

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 Consequently, the analysis reflected in the opinion may be outdated.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

No violation existed for a state conservation officer to enter into a private hunting lease, individually or as a member of a group, contingent upon the DNR's adoption and enforcement of an appropriate written policy.

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No. 98-I-2

BACKGROUND INFORMATION

The State Ethics Commission received a request for an advisory opinion from the chief legal counsel and ethics officer of the Department of Natural Resources. This inquiry arose following her discussions with Commission staff in which she described a situation where a particular conservation officer along with several of his friends had leased hunting rights in the county of the officer's primary assignment. According to the Department, most persons lease the hunting rights to their property for the purpose of limiting the number of people with authorized access to the property. Leasing of private hunting rights is a practice increasing throughout the state. In some areas of the country, it is the only means through which an individual may hunt on a particular property. The Department was concerned about precluding its law enforcement officers from membership in these associations, as they are becoming a more common means of accessing hunting lands. The Department sought counsel on the extent to which a conservation officer's involvement with such leased hunting rights is permissible under the state ethics code.

Following discussion related to the inquiry with Department representatives, the Commission requested that the Department develop a policy based upon points of discussion and available information from other states. The Department polled other states including Illinois, Wisconsin, Michigan and Missouri regarding each state's approach to the issue. The Department reported that the states responding to its questions had not directly dealt with the issue, but considered it generally permissible for a conservation officer to lease hunting rights. The Department's Legal Counsel and the Division of Law Enforcement drafted a policy specific to leased hunting rights and submitted a draft to the Commission for review and further discussion.

QUESTION

Does the state ethics code permit an employee of the Indiana Department of Natural Resources, specifically a conservation officer, to lease, as a member of a private association, the hunting rights to private property while charged with the duty to enforce state and natural resource laws, including those related to hunting?

FACTS

A conservation officer in northern Indiana is involved in the leasing of approximately 3,000 acres of private property. The conservation officer and several other individuals are leasing hunting rights upon the land. These individuals organized a not-for-profit association and money contributed by the members is used to pay the landowner for the leased hunting rights and to purchase signs indicating that the property is private and not open for public hunting. A mission of the association leasing the rights is managing the property for trophy deer. Both deer herd control and private hunting under the leases is occurring on the property.

Conservation officers in Indiana are normally assigned a primary area of enforcement, but on special assignment could be assigned anywhere in the state. Once an officer initiates an enforcement action, the officer is considered on duty. The Department has found officers'

involvement with leased hunting rights to have no effect upon the manner in which the officers enforce state and natural resource laws.

Conservation officers often provide general information on a particular area to individuals upon request. Further, the Department's Division of Fish and Wildlife collects data on animal populations/projections and much of it is published or available upon request. Conservation officers are also asked by landowners and other individuals to provide information regarding prospective hunters on particular properties. The Department does not authorize conservation officers, under any circumstances, to disclose information of a confidential nature, including criminal histories or agency information so designated.

Conservation officers are further prohibited under existing agency policy from driving state vehicles to their private hunting locations or from transporting animals in state vehicles, other than for official purposes.

RELEVANT LAWS AND RULES

40 IAC 2-1-8 (moonlighting):

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.

40 IAC 2-1-9(d,f,h) (conflict of interest):

... (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 that permitted or required by law

... (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.

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

CONCLUSION

The Commission found that it is not a violation of state ethics moonlighting and conflict of interest rules for a conservation officer to enter into a private hunting lease, individually or as a member of a group, contingent upon the Department's adoption and enforcement of an appropriate written policy. Such a policy, as discussed by the Commission, would incorporate the state ethics code generally and be applicable to all law enforcement officers in the Department's Division of Law Enforcement. The policy would require an officer who, either alone or as part of a group of individuals, leases hunting rights on a private property at the time of adoption of the policy, or wishes to become part of a group leasing such privileges, to inform the Director of the Division of Law Enforcement and obtain his written consent. A statement of disclosure and request for consent to engage in this practice under such a policy would include:

The employee's name, rank and county of primary assignment;
Nature and location of leased hunting rights, including a copy of any lease agreement or, in the absence of a lease, other documentation detailing the type of hunting and time frames permissible

Name, address and phone number of the owner and lessor of the property being leased;
A statement of intent that the hunting activity will be performed outside state time and without the use of state property;
A summary of any facts indicating any potential incompatibility with job responsibilities or possibility of conflict of interest;
A statement of intent that ethics law will be complied with, any conflicts will be immediately disclosed, and the employee's disclosure will be updated as circumstances change.