

**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 Consequently, the analysis reflected in the opinion may be outdated.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 DNR staff photographer and videographer sought to offer services to state agencies, specifically still photography to DOE, through a private audio/visual production company. SEC found that it was permissible for such state employees to offer the services of their outside businesses in photography and audio/visual production to state agencies other than their own, those they worked with through STARS and those they had a connection with through the State, provided they acquired the job through regular bidding procedures which included responding to a request for proposal.

**91-I-15: Conflict of Interest, Moonlighting  
Indiana State Ethics Commission  
Official Advisory Opinion  
(Decision August 15, 1991)**

**FACT SITUATION**

A Surveyor IV for the Division of Water, Indiana Department of Natural Resources, acted as a staff photographer and videographer. He helped with division slide and overhead presentations, made training and documentation videos, kept track of financial and vehicle records for the survey and maps section, and handled requests for aerial photography and engineering reprographics.

The employee, another state employee who worked in the State Library, and another non-state employee started an audio/visual production company which specialized in making video tapes for weddings, training, and conventions. It also did still photography.

The company did photography for what they believed was a Kiwanis Club but turned out to be for the Indiana Department of Education. The job was acquired through a friend who worked for the Department of Education.

The other state employee who worked in the State Library was an audio/visual consultant with responsibilities to circulate video tapes, schedule audio/visual equipment, do some production, and do a variety of audio/video related things for state agencies and other public libraries throughout the state. Neither state employee procured photographers or audio/video services as part of their state duties.

Both participated in the STARS group, which is a sub-committee under the Training Advisory Committee composed of those in various agencies of state government who have video expertise. The group transfers services back and forth as a courtesy and no money is transferred between agencies. Only ten to fifteen agencies are represented on STARS. The group members planned to make themselves available to other agencies which did not have anyone to do video production and the group was writing up guidelines to do that at the time of the inquiry.

**QUESTION**

Is a staff photographer and videographer for the Division of Water, Indiana Department of Natural Resources, permitted through a private audio/visual production company to offer services to state agencies and, specifically, still photography services to the Department of Education?

**OPINION**

The Commission found that employees of state government who perform photography and videography duties in their state job are permitted to offer the services of their outside business in photography and audio/visual production to agencies of state government other than their own,

other than those they work with through STARS, and other than those they have a connection with through the state, provided they acquire the job through regular bidding procedures which include responding to a request for proposal.

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."