

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 Consequently, the analysis reflected in the opinion may be outdated.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 Conflict of interest**

A Department of Commerce employee who was responsible for overseeing Community Development Block Grant fund eligibility and compliance monitoring sought to create a private business in which he would assist the cities of Marion and Washington in applying for and administering INDOT grants. SEC found this arrangement was permissible subject to specific conditions.

**91-I-2 Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision February 14, 1991)**

FACT SITUATION

The Department of Commerce wanted to appoint an employee as Deputy Director of Grant's Management for the Community Development Division of the Indiana Department of Commerce. Duties of the Deputy Director of Grant Management were to determine applicant eligibility for Community Development Block Grants (CDBG) funds according to Department of Housing and Urban Development (HUD) regulations and for monitoring grantee compliance with the federal regulations regarding such funds. The Deputy Director does not have the authority to select which Indiana communities will be awarded CDBG funds.

The employee's private business was as a consultant through a subchapter S corporation. The activity of the corporation involved contracts with the cities of Marion and Washington to assist them in applying for and administering Indiana Department of Transportation grants (Urban Mass Transportation Section 18 Program). The employee was previously employed by the cities of Marion and Washington before coming to work for the Department of Commerce. The employee came before the State Ethics Commission in March 1988 for an advisory opinion in regard to working for the Department of Commerce and continuing his outside private consulting with the two cities. The State Ethics Commission found no conflict of interest.

To avoid any appearance of a conflict of interest in his new position, the employee said he would not perform any grants management duties related to the cities of Marion and Washington. He also would voluntarily file disclosure statements with those communities and with the Indiana Department of Transportation. The Department of Commerce had informed HUD of the situation and presented the Commission with a copy of a letter permitting the continued private business activity provided the State Ethics Commission so ruled, provided the employee complied with statements made in the letter to HUD, and provided the employee refrain from other similar business activities during his tenure working on CDBG grants and one year thereafter.

QUESTION

Is an employee of the Department of Commerce with responsibilities for Community Development Block Grant fund eligibility and compliance monitoring permitted to have a private business with the cities of Marion and Washington assisting them and applying for and administering Department of Transportation grants?

OPINION

The Commission found that it was permissible for the employee to have a private business with the cities of Marion and Washington assisting them and applying for and administering Department of Transportation grants while serving the Department of Commerce as the Deputy Director of grants management with responsibilities for Community Development Block grant fund

eligibility and compliance monitoring provided that 1) the employee was screened from CDBG grant duties where the cities and other government units with which he had private contracts and any grant management duties related to those were performed by the employee's supervisor or someone not under the employee's supervisor; 2) the employee refrain from entering into outside business activities during his CDBG tenure and one year thereafter with any other communities for which he might have taken discretionary CDBG program related action; 3) the employee file disclosures with the cities of Marion and Washington and with the Indiana Department of Transportation.

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 Conflicts 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."