

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 Consequently, the analysis reflected in the opinion may be outdated.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

A Department of Commerce Deputy Director was offered a part-time consulting position by the subcontractor of an advertising agency that had been hired by another division of her agency.

SEC found it was permissible for the Deputy Director to accept employment with the subcontractor so long as she was screened from making any decisions related to the subcontractor in her state job and she did not engage in consulting activities related to her responsibilities with the Department of Commerce or to the project the advertising agency was doing for the Department of Commerce.

96-I-5 Conflict of Interest, Moonlighting

(Decision May 16, 1996)

Fact Situation

The Deputy Director for Research and Technology Services in the Administrative Office of the Department of Commerce, responsible for strategic technology planning and implementation, for policy analysis, and for economic and revenue impact analysis for job-creation projects, had been asked by a subcontractor of an advertising agency hired by the Tourism Division of the Department of Commerce to accept a part-time consulting job. The question was whether she was permitted to accept this part-time consulting position. Her day-to-day responsibilities focused more on technology services while the Director handled research. One set of skills she possessed was in information technology planning, for example, preparing a two- to five-year plan. Her research skill allowed her to gather raw data, distill it, and make strategic recommendations. She was also able to manipulate raw data by computer to generate reports which were more intelligible.

The research she did for the Department of Commerce varied from assessing the potential impact of the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) on the Indiana economy to calculating the tax incentives needed to attract a company to Indiana or keep expansion in Indiana. She also worked on research projects with the International Trade Division (ITD). ITD provided services to Indiana manufacturers trying to build export business. Her research on their behalf examined whether the companies' efforts were effectively targeted in terms of industries and countries selected. She also had researched healthcare issues, especially when healthcare received national attention as it did approximately one year earlier.

Her duties did not include doing research for the Tourism Division because Commerce had decided in 1991 to employ outside vendors to meet Tourism's research needs. Her duties also did not include evaluating the advertising agency contracted to do this work. The Department of Commerce had employed two different advertising agencies; she had never evaluated the performance of either. Such evaluations were done by the division that worked with the advertising agency. In the case of the advertising agency for Tourism, the most important criterion for evaluation was the number of leads

generated by the agency's effort. In addition, the Deputy Director's duties did not include any direct supervision of the subcontractor. She made no decision in regard to its performance or its hiring. The contractor had approached her; she did not approach the subcontractor.

The Deputy Director said she would do no tourism work, either for the state of Indiana, other states, or other governmental units inside or outside of Indiana in her part-time consulting. She planned to keep her state job, work part-time as a consultant, and perform all consulting activities on her own time.

The advertising agency employed by the Division of Tourism had a subcontract with a national company that concentrated its efforts east of the Mississippi River. This subcontractor approached her to do consulting services including 1) data preparation (aggregating large data sets from clients), 2) data analysis (synthesizing data from several sources and providing a written report), and 3) information technology planning (reviewing hardware, software, and telecommunications needs to create a three- to five-year growth plan). The subcontractor wanted her to first plan for its information technology needs.

None of the subcontractor's marketing efforts were directed toward attracting businesses to Indiana. Those marketing efforts were assigned to another advertising agency employed by Commerce. The Deputy Director did not know if the other advertising agency had a separate arm doing their research.

The Deputy Director indicated that most of the subcontractor's clients were from the healthcare and banking sectors.

The healthcare research the subcontractor did would be narrow in focus, looking at marketing issues like how a hospital could attract more cardiac patients to use its services. She would not research any broad healthcare issues for this subcontractor but wanted to "GO" code a hospital's admittance records and work with basic marketing data preparation. She would not do policy analysis for this subcontractor.

The Tourism Division Director had decided to employ the advertising agency and may have had input into the decision to hire the subcontractor but the advertising agency was responsible for employing the subcontractor to work on its research projects for its contract with the Division of Tourism. It could choose any vendor to perform the required research.

The services the subcontractor provided to the advertising agency were as follows. The Division of Tourism gave the subcontractor the addresses and files of people who responded to tourism ads. The subcontractor then assigned a "GO" code that placed the respondent in a particular census tract. Census tracts were then grouped by income and social class. This work helped Tourism better understand who was most likely to respond to its advertisements and how the advertising campaign could be better conducted. The

subcontractor sent the information to the advertising agency who shared it with the Division of Tourism.

The data files used by the Department of Commerce were not similar to the data files used by the subcontractor with the exception of public information both used such as census data and zip code data. The Deputy Director said she would never use confidential information obtained from Commerce in work for the subcontractor. The Deputy Director's supervisor was aware she had been asked to work for this national company and that she wanted to accept. The supervisor had no objections and agreed to screen her from any evaluation of the subcontractor, if the Division were ever asked to do that in the future. The Division had never evaluated or overseen either the advertising agency or the subcontractor in the past.

Question

Is the Deputy Director of Research and Technology Services in the Administrative office of the Department of Commerce permitted to accept a part-time consulting position with the subcontractor of an advertising agency hired by another division in the Department of Commerce?

Opinion

The Commission found that the Deputy Director was permitted to be employed as a part-time consultant for a subcontractor of an advertising agency employed by the Division of Tourism as long as the Deputy Director did not participate in work for the subcontractor which involved tourism issues, was screened in her job for the subcontractor from policy analysis issues regarding healthcare and other policy areas under consideration by the Department of Commerce, and was screened in her state job from any evaluation of the subcontractor.