

**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 Consequently, the analysis reflected in the opinion may be outdated.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 DHS Clerk wanted to start an outside business doing painting, landscaping, dry wall, carpentry, janitorial and maid service, property management and upkeep. SEC found this did not present a conflict of interest provided the employee did not give out business cards or mention his private business while in the course of duties for the State, nor mention in the course of private duties that he worked for the State.

**91-I-9: Conflict of Interest, Moonlighting  
Indiana State Ethics Commission  
Official Advisory Opinion  
(Decision April 11 and June 13, 1991)**

**FACT SITUATION**

A Clerk IV in the Indiana Department of Human Services, Section 8 program, with duties that involve the scheduling of tenants to determine eligibility and continued eligibility for the Section 8 existing housing voucher program, according to Federal and agency regulations, wanted to have an outside business. The employee was also assigned occasionally on a fill-in basis Clerk III duties which were to deal with clients by doing the intake to determine eligibility and income changes for residents, some of whom are from Marion County, and to do a briefing of tenants as to the Section 8 program. The briefing is to inform the tenant how to determine what the rent amount is going to be and how to make sure the unit is going to pass inspection. The Clerk did not deal with landlords.

The business that the Clerk IV was a part of was a company called "Desired Price Restore and Upkeep." The company specialized in painting, landscaping, dry wall, carpentry, janitorial service, maid service, property management, and continuous upkeep. The employee and eight other gentlemen formed the business. The business had reserved the name for 120 days effective March 1, 1991. The employee's role in the business was as bookkeeper for the association which planned to become a corporation. The employee had agreed not to receive a salary for the first two years, because the proceeds would go directly into the corporation. At some point in the future, the business planned to bid on contracts through HUD which have no affiliation at all with the Section 8 housing program. As of the time of the opinion, the company had done no business with a Section 8 landlord. However, one person who was in the Section 8 program had contacted them, but the business did not do any work for this person because the employee knew the person was a Section 8 landlord.

**QUESTION**

Is an employee in the Department of Human Services who is a Clerk IV and sometimes does Clerk III duties permitted to have an outside business which does painting, landscaping, dry wall, carpentry, janitorial and maid service, property management, and upkeep?

**OPINION**

The Commission found that there was no conflict of interest for an employee in the Department of Human Services who is a Clerk IV and sometimes does Clerk III duties to have an outside business which does painting, landscaping, dry wall, carpentry, janitorial and maid service, property management, and upkeep provided the employee does not, while in the course of duties for the state, give out business cards or mention the employee's private business, nor mention in the course of private duties that the employee works for the state.

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 judgement 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)."

The definition of conflict of interest says that a "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."