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 Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-9 Conflicts of interest

SEC found there was an appearance of a conflict of interest for the ISP superintendent to allow his agency to discuss a proposal and to negotiate a contract with a company for rebuilding ISP vehicles while the company was sponsoring the superintendent's racing car.

91-I-16: Conflict of Interest
Indiana State Ethics Commission
Official Advisory Opinion
(Decision August 15, 1991)

FACT SITUATION

The superintendent of the Indiana State Police Department was involved in automobile racing as a recreational hobby. One of his sponsors was a company that was in the business of rebuilding police vehicles and had recently requested to discuss a proposal with the Indiana State Police. Such a proposal could result in a substantial savings for the state.

The sponsorship of the superintendent's racing car was paid into a corporation in which the superintendent was a shareholder and officer. The company, consisted of the superintendent, his wife, and his son. The superintendent owned forty-eight percent of the corporation, the son owned forty-eight percent of the corporation, and the superintendent's wife owned two percent, the controlling vote. The son repaired the racing cars and the superintendent raced cars.

The company put a sponsorship on a race car, mainly for a twenty-four hour race that was in Nelson, Ohio. The company paid $1,350 to advertise on the side of the superintendent's race car. The corporation had kept the decals on the side and planned to through three races in the month of September.

The company had approached the Indiana State Police about doing a project to rebuild police Mustangs that have high mileage on them by putting in new running gears. The company had done a project for the New Jersey State Police in the preceding year that saved half the price of the cost of buying new cars. New Jersey had only done one or two cars, but thought it had worked well. Because the state was getting good resale value with the Mustangs even though they were high mileage, the superintendent was not sure whether it would be cost effective and wanted to make sure before the agency would consider letting a contract for bids on rebuilding cars for the State Police.

If the state decided to do this sort of a project, the procedure would be that the State Police Logistics Division would write specifications. The Department of Administration would handle the bidding, the contract work, and actually make the decision. The superintendent's only involvement would be that he was the chief executive of the agency.

QUESTION

Is the superintendent of the State Police permitted to participate in the discussion of a proposal to rebuild police vehicles with a company that is sponsoring the superintendent's automobile racing corporation?

OPINION

The Commission found there was an appearance of a conflict of interest for the superintendent of the Indiana State Police Department to allow the State Police to discuss a proposal and negotiate a contract with a company for rebuilding State Police vehicles so long as the company was sponsoring the superintendent's racing car.

The relevant statute is as follows:

IC 4-2-6-9, on Conflict of interest provides, "(a) A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest.

(b) If:

(1) disqualification of a state officer or employee under subsection (a) leaves a body with less than a quorum; or

(2) the disqualified state officer or employee:

(A) is required by law to act; or

(B) is the only person authorized to act; the state officer or employee may act if the state officer or employee makes a disclosure under subsection (c).

(c) A disclosure under this section must:

(1) be in writing;

(2) disclose the nature and circumstances of the financial interest;

(3) be affirmed under penalty of perjury;

(4) be submitted to the agency before participation in the decision or vote;

(5) be filed within fifteen (15) days of the decision or vote with the state board of accounts; and

(6) contain the written approval of the state officer, if any, who appointed the employee.

(d) This section does not apply if the state officer or employee has made a disclosure under IC 35-44-1-3(c)(3) or IC 35-44-1-3(c)(4) with respect to the same conduct."