

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 Consequently, the analysis reflected in the opinion may be outdated.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

The DOL's Deputy Commissioner, who was responsible for Occupational Safety and Health Standards enforcement, questioned whether it was a conflict of interest for him to be employed by an Ohio consulting firm to do consulting in regard to Ohio state safety standards applicable to Ohio public sector employers. SEC found that although it was not permissible for the Deputy Commissioner to be employed by a firm providing such services, it would not be a conflict of interest or violation of the moonlighting rule for him to provide consulting on Occupational Safety and Health Standards directly to public sector employers in the state of Ohio.

**93-I-3 Conflict of Interest, Moonlighting
(Decision April 15, 1993)**

FACT SITUATION

The Director of the division that enforces Indiana Occupational Safety and Health Administration (IOSHA) standards for both private and public sector employees in Indiana wanted to be employed by an Ohio consulting firm to do consulting in regard to Ohio state safety standards applicable to Ohio public sector employees.

The Director's responsibility was to ensure a safe workplace for public and private sector employees in the state of Indiana by supervising a staff of approximately 100 employees, 80 compliance officers who perform safety inspections and 20 office support staff. The IOSHA standards were a fifty-fifty agreement with federal OSHA, whereby the federal OSHA has oversight to make sure the Indiana regulations are at least as effective as the federal regulations.

The state of Ohio is a federal state which does not have jurisdiction over public sector employees. The federal government enforces safety standards in the private sector. Ohio recently passed a law which developed a safety division within Ohio to provide similar protections for public sector employees enforced through the Ohio Occupational Safety and Health Division.

A consulting company had contacted the Director to put on seminars for public sector employees in Ohio under the new law. The Director had given several speeches. After the speeches, the Director was asked if he would consider doing consulting work such as reviewing safety programs developed in Ohio to see if they comply with the law, giving talks on the importance of safety, helping public sector employers comply with the law, and promoting the idea of compliance with the law. The Director said he would use weekends and vacation time to do the consulting. The consulting company now provides services such as labor negotiations to public employers. The company was discussing how they will go into safety law.

The consulting company had done some work in the city of Muncie, Indiana. It could have advised the city of Muncie with regard to IOSHA standards. It was also possible the consulting company could be hired by another Indiana city or governmental agency to help do a safety plan or help with labor negotiations.

QUESTION

Is it a conflict of interest for the Deputy Commissioner for the Department of Labor with responsibilities for Occupational Safety and Health Standards enforcement to be employed by an Ohio consulting firm to do consulting in regard to Ohio state safety standards applicable to Ohio public sector employers?

OPINION

The Commission found that the Deputy Commissioner in the Department of Labor with

responsibilities for Occupational Safety and Health Standards enforcement was not permitted to be employed as a consultant on the Occupational Safety and Health Standards applicable to Ohio public sector employees by a firm which also did business in Indiana and which was subject to enforcement by the Indiana Department of Labor. The Commission found it would not be a conflict of interest or violation of the moonlighting rule for the Deputy Commissioner to provide consulting on Occupational Safety and Health Standards directly to public sector employers in the state of Ohio.

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."