

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 Consequently, the analysis reflected in the opinion may be outdated.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

**40 IAC 2-1-9 Conflicts of interest**

A DHS vocational rehabilitation counselor sought to engage in a part-time, self-employed counseling position out of the office of a psychologist from whom VR purchased services. SEC found it was acceptable for the counselor to engage in such outside employment so long as he observed certain specified conditions.

**91-I-12 Conflict of Interest, Moonlighting**

**Indiana State Ethics Commission**

**Official Advisory Opinion**

**(Decision June 13 and August 15, 1991)**

**FACT SITUATION**

A vocational rehabilitation counselor for the Department of Human Services in the Seymour area wanted to have a part-time self-employed counseling position. Vocational rehabilitation (VR) counselors work with physical and mentally handicapped people to become employed. This entails determining their eligibility for vocational services, identifying realistic goals, and obtaining the necessary services to reach the goal. The age of the population is generally from sixteen years old to retirement age. Vocational rehabilitation counselors provide counseling, diagnostic services and eligibility information, vocational planning and program development, and coordinate service delivery to individuals who qualify for the services. A counselor's state responsibilities include purchasing services from a psychologist, including testing and psychotherapy.

The business arrangement of the vocational rehabilitation counselor was with a doctor's office where the VR counselor paid thirty-five percent of proceeds from billings for office rental, secretarial help, and supportive services. The VR counselor was self-employed, paying his own taxes. The VR counselor did not share any of the profits from the doctor's practice. The VR counselor counseled abuse cases, both children and adults. He also did testing and family therapy for day-treatment students at a private psychiatric hospital. The VR counselor had no involvement with VR clients from any VR office in his counseling at the doctor's office. He had no contact with VR patients that the doctor saw.

As a VR counselor, the employee purchased services from the doctor's office, primarily psychological testing services. The testing was done by a technician with the doctor performing an interview, an interpretation of the test, and writing a report. Psychological testing services were provided by at least four psychologists in the area, but this doctor was the only psychologist with an office in the Seymour area.

Procedures of the regional VR manager were that VR supervisors were to review all purchases of psychological testing and therapy services routinely. Purchase authorization forms contained a place for sign-off by the supervisor. During the preceding summer, the Department of Human Services initiated a policy of severely restricting authorization of psychotherapy and called instead for referral of all individuals to local community health centers.

**QUESTION**

Is a vocational rehabilitation counselor for the Department of Human Services permitted to have a part-time, self-employed counseling position out of the office of a psychologist from whom Vocational Rehabilitation purchases services, provided the VR counselor does not take any vocational rehabilitation clients?

**OPINION**

The Commission found that a VR counselor was permitted to have a part-time, self-employed counseling position out of the office of a psychologist from whom Vocational Rehabilitation purchased services provided the VR counselor: 1) did not see any clients referred from VR to the psychologist, even if referred by another VR office; 2) no longer worked with a client in his private capacity if the VR counselor referred the client to VR for services; 3) did not receive profits from the psychologist's business, but only paid for office rental and clerical services from that business; and 4) was monitored by his VR supervisor in his referrals of clients to the psychologist.

The relevant rules are as follows:

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."

40 IAC 2-1-9, on Conflict of interest provides, "(A) 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).

(F) 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."

Although the possibility of a conflict of interest is present, the Commission felt the VR counselor could be screened. They realized the importance, especially to smaller towns, of professionals needed to provide services. However, they caution keeping the relationship of the counselor with the psychologist an arm's length relationship. They also are depending upon a supervisor to review decisions the counselor makes to refer VR clients to the psychologist, in order to assure the referrals are necessary and proper, and not excessive.