

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 Consequently, the analysis reflected in the opinion may be outdated.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

DOC's Commissioner and Chief Counsel wanted to start a business to run a juvenile facility that would provide residential services to juvenile delinquents and CHINS in contractual relationship with local government units. SEC found the Commissioner and Chief Counsel could operate a facility which serviced juveniles who were not under the purview of the Indiana juvenile justice system or FSSA but that it created a potential conflict of interest for them to open the facility to juvenile delinquents and CHINS.

96-I-4 Conflict of Interest, Moonlighting
(Decision April 18, 1996)

Fact Situation

The Commissioner and the Chief Counsel of the Department of Correction wanted to create and operate a business to run a juvenile facility which would provide residential services to juvenile delinquents and Children In Need of Services (CHINS) in contractual relationships with local government entities. The Commissioner had overall responsibility for state correctional facilities. This included thirty-two correctional units (twenty-three adult facilities and nine juvenile institutions). Some of these were work camps, juvenile residential treatment facilities, and work-release centers. The agency employed more than 7,500 persons and confined approximately 17,500 offenders. It provided various educational, vocational, and industrial programs, including a farm. The Chief Counsel's responsibilities included overseeing a legal division of staff counsel and a division of internal affairs. He also acted as the Department's legislative liaison.

The Commissioner and Chief Counsel proposed to establish a corporation to operate, on their own time, a post-adjudication residential juvenile treatment facility for at-risk youths in a staff-secured building. The purpose of the facility was to address delinquent juveniles and CHINS problems and to assist these juveniles to return to their families and their communities. At least initially, the facility would not house a large number of juveniles. The facility would 1) accept no state funds but would deal solely with county governments, and 2) would never accept a juvenile who had been sentenced to a DOC facility. Both of these stipulations would be put in the admission criteria for the facility. The facility would be licensed by the Family and Social Services Administration (FSSA) which licensed all group homes and juvenile facilities. They would not operate the type of juvenile detention facility the DOC operates. They also would not operate a pre-adjudication secured juvenile detention facility because the DOC monitors and regulates these facilities (operated by counties to hold juveniles prior to their appearance before a judge).

In the juvenile justice system, the judge determined whether to send a child to a secure facility (state or local) or to a treatment facility (residential or community based) and the length of time of determinate sentences. There were approximately 100 privately operated residential treatment facilities in Indiana.

Only a small percentage of juvenile placement were to a DOC detention facility. At the time, no more than 1,000 juveniles had been placed by judges in DOC detention facilities. Judges placed juveniles in such facilities if they had engaged in criminal behavior such as a felony or a serious misdemeanor. While DOC juvenile facilities were filled to capacity at the time, DOC planned to bring on additional beds during the year and a new 350 bed facility was planned.

DOC had successfully used several approaches during the prior seven years to provide for DOC-bound juveniles including opening new facilities, converting state and mental health facilities into juvenile facilities, converting adult DOC work-release facilities into juvenile facilities, constructing new facilities, contracting with a facility in Vincennes, and giving counties dollars to develop alternative programs for felon juveniles. DOC had made no early releases or placements out of state.

Judges sometimes told juveniles that, if they did not successfully complete their residential service program, they could be placed in a secured facility. A small percentage of juveniles placed in residential treatment misbehaved and were sent to a DOC detention center for doing something egregious like committing a crime while in residential treatment. A judge also could sentence a juvenile to a time period in a DOC facility followed by a time period in a treatment facility, but that did not occur frequently. Judges decided the placement of a juvenile with input from a probation officer or in response to a petition from a parent or guardian. The judge worked closely with the probation officer, a county employee, who made a recommendation for placement and who supplied information regarding the juvenile's family background and personal history.

Payment for juveniles in the planned residential facility would come from county and private funds. The Commissioner decided nothing regarding the county's sources of funding. No state correction funds flowed to counties for placement of juveniles, but funds flowed to counties for community correction programs. In the placement of juveniles in a post-adjudicative secured DOC facility, on the other hand, the county and state divided the costs evenly.

The Department of Correction had a contractual relationship with one of the providers who would be a competitor to the facility the two had planned. It was a facility in Vincennes, Indiana, that provided both pre-adjudication and post-adjudication residential housing. DOC placed thirty to forty juveniles in that facility each year. The placements were for post-adjudication juveniles.

Neither the Commissioner or the Chief Counsel had access to confidential information that competitors would not have. If the planned facility did not materialize, the juveniles it was designed for would be placed in another private facility.

The Chief Counsel did not foresee any situation that would be a conflict for him, because he would be defending the state in a lawsuit. This was true because, as Chief Counsel for DOC, he was not the Commissioner's personal attorney, and because the Attorney General's office handled all DOC litigation. He also did not foresee a situation where he or the Commissioner might be called to testify in a matter involving their private venture which would create a situation where either would be forced to wear two hats (roles of Commissioner or Chief Counsel as well as their private interest) at the same time.

Employees they expected to hire included caseworkers to work with the juveniles on a daily basis, behavioral clinicians with master's degree in counseling, contract psychologists and psychiatrists, dental and medical services providers, and food service personnel.

Neither thought any decision they made as Commissioner or Chief Counsel affected their financial interest in the facility nor could they foresee any decision in regard to their financial interest in the proposed venture in which their spouses could participate.

The DOC gave grants to counties for community correction programs. State taxpayer dollars went to county community correction advisory boards. Most of the funding was used for adult community correction programs, but some was for juvenile diversion programs such as a work or farm program or an alternative school. The Commissioner and Chief Counsel would not seek any of these funds for their facility. The DOC deputy commissioner assigned to community correction dealt with the county community correction program.

DOC made decisions which affected the demand for and supply of pre-adjudication juvenile detention spaces at the local level, but the proposal did not involve such programs.

Question

Are the Commissioner and the Chief Counsel of the Department of Correction permitted, while remaining employees, to create and operate a business to run a juvenile facility to provide residential services to juvenile delinquents and Children in Need of Services (CHINS) in contractual relationship with local government entities?

Opinion

The Commission found it created a potential conflict of interest for the DOC Commissioner and DOC Chief Counsel to create and operate a juvenile facility to provide residential services for juvenile delinquents and Children in Need of Services in a contractual relationship with local governments. The Commission and Chief Counsel were permitted to operate a facility which serviced juveniles who were not under the purview of the Indiana juvenile justice system or Family and Social Services Administration.