

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 Consequently, the analysis reflected in the opinion may be outdated.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) Conflict of interests

40 IAC 2-1-8 Moonlighting

DOC substance abuse counselors sought employment with a joint venture entity to train other substance abuse counselors at DOC even though DOC had a contract with the joint venture entity to provide training for its own employees. SEC found there was no conflict of interest in the counselors accepting employment with the entity to train other DOC counselors provided the counselors observed the appropriate restrictions.

**94-I-12, Conflict of Interest, Moonlighting
(Decision December 15, 1994)**

FACT SITUATION

The director of Substance Abuse Services who supervised Department of Correction (DOC) substance abuse counselors wanted to know if these counselors could be employed by a joint venture entity to train other substance abuse counselors at DOC given the fact that DOC had a contract with the joint venture entity to provide training for its own employees. The substance abuse counselors did group and individual counseling with offenders, new employee orientation, and education of staff to help them better identify substance abuse problems. The nonprofit was a joint venture of an entity associated with an alcohol and drug treatment hospital and the Indiana Counselors Association on Alcohol and Drug Abuse. The joint venture provided quality low-cost training to substance abuse counselors across the state in both the public and private sectors. Substance abuse counselors from the DOC sometimes attended this training. The Department paid the conference fees and travel expenses for them to attend. The joint venture provided about six or eight different types of training.

Part of the training at issue was being supported by a grant from the state Division of Mental Health.

The joint venture utilized both full-time trainers as well as part-time trainers. It wanted to expand its pool of trainers and was preparing to conduct a train-the-trainer program. This training would be provided at no cost except for travel expenses. The joint venture intended to use this as a tool to recruit part-time trainers for future training programs. Individuals recruited would be utilized and paid to conduct training on an "as needed" basis. The joint venture wanted to be able to recruit several individuals from among DOC substance abuse counselors to participate in the train-the-trainer program. If these counselors were selected as trainers, they could be in the position of being paid to train DOC staff. The question was whether substance abuse counselors who were DOC employees could be employed by this joint venture and train other substance abuse counselors in the Department of Correction.

The DOC employees who would go through the train-the-trainer program would have to do it on their own time. DOC employees who were then contracted to provide training would also have to do that on their own time. No more than five of the seventy-five DOC counselors would participate in the one week train-the-trainer program.

Although supervisors could suggest sending one of their employees to a specific training session, the director of Substance Abuse Services had final authority to approve or deny such requests, and \$500 per year was available to spend on training for each counselor.

Fees for payment of trainers were negotiated by the joint venture based upon the trainer's level of experience and skills. None of the DOC employees who would be trained were involved in running the joint venture. There was, however, an advisory group on which the director of

Substance Abuse sat. He was asked to serve concerning the content of training given by the joint venture because about twenty percent of the people the joint venture trained were DOC employees. Business issues concerning the joint venture were handled by an affiliate of the alcohol and drug treatment hospital, while issues concerning training were handled by the advisory group.

While other training conferences and seminars were used by DOC, the joint venture was used most frequently because the training offered was cost effective and focused on the areas in which DOC employees were in need of training. It was possible to ensure that DOC employees who became trainers did not do small intensive group work with an individual employee who was in a direct supervisory/subordinate relationship.

In terms of a timeline, the joint venture set its training curriculum anywhere from six months to a year in advance. After the curriculum was set, registration for a course would be open. While that was occurring, the joint venture contacted trainers. The DOC trainers had no involvement in putting together the group to be trained. The background of the trainers would not be listed and employees of the DOC would not be identified as such.

DOC could set up in-house training, if it so chose. However, the Department encouraged the utilization of outside training so that its employees had contact with people outside state government.

QUESTION

Are DOC substance abuse counselors permitted to be employed by a joint venture entity to train other substance abuse counselors at DOC given the fact that DOC has a contract with the joint venture entity to provide training for its own employees?

OPINION

The Commission found it was not a conflict of interest or incompatible under the moonlighting provision for substance abuse counselors who were employees of the Department of Correction to be employed by a joint venture entity to train other substance abuse counselors at DOC under a contract DOC had with the joint venture to provide training for DOC employees provided the counselors did the work on their own time, did not make decisions about who would participate in the training classes nor had input into whether or not a class took place because of class size and thus affect whether they were paid, and that the trainers' affiliation with DOC was not used in advertisements of the training classes.

The relevant statute and rule are as follows:

IC 4-2-6-9(a) on conflict of interest provides, "A state officer or employee may not participate in any decision or vote of any kind in which the state office or the employee or that individual's spouse or unemancipated children has a financial interest."

40 IAC 2-18 on moonlighting and other activity 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."