

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 Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-9 Conflicts of Financial Interest

An FSSA Assistant Deputy Director's husband was employed by a community mental health center which the Director's Division certified and contracted with. SEC found no conflict of interest existed so long as the Director was adequately screened from involvement with her husband's employer.

No. 97-I-7 Conflict of Interest

Indiana State Ethics Commission

Official Advisory Opinion

August 21, 1997

Background Information

The State Ethics Commission received an advisory opinion request from the Deputy Director of Contract Management in the Division of Mental Health of Family and Social Services Administration. The Deputy Director said an Assistant Deputy Director was about to be employed by the State to be in charge of certification and licensing. The spouse of the incoming Assistant Deputy Director works for a community mental health center, which the Division certifies and with whom the Division contracts. The Deputy Director brought the matter to the Commission to assure that her agency appropriately dealt with any ethics issues raised by this situation.

Question

Does the state ethics code prohibit an Assistant Deputy within the Division of Mental Health from participating in certification decisions regarding a community mental health center that employs her husband?

Facts

The Assistant Deputy Director, Certification and Licensing, within the Office of Contract Management will supervise staff members who certify addiction services providers, residential care providers, community mental health centers, and private psychiatric hospitals. She also will recommend and write rules to implement certification and licensing of those entities and devise a system that is least burdensome to the entities being certified. She also will assist the Deputy Director regarding certification issues.

The incoming Assistant Deputy Director's spouse works as Division Manager for the Indianapolis office of a mental health center which contracts with the Division of

Mental Health (the Division) as one of thirty community mental health centers in the state. The Division does not provide funds to centers such as this one. It contracts with centers to provide all of the mental health services needed for an individual client.

The Certification and Licensure Section of the Division's Office of Contract Management certifies Center where the spouse is employed as a community mental health center and as an addiction services provider. That section does not make funding decisions or contract decisions. However, it does have the power to revoke a certification or to impose a conditional certification on an agency that is already certified.

As Division Manager for the center's Indianapolis operation, the spouse monitors group homes and apartment living programs in the area and supervises all area case managers. He also works on policies, procedures, planning, and budgeting.

In approaching the Commission, the Deputy Director said that the Division intends to screen the incoming Assistant Deputy Director from participating in any decision involving the center which employs her husband. The Deputy Director for Contract Management can make those decisions, without input from her assistant. The Division asked whether this screening was sufficient to avoid problems under the state ethics code.

Relevant Law

IC 4-2-6-9, Conflicts of Financial Interest:

"A state officer or employee may not participate in any decision or vote of any kind in which the state officer or that individual's spouse or unemancipated children has a financial interest."

IC 4-2-6-1(9), Definitions:

"Financial Interest' means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun."

Conclusion

The Commission found that so long as the Assistant Deputy Director is screened from any decision-making or other responsibilities with respect to her spouse's employer that there is no conflict of interest.