

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 Consequently, the analysis reflected in the opinion may be outdated.

Agency Statute

Interpreting the ABC's statute on political activity, SEC found an ALJ was not defined as an enforcement officer, and it was therefore permissible for the former employee to both serve as an ALJ through a professional services contract and run for office as a state representative without violating the statute.

96-I-1 Alcoholic Beverage Commission's Political Activity Statute
(Decision January 19, 1996)

Fact Situation

The prosecutor for the Alcoholic Beverage Commission resigned and announced the following day his candidacy for a state representative position. He asked the Chairman of the Alcoholic Beverage Commission if he could perform contract service work as an administrative hearing judge. He proposed to be retained as an independent contractor, hearing no more than fifteen cases per year. The Chairman asked the State Ethics Commission if a person could serve on a personal services contract with the Alcoholic Beverage Commission as an administrative hearing judge while running for state representative without violating the Alcoholic Beverage Commission's statute on political activity.

The statute provided that a commissioner or an enforcement officer "shall not participate actively in any political activity" as long as he was affiliated with the Commission. However, "the right of a commissioner or an enforcement officer to vote as he chooses and express his opinions on political subjects and candidates shall not be impaired."

The Alcoholic Beverage Commission's statute contained no definition of an administrative hearing judge. The question the State Ethics Commission addressed was whether an administrative hearing judge was an enforcement officer and, therefore, prohibited by the Alcoholic Beverage Commission's own statute from serving as a part-time administrative hearing judge while running for political office.

The executive secretary had served as the hearing judge for the prior seven years. Prior to that, the two positions of executive secretary and hearing judge had been separate, but they were combined as a cost-saving measure. An administrative hearing judge does not have final authority over cases he or she hears; the Alcoholic Beverage Commission has final authority. Also, administrative hearing judges had no discretion regarding which cases were filed. They were restricted to hearing and weighing the evidence of cases that came before them.

Cases that the administrative hearing judge heard included appeals of an approval or denial at the local level of a permit for an establishment to have a liquor license and also hearings on violations of alcoholic beverage laws. In the first type of case, excise officers

and local board members were involved. In the second type of case, the prosecutor and excise officers were involved.

The former prosecutor said that he would recuse himself as an administrative hearing judge from any case where one of the parties had donated funds to his campaign. He said it would not be possible to refuse to take campaign donations from anyone involved in the alcoholic beverage industry because so many people have some connection, whether direct or indirect, with the alcoholic beverage industry.

The Alcoholic Beverage Commission's statute defined "enforcement officer" as a person employed by the Alcoholic Beverage Commission to perform duties pursuant to another chapter. A section of that chapter said that an enforcement officer was vested with full police powers and had the duty to enforce the Indiana Code and other laws pertaining to alcoholic beverages. The statutory powers and duties of enforcement officers included the power to arrest and issue summons for certain infractions and misdemeanors. Another section of that chapter required enforcement officers to execute surety bonds and to file an oath of office with the executive secretary of the Beverage Commission.

This filing requirement by the enforcement officer with the executive secretary logically dictated that the positions were not the same.

The statute further provided for the employment of the executive secretary and said the executive secretary was to aid the Commission in the administration of its powers and duties. A section of another chapter described the various functions of the Beverage Commission, many of which were filled by the executive secretary. These functions were distinct from the ones performed by enforcement officers.

Question

Under the statute that applies to the Alcoholic Beverage Commission, is a person able to serve on a personal services contract as an administrative hearing judge while running for state representative?

Opinion

The Commission found that the Alcoholic Beverage Commission's statute did not define an administrative hearing judge as an enforcement officer, and thus a former employee was permitted to work part time as an administrative hearing judge while running for political office without violating the statute prohibiting an enforcement officer from any political activity while affiliated with the Alcoholic Beverage Commission.