

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 Consequently, the analysis reflected in the opinion may be outdated.

Conflict of Interest

The husband of an SPD division director was employed by an insurance company that bid on a state contract to become the third party administrator. SEC found that no conflict of interest would arise for the division director, even though she had a limited consultative role in the contracting process, since her husband would have no responsibility with the company for the contract, and his compensation would not be affected by the outcome of the State's decision on the contract.

95-I-2 Conflict of Interest

(Decision April 10, 1995)

A division director of the State Personnel Department with a limited consultative role in the procurement process and with responsibilities to administer the state disability and worker's compensation plan and to coordinate activities of the third party administrator selected wanted to know if she had a conflict of interest if her husband was employed by an insurance company as the manager of business sales for the Ohio (Indiana not included) region and the company bid on a state contract to become the third party administrator. The division director had been hired to help the state contain the cost of its disability and worker's compensation programs.

A year earlier, the Department embarked upon a process of selecting a third party administrator for those programs. The firm selected was to adjudicate claims, do investigations, and, in some cases, actually pay claims. The Department issued a request for proposals (RFP). Prior to the issuance of the RFP, the employee had sought an advisory opinion about the fact that her husband worked in the insurance industry (see 94-I-5). The Commission found there was no conflict of interest in that situation but charged the division director with the obligation to come back before the Commission if her or her husband's job changed. Both these events had occurred.

The division director's husband had been promoted and was responsible for business sales of property casualty insurance to employers for a region in Ohio. His situation was such that neither he nor the division director had any ownership interest in the company nor did either share in the profits of the company. The husband had no direct financial gain from the award of this contract in Indiana.

The division director's position had changed; she had previously been a program director for the worker's compensation program. The division director now supervised three employees who worked on the worker's compensation side of the contract and four employees who would work on the disability side of the contract.

The RFP issued the prior year had provided that the vendor would be the fiscal agent for both programs. The RFP had been responded to by eleven companies including the company for which her husband worked. There was a general election and a new state auditor was elected. In recognition of his authority and responsibility, the Department deferred to him on the question of who would actually issue the checks. As a result of the Auditor's decision, a new RFP had been developed, which indicated the third party

administrator would be responsible for transmitting certain information to the Auditor but would not be responsible for actually issuing checks.

That change in the RFP gave the Department the opportunity to improve upon the process and further insulate the state from any allegations that the RFP process was biased. The Department had transferred to the Department of Administration the primary responsibility for the development of the revised RFP, the evaluation of the proposals submitted, and awarding of the contract. The division director would not serve on the evaluation committee, but the Department would still offer the division director's services in a consultative role to the Department of Administration. The new RFP had not yet gone out at the time of the request for an advisory opinion.

In addition, the division director was not going to decide whether the responses to the RFP met minimum requirements. That determination was to be made by the Department of Administration or the committee it assembled. The division director would have no decision-making role in the RFP process but would only give advice to the committee if requested. In addition, none of the employees the division director supervised was going to be evaluating responses to the RFP. However, once a vendor was selected and a contract established, the division director and employees she supervised would administer the contract. Nothing about that role had changed from the prior opinion.

Question

Is it a conflict of interest for the division director of Disability and Worker's Compensation who wished to have only a limited consultative role in the procurement process but would administer the plan and coordinate the activities of the third party administrator selected if her husband was employed by an insurance company as the manager of business sales for the Ohio region, not including Indiana, and the insurance company bid on a state contract to become the third party administrator for the state?

Opinion

The Commission found it did not create a conflict of interest for the Director of the Disability and Worker's Compensation Division of the State Personnel Department to have a limited consultative role in a contracting process in which an insurance company bids on a state contract to be administered by the division director when the director's husband was employed by the insurance company as business sales representative based on the facts that:

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

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.