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 Consequently, the analysis reflected in the opinion may be outdated.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 found there was no conflict of interest for six DFC directors, who had formed a nonprofit corporation and were its only board members, to receive federal funds administered through the DFC as long as the directors did not participate in any decision on the funding panel involving the allocation of the federal funds to the nonprofit corporation.

93-I-14 Conflict of Interest, Moonlighting
(Decision October 21 and November 18, 1993)

FACT SITUATION

Six Division of Family and Children (DFC) directors wanted to know if it was a conflict of interest or incompatible with their state duties for the six directors, who had formed a nonprofit corporation and were its only board members, to receive federal funds administered through the Division of Family and Children and to serve on a panel which recommended which providers received federal funds.

The six were directors in six northern counties. They received no financial benefit personally from serving on the nonprofit corporation board. The nonprofit corporation provided foster parent training and family home studies in the six rural counties of these directors. The nonprofit corporation received federal funding for two programs and County Child Welfare Administration funds for all other services it provided.

Five directors formed the nonprofit corporation in 1975 to serve their counties. At a later date, the organization incorporated as a nonprofit and added a sixth county and its director. The nonprofit corporation provided a variety of services which were originally purchased by county welfare departments with federal Juvenile Justice funds. As the Juvenile Justice grant amount decreased each year, the county welfare departments began purchasing services with Child Welfare Administration funds allocated by local county councils. In 1984, county welfare departments began to purchase some services from the nonprofit corporation with federal funds allocated to county departments by the State Department of Public Welfare. In 1987, the county offices, now called Offices of Family and Children, became state administered.

A district-wide panel of eleven DFC directors once a year recommended specific service providers receive the federal funds based upon the unique needs of the district. The district panel recommendations were submitted to the Indiana Division of Family and Children for approval as part of the statewide provision of child welfare services. The six county directors abstained from voting in regard to the distribution of the federal funds in their districts on issues relating to the nonprofit corporation.

The nonprofit corporation had one full-time director, one part-time secretary, and three part-time home study specialists. The home study specialists worked in the counties of the district and also did home studies for Allen County as part of the federally funded contract. The nonprofit corporation provided foster parent training, home studies, and recruited new foster homes. The nonprofit corporation maintained an office, paid rent and utilities, sent out newsletters, and maintained a toll-free number. Each of the six counties contributed a yearly fee which provided a cash balance that permited the nonprofit corporation to pay its workers prior to receipt of the federal reimbursement.

To decide who was to receive the federal funding, the counties placed public advertisements of the date of acceptance of bids for the federally funded services. Sealed bids were received which included a unit rate, the amount of service that could be provided, and a description of the service. The bids were reviewed by the panel. The nonprofit corporation turned in its bids without knowing the rates other providers had bid.

There were not many bidders to provide these federally funded services in these six counties because of the rural nature of the area. The closest large providers were in Ft. Wayne, and the rates charged were higher because of the distance providers had to travel.

QUESTION
Is it a conflict of interest or incompatible with their state duties for six Division of Family and Children (DFC) directors who had formed a nonprofit corporation and were its only board members to receive federal funds administered through the DFC and to serve on a panel which recommended which providers received these federal funds?

OPINION
The Commission found that it was not a conflict of interest or incompatible with their state duties for six DFC directors who had formed a nonprofit corporation and who were its only board members to receive federal funds administered through the DFC as long as the directors did not participate in any decision on the funding panel involving the allocation of the federal funds to the nonprofit corporation.

The relevant statute and rules are as follows:

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."

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."