

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 Consequently, the analysis reflected in the opinion may be outdated.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

The ISD's Director of Support Services sought outside employment as an on-call residential assistant at a group home for the hearing impaired that was owned and operated by a local mental health center. SEC found there was no problem with the Director accepting outside employment with the group home provided he was screened from participating in decisions to refer ISD students to the group home or a competing group home

**94-I-14, Conflict of Interest, Moonlighting
(Decision December 15, 1994)**

FACT SITUATION

The director of Support Services for the Indiana School for the Deaf (ISD) wanted to know if he could have outside employment as an on-call residential assistant at a group home for the hearing impaired owned and operated by a local mental health center. Support Services of ISD was part of the education/residential program. It provided confidential counseling services to students, parents, families, staff, and the community at large. The director of Support Services supervised counseling staff to ensure high quality of services to students, provided consultation to staff, and assisted parents. He determined whether, for a given student, the Support Services Center had adequate counseling services, or the student needed to be referred for counseling outside of ISD.

The referrals would go to the only mental health center in Indianapolis that provided services to deaf individuals. It owned and operated the group home for the hearing impaired at which the director of Support Services had accepted employment. The group home was specifically designed for mentally ill persons who were deaf or who had severe hearing impairment. The program was designed to help individuals function in a structured community setting or to live independently with supervision. The director worked at the group home as a residential on-call assistant whenever a staff person was sick, on vacation, or in a crisis. In addition, the director wanted to consider working full time during the summer, because he worked nine months during the school year and not during the summer. The group home provided supervision, training, and guidance for residents.

To that time, only one student of ISD was a resident of the group home. However, the director was not involved in the placement of that student at the group home because the student was one brought back in from out of state. The group home was primarily for deaf adults and would only be used for ISD students who had graduated. Therefore, it was not likely there would be situations in which students would be referred from ISD to the group home.

There were a number of ways in which director's duties at ISD involved, not the group home, but other services offered by the mental health center which owned and operated the group home. He determined whether the counseling services of ISD were adequate for a given student of the school. If the services were deemed to be inadequate because a student needed more counseling than the school offered, he recommended the student be referred for counseling at the mental health center. However, he did not have sole authority to make referrals. A case conference committee at ISD, which was comprised of the director or his designee, Assessment Services staff, parents, teachers, and local educational representatives, made referrals. The committee made referrals as well as determinations of whether a child was emotionally handicapped. Students determined to be emotionally handicapped were referred to the mental health center, and the director acted as the liaison between ISD and the mental health center concerning the management of services to these students.

Another way the director's duties at ISD involved the mental health center was that, under court order, a number of agencies including the Department of Health, Division of Mental Health, Division of Public Welfare, ISD, and the mental health center were asked to work together to establish a program under which seriously emotionally handicapped students would be provided services in a group home setting so that they would not have to go out of state. Because of a lack of adequate services, some emotionally handicapped deaf children in the past had been sent to facilities outside the state. An effort was being made to develop adequate services in Indiana. The director was involved in that group. Referrals could then be made to this home when a student was severely emotionally handicapped or for a psychiatric evaluation. The group was known as Tammy's Group. The home would be for children, not adults. The director said he would not work for Tammy's Group if a group home were established.

It was always difficult to find qualified deaf professionals to work within Indiana and positions were frequently left vacant.

QUESTION

Is the director of Support Services for the Indiana School for the Deaf permitted to have outside employment as an on-call residential assistant at a group home for the hearing impaired owned and operated by a local mental health center?

OPINION

The Commission found it was not a conflict of interest nor incompatible with state duties for the Director of Support Services for the Indiana School for the Deaf to become an on-call residential assistant for a group home for the hearing impaired owned and operated by a local mental health center provided the director was screened from participating in decisions to refer students of the Indiana School for the Deaf to the group home or a competing group home.

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 2-1-8 on moonlighting and other activities 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."