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 Consequently, the analysis reflected in the opinion may be outdated.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

The husband of an SPD program director worked as a sales representative for an insurance company that bid on a state contract that the program director administered. SEC found there would be no conflict of interest since the RFP process provided adequate checks and balances for the program director and her husband would not be involved in the contracting process nor would his compensation be affected by the outcome of the State's decision on the contract.

94-I-5, Conflict of Interest
(Decision May 19, 1994)

FACT SITUATION

The program director of the Worker's Compensation program for the State Personnel Department wanted to know if she had a conflict of interest if her husband was employed by an insurance company as a business sales representative and the company bid on a state contract administered by her. The Worker's Compensation program had historically been administered by the Attorney General's office. A decision had been made that the State Personnel Department would let a request for proposals (RFP) to secure a third party administrator to pursue claims. This program director was hired into the Benefits Division of the Personnel Department to implement and oversee the Worker's Compensation plan. The process included developing and releasing a request for proposals inviting bidders to submit proposals to the state. The company chosen would, as a third party administrator, provide services in regard to worker's disability claims. The program director's duties included selecting a group to evaluate the proposals, assisting in the evaluation of the proposals in response to the RFP, and ultimately recommending one or more firms to be the state's third party administrator.

Her husband was employed by an insurance company, one of the third party administrative firms expected to submit a proposal in response to the RFP. The insurance company employed approximately 22,000 persons nationwide and 100 in the local office. Their business offerings were diverse and included, in addition to a Worker's Compensation and disability insurance, all lines of property and casualty insurance, securities and investments, and life insurance. The program director's husband was employed as a business sales representative selling property casualty insurance to employers in Indiana. He had no involvement in responding to the RFP or in the state of Indiana account if his company was chosen as the state's third party administrator. Neither the program director nor her husband had any ownership interest in the company nor was any portion of the husband's compensation package based on the profits of the company. There would be no increase in his income if the company secured the bid. The insurance company had two names. The relationship between the two names was that, if employees were working on an insurance policy, they worked under one name and, if employees were working on a third party administration contract, they worked under the other name. The husband was paid, based on his sales alone, both a salary and commission.

The State Personnel Department handled all the state's insurance contracts relative for employees, including health insurance, health maintenance organizations, and life insurance. These contracts were made through a formal request for proposal process administered by the Department of Administration. In order to develop an RFP as well as to evaluate the responses to it, a committee was established. Traditionally, such a committee was comprised of persons from the State Personnel Department, the Department of Administration, the Attorney General's office, and the Department of Insurance. Over twenty-five companies had been represented at a pre-bidder's conference and, since the conference, a total of thirty-five to forty companies had requested a copy of the RFP.

Objective criteria were used as much as possible. Ten percent of the total evaluation was usually reserved for managerial discretion. This discretion was for things the committee felt should be factored into the decision which were not anticipated when the RFP was written. Although the statute did not actually require it, the evaluation was typically done by numerical grading. The evaluation section of the RFP listed the factors to be used. Forty to fifty percent of the evaluation was usually based on the total cost of the contract. Other factors included an entity's ability to provide the services involved and the committee's assessment of the quality of those services. It was not possible to keep the names of the companies submitting bids anonymous. Although the actual evaluation instrument used did not identify the company by name, the committee would know the name of the company through information included in its proposal such as financial statements and materials which had the company name on them. In addition, when the number of candidates had been narrowed, closed conferences were usually held in which representatives of the candidate companies would appear. The determination of certain figures used in the evaluation process, such as a company's assets, would be assigned to a staff person to research. The program director would be the person who determined whether the offerors met the minimum requirements for consideration. Her supervisor had overall responsibility for the evaluation process.

The committee made a recommendation which went to the Director of the State Personnel Department for decision, and the contract was awarded by the Commissioner of the Department of Administration. The Director of the State Personnel Department said it was her view that there were enough checks and balances in the RFP process to ensure the best company was selected to provide the best possible service for the state of Indiana. The ultimate decision was up to her, and she had no ties to anyone working for an insurance company.

The program director was responsible for monitoring the plan after it was in place and overseeing the thousands of claims filed under the plan. The State Personnel Department would also train agencies with regard to the changes in the Worker's Compensation plan once the third party administrator was selected.

QUESTION

Is it a conflict of interest for a program director of the Worker's Compensation program if her husband is employed by an insurance company as a business sales representative and the company bids on a state contract administered by the program director?

OPINION

The Commission found it did not create a conflict of interest for the program director for the administration of the Worker's Compensation program to participate in a contracting process in which an insurance company bids on a state contract administered by the program director and the director's husband was employed by the insurance company as a business sales representative based on the facts that:

1) Her husband had no involvement on behalf of the company in the development of a response the company submitted or in any implementation of such a contract if the company was awarded the contract;

2) Her husband's compensation would not be affected in any foreseeable way by the outcome of the state's decision on this particular contract; and

3) The use of the formal RFP process included adequate checks and balances on the program director's discretion and opportunity to influence the decision.

Note: The program director was cautioned to adhere to strict limits on use of information concerning the entire contracting process and directed not to provide her husband with information about it, including its development and any information submitted by various competitors.

In addition, if the responsibilities of either spouse were to change, the State Ethics Commission directed that it be informed in order to revisit the question.

The relevant statute is 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."