

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 Consequently, the analysis reflected in the opinion may be outdated.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

DOC sought clarification from the SEC of the opinion it issued in 93-I-12 in which it determined an assistant superintendent was prohibited from contracting with a local college to teach evening classes to employees on state grounds. SEC explained that the mere existence of a supervisor/supervisee relationship between a teacher and student in a continuing education course taught through a state university in the correction field was not necessarily incompatible with the state ethics rules; however, if the supervisor actively recruited his or her subordinates for a class to be taught by the supervisor, that would be a violation under 40 IAC 2-1-8.

**93-I-15 Conflict of Interest, Moonlighting  
(Decision October 21, 1993)**

**FACT SITUATION**

The Department of Correction asked the State Ethics Commission to clarify its opinion in 93-I-12 of August 1993 in which the Commission found an assistant superintendent was prohibited from contracting with a local college to teach evening classes to employees on state grounds. The Department of Correction had staff members who taught employees on the grounds of Wabash Valley, a correctional facility. There were also staff members who taught at off-ground sites employees they supervised during the work day. Finally, there were staff who taught at a university and some of the students they taught could be employees they supervised. A local university near the correctional facility had had an arrangement with the Department of Correction for ten or eleven years to provide educational services for DOC staff who wanted to get an associate's degree. The university had designated correctional facilities as continuing educational sites and contracted with various staff members at these institutions who had expertise to teach.

The university's associate degree was developed primarily for people who worked within the correctional system. The university did not have adequate staff. Therefore, it had approached qualified DOC employees to become adjunct faculty. When a correctional facility was designated a continuing educational site, any student (not employees only) was permitted to register for courses offered at that institution. The university sent someone to the site to assist employees with financial aid and class registration. In the case of one DOC facility, a training officer served as an unpaid coordinator between the institution and the university.

Eight correctional facilities were listed as off-campus continuing education sites for this university. Staff members and middle management in high administrative positions were frequently approached by the university to become adjunct faculty because they had the broadest background experience and were generally qualified to teach these classes. Other universities also recruited correctional employees to teach. The minimum number of students required in order for a course to be offered was generally ten students. Educational attainment assisted employees who wish to be considered for higher level positions in the Department of Correction.

The level of compensation for adjunct faculty was about \$1,200 for a one-semester course, although the amount varied. Courses were frequently listed without the name of the instructor, but with only the term "adjunct faculty." The Department of Correction did not provide any tuition assistance for students. The program had existed for some time without apparent problem. The program had provided substantial benefits in employment and education for DOC employees. The Department of Correction was in a unique position to provide qualified instructors.

**QUESTIONS**

1) Is any employee exercising supervisory authority over another employee prohibited from teaching on Department of Correction grounds under contract with a local university?

2) Does it matter if the classes are held at a site other than where the administrator works, e. g., another Department of Correction facility or a non-state site?

3) Is an employee of the Department of Correction who exercises supervisory authority over another employee prohibited from teaching that employee on the grounds of institutions of higher learning?

#### OPINION

The Commission clarified its prior opinion in 93-I-12 by stating the mere existence of a supervisor/supervisee relationship between a teacher and student in a continuing education course taught through a state university in the correction field is not necessarily incompatible with the state ethics rules. However, if the supervisor actively recruited his or her subordinates for a class to be taught by the supervisor, that is a violation under 40 IAC 2-1-8. The Commission provided this clarification with the understanding that the Department of Correction and its management will be sensitive so that if problems arise, they will be dealt with either by the Department of Correction or through the State Ethics Commission.

In reaching this opinion, the Commission found two factors to be significant: the apparent lack of previous problems in supervisory/supervisee relationships within the Department of Correction when a supervisor has taught a supervisee in a course and the limited supply of qualified faculty in the field of corrections other than state employees.

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."

The definition of financial interest at IC 4-2-6-1(9) says, "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services; in which a state officer or an employee or that individual's spouse or unemancipated children may gain a benefit of two hundred fifty dollars (\$250) or more.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee."

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."