

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 Consequently, the analysis reflected in the opinion may be outdated.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 full-time IDETS audit examiner wanted to engage in outside employment as a part-time collector of personal debt owed on banking and retail merchant credit cards and medical and utility bills. SEC found that although the examiner would be prohibited from collecting on debts owed by individuals who were employed or had ever been employed inside Indiana, it was permissible for him to collect the personal debt owed by individuals who worked outside of the State.

**91-I-13: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision July 11, 1991)**

FACT SITUATION

A employee of the Employer Collections Division in the Indiana Department of Employment and Training Services, Employer's Liability Section, asked about having outside employment. The Employer Collections area had responsibility collecting delinquent unemployment taxes from employers who had eligible employees in the state of Indiana. The employee was one of ten audit examiners that worked in unemployment insurance tax employer collections. The audit examiners answered telephone inquiries regarding employer accounts, called employers concerning wage discrepancies involving employment benefit claimants, called employers about outstanding quarter tax reports and liability, and processed incoming mail. The hours were Monday through Friday, 7:30 a.m. to 4:00 p.m. Audit examiners had twenty-three different screens on their computers through which they could research questions to prepare to make their telephone calls. They had access to an individual's employment record by way of name or social security number inquiry. Information that could be obtained included wage history and the employer's name and address. This information is confidential, governed by state and federal statutes. An employee wanting to know if his or her employer had paid unemployment insurance tax is required to submit a request in writing and provide documentation.

The employee's part-time collection activities were with Financial Services Corporation. The position was part-time with scheduled hours of work being 5:00 p.m. to 8:00 p.m., Monday through Thursday, and 8:00 a.m. to 12:00 p.m. on Saturday. Duties were to contact individuals owing personal debt on credit or bank cards or on medical or utility bills by telephone or mail series. Missing information to contact the individual was provided by a separate skip-tracing department. The individuals were contacted at their place of residence. The employee did not handle collection activity beyond a phone call or initial letter. If the employee recognized a name of someone he had dealt with before, that account could be referred to another collector in the office.

It was possible that the employee could have contact in his outside employment with someone he had contact with in regard to his employment for the state. For example, someone he contacted in regard to business for the state could have a personal debt to a retail merchant. Information on individuals within the state's computer system could be used in the part-time job in collection of the delinquent account, although such use would clearly be a violation of state and federal statutes. It was also possible that something that came to the employee's attention through his outside collection activity could cause him to look into whether an employer had paid unemployment tax.

QUESTION

Is a full-time audit examiner for the Indiana Department of Employment and Training Services,

Employer's Liability Section, permitted to engage in outside employment as a part-time collector of personal debt owed on banking and retail merchant credit cards and medical and utility bills?

OPINION

The Commission found that an employee who is a full-time audit examiner for Indiana Department of Employment and Training Services, Employer's Liability Section, is not permitted to engage in outside employment as a part-time collector of personal debt on banking and retail merchant credit cards and medical and utility bills owed by individuals who are employed or have ever been employed inside Indiana. The employee may engage in employment as a collector of personal debt owed by individuals who work outside of Indiana.

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 judgement 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).

"(D) No state officer or employee shall benefit from, or permit any other person to benefit from, information of a confidential nature."