

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 Consequently, the analysis reflected in the opinion may be outdated.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 it was not a conflict of interest or a violation of the moonlighting prohibition for an INDOT Laboratory Technician to sell flowable mortar to contractors who might do business with INDOT.

**93-I-6 Conflict of Interest, Moonlighting
(Decision May 20, 1993)**

FACT SITUATION

A Laboratory Technician II in the Soils Laboratory of the Indiana Department of Transportation's Materials and Test Division wanted to have an outside company which would engage in a flowable mortar business, selling backfill material to contractors for state road projects. The Laboratory Technician performed on his state job a series of tests for soil compaction, grain size analysis, liquid and plastic limits, and other tests of soils and aggregates. The Soils Laboratory tested samples which drill crews brought in from the field. A sample came through Receiving where it was assigned a laboratory number. The technicians performing the test did not know where the samples had come from; all they had was a laboratory number. The laboratory technician's job responsibility was to collect the data and perform the tests on the materials assigned by the engineers.

Flowable mortar, a combination of ash, water and cement, would be tested in the Cement or Concrete Laboratory. The Soils Laboratory might run some tests but, when the sample was submitted, the technicians did not know the source of the sample. Samples in the Cement or Concrete Laboratory also were identified by a number which was assigned by a person in Receiving. That person would not know to whom the laboratory technician's business had sold fly ash or flowable mortar. The laboratory technician had no role in the procurement decisions of the Department of Transportation nor any role in writing specifications or doing design work for projects.

The Laboratory Technician planned to sell his flowable mortar to contractors to use as optional backfill material. The Department of Transportation would not buy flowable mortar directly but would work with contractors. Contractors had the option to use flowable mortar or granular backfill. Concrete companies also sold flowable mortar. The Laboratory Technician said the cost of the combination that cement companies used was higher than the cost of his product. In addition, his product sets up in 5 to 12 hours and does not expand or contract.

Although the Laboratory Technician could sell flowable mortar to contractors whose other materials would be tested in his laboratory, he would not know which samples he was testing belonged to a particular contractor.

Flowable mortar was tested as produced in a field test. The product was mixed on the site and had to meet requirements and specifications at the time it was being spread. The field inspector would not be a co-worker of the Laboratory Technician but an employee out of a district office. Engineers could submit a sample for a laboratory test in order to get more data from it. If a project was a private project, the laboratory testing could be assigned to a private testing laboratory. If it were a Department of Transportation project for which the contractor had purchased the flowable mortar, then the Indiana Department of Transportation performed the test.

QUESTION

Is a Laboratory Technician in the Materials and Test Division who does soils testing for the Indiana Department of Transportation permitted to have a business selling flowable mortar as backfill material to contractors for state road projects?

OPINION

The Commission found it was not a conflict of interest or a violation of the moonlighting prohibition for a Laboratory Technician II in the Materials and Test Division who does soils testing for the Indiana Department of Transportation to sell flowable mortar to contractors who may do business with the Indiana Department of Transportation.

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."