

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 Consequently, the analysis reflected in the opinion may be outdated.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

The Director of a DFC county office and his wife wanted to adopt a ward of the county. SEC found the Director would not violate the Moonlighting rule by adopting a ward of the county as long as he observed certain conditions.

**96-I-12 Moonlighting and Other Activity and Division of Family and Children
Operational Directive**

(Decision October 17, 1996)

Fact Situation

The Director of a county office of the Division of Family and Children (DFC) and his wife wanted to adopt a ward of the county office. The question was whether he was permitted under the relevant ethics statute and rules to adopt a child who was a ward of the county. The Director had overall responsibility for the administration of the programs of the county, including adoption of wards of the county. He and his wife wanted to adopt a child who was eighteen or nineteen months old. The child was not currently living with them. The Director said they were interested in adopting and would try to adopt again if this child was not placed in their home.

The area SNAP, which stood for "Special Needs Adoption Program Specialist," from another county had done a home assessment.

An adoption team met on a monthly basis to decide what was in the child's best interest. Normally, more than one family was presented for the team's decision. The composition of the adoption team would be county directors, supervisors of county DFC offices, other outside providers, and SNAP specialists. The SNAP specialist led the adoption team. The SNAP specialist for his area was from another county office and reported to that office, not to his office. It was possible for the adoption effort to be arranged in such a way that no one under his supervision would be on the adoption team for this presentation.

A case manager usually supervised the child for one year after the placement. Because the child was a ward of the county, the supervision could be done by an outside agency under contract, or it could be done by another county office. There were forty-five agencies to supervise an adoption in Indiana, and some of them were located in the county area. All of the private agencies were not under his supervision. When asked if there were any private agencies not under contract with the county that could perform the services, the Director said he hoped to avoid such concerns by transferring the wardship to another county so another county director would be responsible for monitoring the case manager performing the post-adoption supervision. If an independent agency was used, it would be under contract to the county that hired it.

A petition to adopt the child was filed after the one-year placement in Probate Court. Typically, the county director signed the consent to the adoption, but that would need to be changed if the Director were adopting.

In cases where the child was a "special needs" child, the adoptive parents received a subsidy. The Director did not know if this child was such a child. Adoptive parents of a normal child do not receive financial aid. Special needs children were children under DFC care because they have been abused, neglected, or were older. Based on the child's age, physical, and emotional state, and whether the child was part of a sibling group, the court decided whether to order a state or federal subsidy. The decision was always based on the child's needs, not the family financial situation. The decision was that of the supervising court, but it was based on the recommendation of the agency supervising the adoption placement. The agency had sixty days after the petition for adoption was filed to recommend approval of the adoption and subsidy, if the child was eligible. Financial assistance for families adopting children was determined on a case-by-case basis, based on the child's meeting of qualifications. If the child received subsidies, payment of those subsidies or medical bills would also transfer from one county to another. If wardship did not transfer, someone other than the Director would need to approve the payments.

When asked if the position would allow the Director to know more about a child's background than other prospective parents, the Director said he had not inquired about the child's background and would not expect more information than any other prospective parent. Background files would be held in another county if the wardship transferred to another county.

When asked if transferring wardship would be in any way detrimental to the child, the Director said the judge involved would determine what was in the best interest of the child. The transfer would probably present greater difficulties if the biological parents were involved. Usually, however, the court had terminated parental rights for the child to be in an adoption situation. Most such children were in foster care of some kind. Transferring wardship did not require the child to be moved from one foster home to another. Someone from another county could supervise the child in the foster home.

There were two ways to remove a conflict of interest in regard to the Director's attempt to adopt a child. The first way, transferring wardship to another county, was the cleanest way. Such a transfer would require the consent of two courts in two different counties. If the courts could not agree, one county office could ask another, out of courtesy, to supervise the adoption proceedings. DFC offices made such requests on a regular basis. Non-county revenue sources, such as Title IV-B funds controlled regionally, were available. The Director could recuse himself from any decision regarding those funds spent to supervise the case in this adoption proceeding.

In short, in order to screen the Director from activities and decisions related to the adoption of a ward of his county, the home study would have to be done by a private agency or county office outside of his office and the team members would have to come from outside his county office. The case manager supervising the placement would have

to come from outside the county office or the wardship be transferred to another county. If the wardship was not transferred, the adoption process had to be arranged so that someone other than the Director signed off on the adoption placement decision, for example, a regional manager or some other superior, or possibly the head of the DFC division for FSSA. Alternatively, the presiding judge might waive the requirement of a final signature if the wardship remained in the county. Someone outside of the county DFC office would need to perform the one-year review. The child's records would be transferred out of the county office if the supervision was transferred to another county or a private agency.

Question

Are the County Director and his wife permitted to adopt a ward of the county office?

Opinion

The Commission found that the Director would not violate the moonlighting or other activity rule or the DFC Operational Directive by trying to adopt a child who was a ward of the county which he oversaw as DFC Director as long as the following conditions were met:

1) the home study was done by a DFC office outside his control or by a private agency that did not contract with his county;

2) the team reviewing potential homes for placement of the child was comprised of people "outside of his office;"

3) placement supervisors were not under the control of his county office;

4) the county office tried to transfer wardship to another county; and

5) if wardship was not transferred, the county director was screened from any and all discussions, team selection, and other decisions pertaining to the placement of the child.