

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 Consequently, the analysis reflected in the opinion may be outdated.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

SEC found that a DNR Program Specialist in the Division of Water's Water Rights Section was not permitted to take a part-time position as an executive secretary of the Indiana Well Drilling Contractors Association.

**91-I-5: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision March 14, 1991)**

FACT SITUATION

A Program Specialist in the Division of Water, Department of Natural Resources, wanted to apply for a part-time position as executive secretary of the Indiana Well Drilling Contractors Association. The Division of Water, Water Rights Section, in which the employee worked was responsible for the regulation of water well drilling and for water rights licensing under the water rights statute. The statute sets standards for well siting, construction and operation, and requires a competency exam in order for a water well driller to be licensed. DNR conservation officers inspect and enforce the statute and rules on installation of a water well and the pump and on equipment used to drill a water well. The officers may issue a citation or ticket for violations. The Water Rights Section is not concerned with water quality or with oil well drilling.

The employee performed administrative duties relative to the protection, assessment, and resolution of conflicts concerning the state's ground water resources. They included sending out renewal applications and processing them. If a license had been expired for more than one calendar year, the driller was required to re-take a test and send in references. The employee administered the tests and graded them. The tests were multiple choice and true/false. Duties also included providing information to water well drillers and the public, as well as consulting with the Indiana Well Drilling Contractors Association in preparing the competency exam that was administered.

Approximately fifty percent or more of the drillers licensed by the Water Rights Section belonged to the Indiana Well Drilling Contractors Association. Most of the contractors did water supply drilling, rather than exploratory-type drilling. The Association had a president, elected for an annual term, other officers, and directors at-large.

The duties of the executive secretary included setting up their annual convention, taking part in the committee that decides on convention facilities, attending annual board meetings (four or five a year), preparing newsletters (four to six a year), and publishing an annual yearbook. The work was estimated to take six hours a week and would be done by the employee primarily in the evenings at home. The employee would take vacation days to attend conventions and mini-conventions held in alternate years which last two days and one day respectively.

The Division of Water worked in cooperation with the Indiana Well Drilling Contractors Association in the preparation of rules adopted by the Natural Resources Commission. These rules applied to individual drillers, some of whom were members of the Association. The employee's duties included receiving and passing on to investigators complaints about well drilling contractors, preparing information for the Director of the Department of Natural Resources to use in suspending or revoking a license of a drilling contractor, providing information for the Department to initiate an injunctive proceeding against a person without a license or who operated while their license was suspended, and serving as a witness in a court proceeding if the

DNR tried to seek an injunction. The program specialist would be paid for the executive secretary job by an association of drillers who were regulated by the agency for which the program specialist worked and to whom the agency issued warning citations or tickets for failure to comply with statutes and rules.

QUESTION

Is it permissible for a Program Specialist in the Water Rights Section, Division of Water, Department of Natural Resources to hold a part-time position as an executive secretary of the Indiana Well Drilling Contractors Association?

OPINION

The Commission found that a Program Specialist in the Water Rights Section, Division of Water, Department of Natural Resources, is not permitted to take a part-time position as an executive secretary of the Indiana Well Drilling Contractors Association.

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 or 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(A), on Conflict of interest provides, "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 a conflict is prohibited.

"(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."

The definition of conflict of interest is "a situation in which a state officer's or employee's private interest, usually of a financial or economic nature, may influence his judgment in the performance of his public duty."

The Commission discussed the facts and found that this outside activity was not compatible with the full and proper discharge of your public duties and responsibilities. It also found that the part-time job provided an economic interest that was substantial and material and in conflict with the interest of the people of the state.