it permissible for an employee of the Department of Education whose duties are to certify and recertify school bus drivers to develop as a business venture coaching classes for individuals to prepare them to take the test for the new licenses to operate Commercial Motor Vehicles?

OPINION

The Commission rendered the following opinion:

- 1) The employee may offer his coaching class in other states.
- 2) The employee may not offer his coaching class in Indiana to anyone who has taken, is enrolled, or pending enrollment in his preservice or recertification classes.

In order to sort out those whom he may not accept, the Commission recommends that the employee have a question on the application blank for his coaching class that says, "Have you taken, will you have taken, or are you anticipating enrollment in, before this coaching class, a school bus driver's preservice or recertification safety education class in which (name of employee) was or will be an instructor?" If so, the applicant must be informed that he or she cannot be accepted into the coaching class.

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(B) provides, "No state officer or employee shall solicit or accept compensation other than that provided for by law for such office or employment for the performance of his official duties."

40 IAC 2-1-9(G) provides, "No state officer or employee shall engage in work other than the performance of official duties during working hours, except as permitted by agency, departmental, or institutional policy or regulation."

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."