

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 Consequently, the analysis reflected in the opinion may be outdated.

40 IAC 2-1-8 Moonlighting

40 IAC 2-1-9 Conflict of interest; prohibitions

Due to inherent concerns regarding conflicts of interest, confidential information and use of state resources, individual employees with access to the ICES and BMV databases or other confidential records of state public assistance offices were not permitted to engage in outside employment as collectors or investigators with respect to individuals who are employed in or are residents of the State.

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BACKGROUND INFORMATION

As an outgrowth of a recent investigation, the State Ethics Commission wished to address questions concerning fraud investigators employed by, or in conjunction with, public assistance offices. These questions concerned the availability of information to these state employees and whether, in certain circumstances involving outside employment, this created the potential for conflict of interest under state ethics laws.

In addition to its own questions, the Commission received a letter from a state investigator employed with the Marion County Office of Family and Children, requesting an opinion on rules of conduct that may apply to outside employment for himself and others holding similar positions.

QUESTION(S)

Is a state employee who serves as an investigator of fraud in public assistance programs permitted to engage in outside employment in professions such as recovery (of property or people) and investigations? Secondly, do the tools provided to these employees in the performance of their official duties create the potential for conflict of interest when these employees engage in certain outside activities? Are other state employees similarly impacted?

FACTS

Employees serving as State Investigators examine cases of suspected fraud in state public assistance programs. In addition to fieldwork such as talking with neighbors and employers of assistance recipients, investigators use tools such as the database of the Bureau of Motor Vehicles and the ICES computer system (Indiana Client Eligibility System). These computer data bases can help locate individuals and tell what benefits they are receiving. To supplement their income, some investigators moonlight in non-official activities. Some of these outside jobs include work in private investigations, recovery (of debt, property subject to repossession, or people subject to bail bonds), credit matters and related work.

All of these functions entail, or are enhanced by, information on or about people. The information can come from a variety of sources, such as a credit application (in the case of debt collection or property recovery), or police or court records.

In spite of the likelihood that such information is available through other sources, its availability through the ICES and BMV data bases serves to centralize and make it available in minutes, rather than hours or days that might be required from other sources. ICES includes confidential information, not only about public assistance clients, but their family members. This data includes social security number, employment and income information, other household members, and in some cases, the locations of absent parents. These are invaluable tools for investigators of public assistance fraud. They can also be invaluable tools in these other professions that are often

attractive as moonlighting opportunities for state investigators, creating a strong incentive for abuse of these investigative tools.

While computer logs can monitor use of these systems, the logs do not capture who is looking up what information - only that a certain employee was logged onto to the system. Screening or any automated policing is not an option.

RELEVANT LAW

Applicable rules include 40 IAC 2-1-8: Moonlighting (emphasis added): A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties.

Also applicable is 40 IAC 2-1-9: Conflict of Interest (emphasis added):

(a) A state officer or employee shall not engage in conduct that constitutes a conflict of interest. It is the state officer's or employee's duty to determine if a potential conflict of interest exists, to avoid the conflict, if possible, or, where applicable, to disclose a conflict as follows:

(1) A state officer or employee may seek an advisory opinion to determine whether a conflict of interest exists using the procedure in 40 IAC 2-2.

(2) If the state officer or employee determines that a conflict of interest or potential conflict of interest exists, that individual shall, if possible, be screened from participating in the matter and the matter shall be assigned to another individual who does not have a conflict of interest.

(3) The state officer or employee may make a disclosure under IC 4-2-6-9 or IC 35-44-1-3, where applicable.

(b) A state officer or employee shall not solicit or accept compensation other than that provided for by law for such state officer or employee for the performance of official duties.

(c) A state officer or employee, other than in performing duties in making payments to other state officers or employees as provided by law, shall not pay or offer to pay any state officer or employee any compensation for the performance of official duties.

(d) A state officer or employee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

(e) A state officer or employee, in personal dealings, with a person who has a business relationship with the employee's agency, shall not receive any special terms or benefit not available to others not employed with the agency.

(f) A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.

(g) A state officer or employee shall not engage in, or direct others to engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

(h) A state officer or employee shall not divulge information of a confidential nature, except as permitted by law.

The State Ethics Commission on July 11, 1991 issued an analogous advisory opinion (91-I-13).

CONCLUSION

Because the data available to such state employees would significantly aid in the above listed outside employment, holding such second jobs would impair the independence of judgement, pose a likelihood of conflict of interest, and create an incentive to disclose confidential information. Thus, such an arrangement would violate 40 IAC 2-1-8. Similarly, such two-job arrangements would encourage state employees to use state facilities for purposes other than

official state business and allow the employee to benefit from confidential information acquired through official duties, contravening elements of 40 IAC 2-1-9.

The Commission finds that state welfare fraud investigators, caseworkers and other individual employees with access to the ICES and BMV databases or other confidential records of state public assistance offices are not permitted to engage in outside employment as a private investigator, debt collector, bail bondsman, credit or loan officer, recovery services or similar types of employment with respect to individuals who are employed in or residents of the state of Indiana. Such an employee could engage in such outside activity with respect to individuals who reside outside of Indiana.