

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 Consequently, the analysis reflected in the opinion may be outdated.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(a) Conflicts of interest

40 IAC 2-1-8 Moonlighting

SEC determined that an Air Pollution Control Permit Engineer for IDEM's Office of Air Management was permitted to contract part-time professional services to companies, provided the engineer did not consult in areas of environmental regulation, including those regulated by other agencies.

**91-I-26 Conflict of Interest, Moonlighting
(Decided December 12, 1991 and February 20, 1992)**

FACT SITUATION

An Air Pollution Control Permit Engineer in the Office of Air Management, Department of Environmental Management, wanted to provide professional services part-time to companies on contract for projects having to do with underground tunneling, underground storage tanks, ground water modeling and monitoring, bridge and highway construction, real estate property transfer, mined land reclamation, and hazardous materials transfer and storage.

The engineer's responsibilities were to administer rules and regulations associated with the Clean Air Act, under the authority of the state of Indiana. This included evaluating plans and making recommendations based on the rules and regulations. The engineer wanted to work, possibly with his wife or another person, as an engineering consultant giving advice or performing environmental audits.

The engineer's undergraduate background was in geological engineering and his graduate work was in environmental administration. His wife has a degree from IU in planning and has been a buyer for LS Ayres for ten to thirteen years.

The areas which the Indiana Department of Environmental Management (IDEM) regulates include mining, land reclamation, air pollution, underground storage tanks, solid and hazardous waste, water quality, and drinking water. IDEM was not regulating the real estate property transfer law (RPTL) at the time, but the agency tracked, monitored and provided information in regard to it.

It was possible that an industry or an entity the engineer consulted for could come before the engineer in his responsibilities for the office of Air Management, because there is a lot of crossover with entities having contact with the various divisions within the Department of Environmental Management. The engineer felt he could avoid the situation by making known to his supervisors that he had prior contact with the entity and by being screened from that particular matter.

IDEM's current policy said, "Each full-time employee acquiring employment outside DEM is requested to submit to his/her Division Head information including nature of employment, duties, location, and scheduled work hours."

At the meeting on February 20, the agency announced its intent to have a new policy which 1) prohibited any environmental consulting work and 2) required disclosure from the employee of non-environmental consulting and other employment, with a decision whether to permit such other outside employment made in a case-by-case review and, if permitted, monitoring of non-environmental consulting. The policy would be based on the principle that the agency did not want to interfere excessively with an employee's ability to do secondary employment but did not want to undermine the agency's abilities to regulate. An environmental consultant could turn into a witness for the opposite side. In regard to a spouse being involved in environmental consulting,

the agency would require in the policy the IDEM spouse to write a letter stating he or she would have no involvement in any capacity.

QUESTION

Is an Air Pollution Control Permit Engineer in the Office of Air Management, Department of Environmental Management, permitted to provide professional services part-time to companies on contract?

OPINION

The Commission found that an Air Pollution Control Permit Engineer for the Office of Air Management, Indiana Department of Environmental Management, was permitted to provide professional services part-time to companies on contract provided the engineer did no consulting in areas of environmental regulation, including those regulated by other agencies.

The relevant rules are as follows:

40 IAC 2-1-8 on moonlighting provides, " A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties."

IC 4-2-6-9(a) on conflicts of interest provides, " 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."