

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 Consequently, the analysis reflected in the opinion may be outdated.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

The Sergeant in a DOC facility sought to do tax preparation for state employees including some he supervised. SEC found that because there was a likelihood of conflict of interest, the Sergeant could not prepare taxes for employees he directly supervised; however, he was permitted to continue to do tax work for other employees of the facility or other state employees for whom he had no direct supervisory relationship.

91-I-27: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision December 12, 1991)

FACT SITUATION

A Sergeant in the Control Room on the four to midnight shift at the Reception Diagnostic Center in Plainfield, a Department of Corrections' facility, had been an employee there since August 1972. He supervised an operator, an account officer, and sometimes an extra man in training. There was another supervisor, who was a lieutenant, as well. The Sergeant also was the range floor supervisor of a group of seventeen to nineteen officers on the third shift. His job included authority to write up employees that he supervised and to give information to the shift supervisor to be used in the performance appraisal. Such appraisals could be used when considering employees for promotion.

The individual also had a tax return, accounting, and bookkeeping business (since 1972). He did not advertise or solicit business while at work. He did, however, do tax work for four or five people he supervised but did not do any bookkeeping for anyone in the Department of Corrections. A couple of the employees he had done tax work for were clients when he worked for H & R Block before going into business for himself. At that time, he was a warehouse supervisor and had no supervisory responsibility over those people.

QUESTION

Is a Sergeant in a Department of Corrections facility permitted to do tax preparation for state employees, including some he supervised?

OPINION

The Commission found that because there was a likelihood of conflict of interest, a supervisor is not permitted to do tax business for compensation for employees that he directly supervises. The employee is permitted to continue, however, to do tax work for other employees of the facility or other state employees for whom he has no direct supervisory relationship.

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 Conflict 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."

The Department of Corrections own rule on conflict of interest on file with the State Ethics Commission says, "Staff shall perform their duties in such a manner that appearances of impropriety or conflicts of interest do not exist. Compromising activity may include any activity that gives rise to a suggestion of impropriety or conflict of interest. Staff shall not accept gifts nor gratuities from anyone with whom the Department conducts business. (Note: This prohibition is more restrictive than those provided in the Indiana Code of Ethics for the Conduct of State Business. Any questions regarding potential conflicts of interest shall be discussed with the staff member's immediate supervisor for advice and direction. No staff person shall supplement any state salary through activities engaged in the physical confines of the institution or office, such as collecting commissions, owning or operating a concessions, rendering service to other staff, offenders, or the public."