

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 Consequently, the analysis reflected in the opinion may be outdated.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 DNR conservation officer designed a campaign hat protector that he wanted to market through a private business to state agencies, specifically ISP and DNR. SEC found it was permissible for the officer to do so subject to the limitations set out in the conflict of interest rule.

90-I-8: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision April 6, 1990)

FACT SITUATION

A Conservation Officer in the Indiana Department of Natural Resources and a partner who is a full-time police officer with the Allen County Police Department invented, designed and planned to distribute a Hat-Trap, a unique patented campaign hat protector which is designed to double or triple the life of campaign hats worn by law enforcement officers. The company, Coppers Ltd., is currently marketing the Hat-Trap on a nationwide basis and is controlling all aspects of the sale and marketing. The company also wanted to market the hat protector to the state of Indiana, specifically the Indiana State Police and the Indiana Department of Natural Resources. The Conservation Officer did not make decisions regarding purchases of officer's uniforms or personal equipment as part of his state duties.

QUESTION

Is it permissible for a Conversation Officer through a private business to market a campaign hat protector to the State of Indiana, specifically the Indiana State Police and the Indiana Department of Natural Resources?

OPINION

The State Ethics Commission rendered the opinion that it would be proper for a Conservation Officer in the Department of Natural Resources to market a hat protector to the state, subject to the limitations that are set out in the conflict of interest rule. Specifically,

- 1) The officer may offer the hat protector for sale in other states.
- 2) The officer may offer the hat protector for sale to individuals in the State of Indiana but may not use information not available to the public gained through his state employment to identify potential clients for his private business.
- 3) The officer through his company may offer the hat protector for sale to any state agency including his own so long as the sale is done following proper state procedures. He may not sell the hat protector to his agency through a closed procedure such as an SDO account.

State procedures allow the officer to file an application to put his name on the state vendor list and to make himself and his product known to agency buyers and Department of Administration buyers.

A relevant rule, 40 IAC 2-1-8, on Moonlighting 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."

Another relevant rule, 40 IAC 2-1-9(E), on Conflict of Interest provides, "No state officer or employee, in

his personal dealings, shall receive compensation or economic benefit from the sale or lease of any property or service to the state of Indiana which exceeds that which the state officer or employee would charge or receive in the ordinary course of business."

Note: In order to comply with the criminal conflict of interest statute, IC 35-44-1-3(c)(1), requiring disclosure of potential conflict of interest, the Director of the Department of Natural Resources agreed that any purchase contract of hat protectors from the Conservation Officer's company would be written contingent upon the Natural Resources Commission's approval and that the Director of the Department of Natural Resources would bring the contract before the Natural Resources Commission at a public meeting. The Conservation Officer was requested to file the disclosure required by IC 35-44-1-2(c)(1).