

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-9

SEC found it was a conflict of interest for a SBA field examiner to be appointed as a member of the PERF Board of Trustees.

**90-I-5: Conflict of Interest
Indiana State Ethics Commission
Official Advisory Opinion
(Decision April 6, 1990)**

FACT SITUATION

A Field Examiner for the State Board of Accounts desired to be appointed as a member of the Board of Trustees of the Public Employee's Retirement Fund (PERF). The field examiner had informed the Governor's office of his interest because the Governor makes appointments to the Board. Members of the PERF Board receive compensation of \$75 for each of four meetings a year (October 1, January 1, April 1, and June 30).

QUESTION

Is it a conflict of interest for a Field Examiner with the State Board of Accounts to be appointed as a member of the Board of Trustees of the Public Employee's Retirement Fund?

OPINION

The Commission's opinion was that being a Field Examiner for the State Board of Accounts and being on the Public Employee's Retirement Fund Board of Trustees would be a conflict of interest.

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

In order for the Field Examiner to serve on the PERF Board, two other analysis need to be made, both of which the State Ethics Commission is not authorized to make. One is the constitutional question under Article 2, Section 9, which forbids holding two lucrative offices. The question is whether these two positions would constitute two lucrative offices. The second question is the interpretation of the term "member of the fund" in the PERF statute, IC 5-10.3-3-1, which says:

- "(a) the board is composed of five (5) trustees appointed by the governor:
(1) one (1) of whom must be a member of the fund with at least ten (10) years or creditable service."