

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 Consequently, the analysis reflected in the opinion may be outdated.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 a DNR conservation officer's outside employment as a security officer for a coal company would create a potential conflict of interest due to the department's regulatory responsibility over coal companies.

**93-I-7 Conflict of Interest, Moonlighting
(Decision June 17, 1993)**

FACT SITUATION

A conservation officer in the Law Enforcement Division of the Department of Natural Resources requested permission to have outside part-time employment as a security officer for a coal company. The Law Enforcement Division in the Department of Natural Resources included the Fish and Wildlife Division and the Division of Reclamation which regulated coal companies. All conservation officers had full police powers to enforce all the laws in the state of Indiana. Conservation officers did not specialize but were required to know the rules and regulations regarding reclamation, although officers in some parts of the state did not deal with them routinely. The officer involved worked in a mining area and was familiar with mining laws and rules.

Conservation officers, while enforcing the Division of Fish and Wildlife rules, could have been required to respond to trespass or fish and wildlife violations that occurred on land owned by a coal company. In many of the coal reclamation projects, there were hundreds of lakes and ponds. People were given permission to go on this land to fish. The conservation officer involved could have had to police such an area both as part of his state responsibilities and as security for the coal company. A conservation officer could have been more inclined to spend an inordinate amount of time checking on the property of a coal company if the officer had a part-time job for that company.

The Division of Reclamation issued permits for coal mining and the Department of Labor was responsible for the safety of surface mining. Neither depended upon conservation officers for inspections and enforcement because they used their own inspectors but, when it came to violations of the law, the Law Enforcement Division took over.

A security officer for a coal company could have had to assist non-union strikebreakers in crossing the picket line. A conservation officer could have been required to escort some DNR state mine inspector or Department of Labor safety investigator onto the site. Most of the mining areas have a limited number of police officers available for such situations and, if things were to get out of hand, DNR conservation officers would be called to assist in a law enforcement capacity. A conservation officer could be involved in the investigation and preparation of a case and could be called as a witness in a court case or an administrative hearing involving a mine operator.

QUESTION

Is a conservation officer with law enforcement duties which include enforcing trespass laws in regard to hunting and fishing without permission and rules in regard to regulating coal mining and reclamation, as well as other laws, permitted to have outside employment as a security officer for a coal company within the officer's assigned area?

OPINION

The Commission found outside employment of a conservation officer, Law Enforcement Division, Department of Natural Resources, as a security officer for a coal company would create a potential conflict of interest which rendered the outside employment incompatible with state responsibilities of a conservation officer because of the department's regulatory responsibility over coal companies.

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."