

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 Consequently, the analysis reflected in the opinion may be outdated.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

SEC found there was no conflict of interest in a DMH part-time pharmacist bidding on a contract to provide pharmacy services to a DOC facility.

**91-I-14: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision July 11, 1991)**

FACT SITUATION

A pharmacist worked at Central State Hospital, an institution under the Department of Mental Health. The pharmacist was initially employed as a half-time employee. Subsequently, the employee submitted a bid along with three other bidders for a position as a contract pharmacist at the Indiana Reformatory, Department of Corrections. The pharmacist's bid was the lowest acceptable bid resulting in the contract being awarded, effective July 1, 1991. On June 30, 1991, the pharmacist ended employment with the Department of Mental Health and on July 1 began employment with the Department of Corrections. The previous contractual pharmacist at the Indiana Reformatory initiated this inquiry on the status of a state part-time employee bidding on a state open contract.

The contract was for a thirty-hour week supplying pharmacy services to offenders both for doctor's prescription that the offender carried on their person and for offenders who were in the infirmary. Prescriptions were ordered by doctors there at the prison or at previous locations. The pharmacist also provided fill-in services for pharmacists who were on vacation at other state correctional institutions in the area. The previous contract was for three years. When it was up for renewal, the state did a market survey and decided to advertise the contract for bids. The pharmacist saw the advertisement in the newspaper. The pharmacist had nothing to do with the decision to let the contract for pharmacists and no contact with the Department of Corrections in her job at Central State Hospital.

QUESTION

Is it a conflict of interest for an employee who is a pharmacist on a half-time basis at Central State Hospital, Department of Mental Health, to bid for a contract to provide pharmacy services to the Indiana Reformatory and Correctional Industrial Complex, Department of Corrections?

OPINION

The Commission found it was not a conflict of interest for an employee who is a pharmacist on a half-time basis at Central State Hospital, Department of Mental Health, to bid on a contract to provide pharmacy services to the Indiana Reformatory and Correctional Industrial Complex, Department of Corrections.

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)."

"(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."