

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 Consequently, the analysis reflected in the opinion may be outdated.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

40 IAC 2-1-8 Moonlighting and other activity

A staff specialist with DNR sought advice to determine whether it was a conflict of interest for state employees, their spouses or their lessees to participate in a DNR cost share program. SEC found it was permissible for DNR employees, their spouses and their lessees to participate in these programs so long as the employees involved played no role in evaluating whether the request was appropriate or inspecting their own property, their spouse's property or their lessee's property.

**94-I-2, Conflict of Interest, Moonlighting
(Decision February 17, 1994)**

FACT SITUATION

A wildlife staff specialist in the Division of Fish and Wildlife, Department of Natural Resources, wanted to know if it was a conflict of interest or incompatible with the duties of a state employee for a Department of Natural Resources landowner, their spouse, or lessee to participate in a Department of Natural Resources cost share program. The Division of Fish and Wildlife administered two cost share programs. One involved cost sharing of wildlife habitat development and/or maintenance. Landowners received reimbursement of ninety percent of the cost of development or \$1,000, whichever was less. Practices which could be cost shared included installation of permanent wildlife habitat, windbreaks, brush piles, vegetation establishment and management, and wetland development. The funding was derived from the sale of hunting licenses.

The other cost share program was the game bird habitat program which provided financial incentives to landowners interested in improving and/or developing food and cover requirements for Indiana game birds (Bob-white quail, wild turkey, ruffed grouse, and ring-necked pheasant). Landowners received reimbursement of up to \$100 per acre for creating or maintaining the game bird habitat. Habitat practices included permanent establishment of trees, shrubs, herbaceous cover, vegetation management, fencing, and leaving crops unharvested. Funding was derived from the sale of game bird stamps.

Eleven district biologists administered both of these cost share programs for the Division of Fish and Wildlife. Each biologist's district covered eight to ten counties. District biologists made the decisions about who was reimbursed. Requests were reviewed on an annual basis and the decisions were subjective based on the biologist's experience. The district biologist's supervisor gave final approval to the district biologist's decisions. Each district biologist received a set amount of under \$8,000 of funding which they had authority to award to landowners who applied for these cost share programs. The Department attempted to distribute the funding among as many people as possible.

The Department wanted to make sure there were proper checks and balances in the assessment of whether or not land qualified. For example, where a district biologist would want to have his land qualify, the Department required someone other than that district biologist to make the assessment.

The procedure was that normally citizens who owned or leased land asked for assistance, and a district biologist reviewed the request with the landowner. If the biologist decided the request was an appropriate one, he wrote up an agreement that was sent to the regional office for review. Once the landowner had completed the project, he contacted the district biologist who inspected the land and made sure the work was done as agreed. The biologist then submitted the necessary paperwork, and the landowner was reimbursed for a portion of the costs of the

improvements. Requests could be decided as they were received and could carry over from year to year. The program was publicized through news releases and brochures disseminated at the state and county fairs.

QUESTION

Are employees of the Department of Natural Resources who own land, their spouses, or lessees, permitted to participate in Department of Natural Resources cost share programs?

OPINION

The Commission found that DNR employees, their spouses, or lessees were permitted to participate in the wildlife habitat cost share program and the game bird habitat cost share program so long as the employees involved played no role in evaluating whether the request was appropriate or inspecting their own property, their spouse's property, or their lessee's property and, in the case of district biologists who wished to participate in one of the programs, their supervisor made the evaluation, the decision on reimbursement, and the follow-up inspection.

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 officer or the employee or that individual's spouse or unemancipated children has a financial interest."

40 IAC 2-1-8 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."