

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 Consequently, the analysis reflected in the opinion may be outdated.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

SEC found it was permissible for the private company owned by an INDOT operations engineer to enter into a contract with one of INDOT's biggest paving contractors to do private, non-state projects.

96-I-8 Conflict of Interest, Moonlighting
(Decision July 25, 1996)

Fact Situation

The Operations Engineer at an INDOT district office had a private company which did striping in parking lots. The question was whether his private striping company was permitted to enter into a contract with one of INDOT's biggest paving contractors on non-state projects. The Operations Engineer's responsibilities included attending some (but not all) pre-construction conferences and pre-final inspections, overseeing the district's 75.3 million dollar budget (which included several maintenance-type contracts), prioritizing projects, submitting projects for design and scheduling, and purchasing raw materials for maintaining roads and bridges.

The position of Operations Engineer had been called "maintenance engineer" in prior times. The Operations Engineer was in charge of maintenance work for one-sixth of the state and worked out of one of the INDOT districts. The work involved day-to-day maintenance of the roads, including plowing, patching, mowing, and installing pipes.

The Operations Engineer owned a company that did striping in parking lots. He had been president of the company since 1984 when his partner died. The company had only worked with this contractor on private parking-lot striping projects.

The Operations Engineer already had decided he would not participate in any work for this paving contractor that would be state related. He thought that this company used him almost exclusively in his area to do their non-state striping work, but he was not sure about that. The district he supervised in his state job encompassed this area.

The Operations Engineer participated in decisions as to whether a portion of road was to be patched or paved. Subdistrict managers brought roads that needed repairing to his attention. Together, he and the subdistrict manager decided whether to patch or repave the road.

Major paving projects were let for bidding through the Construction Departments of the various INDOT districts. Most of the paving work his office did consisted of spot repairs. His district office did not have a paver, so they normally did not do paving. On rare occasions, the office had done some paving with a borrowed or rented paver.

Patching material for the district could come from this contractor. The Operations Engineer said that each of the six Indiana subdistricts followed procurement procedures to obtain such materials, and he did not directly deal with the procurement of materials for any subdistrict. He did not decide and was not involved with which bid was accepted. The subdistrict managers had responsibility for that.

The Operations Engineer also did not decide whether a paving contract was accepted but could have input, although he usually did not. When he did have input, it occurred at meetings called "pre-finals" where the construction engineer, a contractor, and other interested parties examined a job that had been nearly completed to make sure the final details were handled correctly. The INDOT maintenance people were the ones who brought problems to the attention of a contractor and the construction people. The problems had to be things already in the contract in order to be addressed. INDOT had no authority to extend the contract to pave more miles, although the Operations Engineer could ask a contractor to make small adjustments, like extending a ditch or some other small maintenance concerns.

The Operations Engineer said he could be replaced at these pre-final meetings. In fact, he had not been to a pre-final in two or three years. The person who replaced him could be someone he supervised, but normally would be someone from one of the six other subdistricts to which he was more of a consultant than a supervisor.

The Operations Engineer had attended a few pre-construction meetings, which were meetings that occurred after the bid has been awarded and involved matters such as when the work will begin, problems the project may encounter, and so on. These meetings occurred mostly between the Construction Department of the INDOT's districts and a contractor. He informed the subdistrict managers about the meetings, so they could attend if they wanted to.

In sum, the Operations Engineer had no control over whether the state hired this contractor; all such jobs went through a bidding procedure. Even the purchase of patching material went through the procurement process. All such matters, furthermore, were let through the subdistrict. There would never be a case where the Operations Engineer would be hiring this contractor without going through a formal bidding process, and he did not tell the subdistricts who to solicit for bids.

Similarly, he could not prevent a contractor from receiving information about a future contract, if, based on a pre-final inspection, he did not like the contractor's work, because such contracts were advertised and were completely removed from his area of responsibility.

When he started his business in 1984, the company only did one job and then only two in 1985. None of these jobs were for this contractor. When he had been a project engineer five or six years earlier, his private company had handled up to ten jobs per year. A few were with this contractor, but many were not. His striping company performed most of its

work on weekends or other non-state time. He had no employees but did all the work himself with his son and daughter helping on occasion.

Question

Is the Operations Engineer at INDOT district office who has a private company which does striping in parking lots permitted to enter into contracts with one of INDOT's biggest paving contractors on non-state projects?

Opinion

The Commission found that an Operations Engineer who owned a private company which does striping in parking lots was permitted to enter into contracts with this paving company so long as all such striping jobs were private, non-state jobs.