

**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 Consequently, the analysis reflected in the opinion may be outdated.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 sanitary engineer in IDEM's Facility Construction Section was part owner of a consulting firm that conducted soil evaluations for towns seeking approval of a wastewater treatment system from the Facility Construction Section. SEC found that this presented a conflict of interest for which neither the engineer nor any firm in which he had an interest would be permitted to participate in the future in any projects which came before IDEM. SEC found that the conflict of interest arising in two existing projects was inadvertent and the engineer should be shielded by IDEM from any participation in the review or decision making regarding those projects.

**91-I-20: Conflict of Interest, Moonlighting  
Indiana State Ethics Commission  
Official Advisory Opinion  
(Decision October 10, 1991)**

**FACT SITUATION**

A sanitary engineer in the Facility Construction Section of the Indiana Department of Environmental Management (IDEM) was a one-third owner of a consulting firm that conducted soil evaluations for towns seeking approval of a wastewater treatment system from the Indiana Department of Environmental Management, Facility Construction Section.

The engineer's duties were to approve plans and specifications and issue construction permits for wastewater treatment facilities throughout the state for municipal, industrial, or private entities. Prior to the inquiry, another reviewer was reviewing a lagoon system project for the Town of Bryant in regard to the design and location for a construction permit. Part of the review included asking for soils information along with the review of the design of the lagoon system in order to see if the location to place the lagoon was proper. When the reviewer asked the design engineer for the soils information, the town submitted a soil analysis and report which it had received from a company, the cover letter of which bore the engineer's signature.

The company of which the engineer was one-third owner did materials testing, e. g., soil testing, concrete testing, and asphalt testing. The work was done primarily for building projects. The firm had been hired by the Town of Bryant to give an opinion on the nature of the soil condition, i.e., whether it was suitable soil for locating a wastewater treatment lagoon. The engineer's company was asked to drill test holes and get soil samples. If the soil testing showed the site would not be appropriate, the town would be required to select a different site. Generally, the engineer's company did no investigations for treatment systems. The final design for the system would be done by a different firm. In addition to the testing for this project, the engineer's company had done some testing which the Facility Construction Section had not yet received of soils in regard to foundations on buildings. The engineer said that these projects were unique and that his consulting firm would not get involved in those kinds of projects again -- they would decline such projects.

The engineer's job for IDEM was to review submissions to ensure final design plans were capable of handling the hydraulic and organic loads. Part of the determination of the suitability of the soil included whether there would be a need to put in a synthetic liner. The engineer's supervisor told the Commission he would ensure the engineer would not be involved in the rest of the review of this project or the second project mentioned. The supervisor felt the fact that the engineer worked in the Facility Construction Section was not going to influence the comments the Section would make on the soil testing report.

#### QUESTION

Does a sanitary engineer of the Facility Construction Section of the Indiana Department of Environmental Management have a conflict of interest if he is one-third owner of a consulting firm that conducts soil evaluation for towns seeking approval of their wastewater treatment system from the Indiana Department of Environmental Management, Facility Construction Section?

#### OPINION

The Commission found that a conflict of interest did exist for the sanitary engineer in the Facility Construction Section of the Indiana Department of Environmental Management who had a one-third ownership of a consulting firm that conducted soil evaluations for towns seeking approval of their wastewater treatment system from the Facility Construction Section of IDEM and that neither the engineer or any firm in which he had an interest would be permitted to participate in the future in any projects which would come before the Indiana Department of Environmental Management. As to the two existing projects, because the Commission felt there was an inadvertent conflict, they asked the IDEM to shield the employee from any participation in the review or decisionmaking regarding those projects.

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."