

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 Consequently, the analysis reflected in the opinion may be outdated.

**40 IAC 2-1-8 Moonlighting and other activity**

A code enforcement officer with INDOT wanted to know whether he was permitted to work in a second job as a hostler helper for a railroad company. SEC found that although this presented a potential conflict of interest, the employment would not violate the Moonlighting rule since the position was offered under a furlough recall and the code enforcement officer was screened from any responsibilities relating to this railroad company.

**94-I-4, Conflict of Interest, Moonlighting  
(Decision April 21, 1994)**

**FACT SITUATION**

A code enforcement officer in the Railroad Section of the Indiana Department of Transportation wanted to know whether he was permitted to work in a second job as a hostler helper for a railroad company. The code enforcement officer (also called Field Investigator or Railroad Inspector) inspected the site in an investigative situation when the Department received complaints on various railroad violations. These violations included a train blocking a crossing, a rough crossing, and the view being obstructed. The code enforcement officer also conducted statistical analyses of information received from various railroads. Investigations included field inspections and developing staff reports for the Railroad Section manager. The manager decided whether there was a likelihood of a violation and whether to turn the matter over to the Department of Transportation's Legal Section or the Attorney General's office. The Railroad Section manager also dealt directly with the railroad company on such matters.

This code enforcement officer had been employed by the railroad company before entering into state employment. He was furloughed approximately thirteen years earlier, a process which put his name on a list to be recalled at some time in the future. He came to work for the former Public Service Commission of Indiana with their full knowledge that he was in furlough status from the railroad company. The Railroad Section subsequently moved from the Indiana Utility Regulatory Commission to the Department of Transportation.

The code enforcement officer had received a notice from the railroad company saying there was a vacancy in the laborer's craft at a diesel terminal. The notice of recall had been issued pursuant to a collective bargaining agreement with a union. The notice requested the code enforcement officer inform the railroad company of receipt of the notification. The code enforcement officer had done that and had been screened out of anything to do with the railroad company on his state job since receiving the certified mail notice.

The position offered was a hostler helper in and around the diesel shop and fuel pad in the rail yard. This involved opening and closing switches for the movement of locomotives so the hostler, who operated the locomotive, didn't have to leave the locomotive to throw the switches. The code enforcement officer planned to attend orientation on accrued vacation days and to work second or third shift (holding two jobs), if permitted.

This railroad company was one of six major carriers in the state, and approximately eight to ten percent of the workload of the code enforcement officers in the Railroad Section was devoted to this railroad company. There was one other code enforcement officer. Both handled the entire state.

The Railroad Section manager told the Commission that, if the Commission found a conflict of interest, this code enforcement officer could be screened from having anything to do with the

railroad company he would work for, and the other code enforcement officer was able to pick up the workload.

A rail yard and its track structure were not under the jurisdiction of the Department of Transportation but were regulated by the Federal Railroad Administration. The work as a hostler helper was confined to the yard. Investigations of errors made by a hostler helper were handled internally within the railroad company and through union representation. If, as an employee of the railroad company, the code enforcement officer saw a problem with the track, he would report it to the union, and the union steward would approach the Federal Railroad Administration.

However, the Indiana Department of Transportation had statutory authority over the operations of the railroad company, and complaints about noise from property owners adjacent to the yard came to the Railroad Section.

#### QUESTION

Is a code enforcement officer in the Railroad Section of the Indiana Department of Transportation permitted to work in a second job as a hostler's helper for a railroad company?

#### OPINION

The Commission found there was a potential conflict of interest for a code enforcement officer in the Railroad Section of the Indiana Department of Transportation to work in a second job as a hostler helper for a railroad company, but because the position was offered under a furlough recall and if the code enforcement officer was screened from any responsibilities relating to this railroad company, the employment as a hostler helper did not violate the moonlighting and other activity rule.

Note: The Commission asked the Railroad Section Manager and the code enforcement officer to consult with Commission staff within four months' time about situations that had arisen and how the arrangement was working. At that point, the Commission could revisit the situation. In addition, if the code enforcement officer's job with the railroad company changed, he was required to contact the State Ethics Commission and have the situation reviewed under the new circumstances. Finally, any complaints from either the public or other railroads about the arrangement were to be brought to the State Ethics Commission's attention immediately. At the end of four months, there had been no problems. The code enforcement officer had been screened, and the job had not changed.

The relevant statute and rules 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."