

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 Consequently, the analysis reflected in the opinion may be outdated.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

**IC 4-2-6-11 Postemployment restrictions**

A state electronic technician was prohibited from contracting a software application to the State since he had developed an application for the same purpose in the course of his employment with INDOT. However, the employee's software application writing did not constitute a particular matter governed by the rule on Postemployment restrictions.

April 13, 2000

No. 00-I-2

**BACKGROUND INFORMATION**

The state employee who brought this inquiry to the Commission is an Electronic Technician II working leader in a signal department at a district office of the Indiana Department of Transportation [INDOT]. He has been writing computer software applications at home and would like to sell a number of these applications to INDOT. He has had involvement with the development of a signal department software application and a sign application in his INDOT position.

He brought his outside business activity to the attention of the INDOT ethics officer and Commission staff to determine the parameters of his private business with the state and/or state contractors. He was then advised to bring his questions to the Commission for resolution in an official advisory opinion. This inquiry to the State Ethics Commission ensued.

**QUESTIONS**

Does the state ethics code permit an employee of the Indiana Department of Transportation, specifically an electronic technician, to contract with the state concerning a computer software application where the employee, in the course of his employment, worked on developing an application for the same purpose?

Does the state ethics code permit this same state employee to leave state employment and obtain subsequent employment with a signal contractor involving software applications to be used for the same purpose?

**FACTS**

This state employee's duties as an INDOT electronic technician in a district signal department include maintenance of traffic signals and supervision of a traffic signal maintenance contract in Marion and surrounding counties. He additionally wrote a signal department software application to help manage that contract.

He was asked in February 1998 to work on a sign application. Writing software applications was not part of his official job description, but was something he to which he was assigned because of his computer expertise. After completing a first draft of the application, he found that over the next few months there was no agency interest in this sign application he was writing at work.

In May 1999, the signal contractor asked him about the ownership of the signal application used to manage the signal maintenance contract, the contract that the employee supervises. The INDOT employee told the contractor it was the property of the state and could not be sold. It was then, however, that he began thinking about writing software applications as a part-time business.

At home he was working on applications for managing a complete traffic office including the following departments: signs, signals, paint, investigations, and the traffic office itself. He was also looking into construction contracts and an inventory control application. In June 1999, he began working at home on his own sign application. He used no state resources to work on the application at home. In testing the fields of this application software, he used fictitious data. Any application software he would sell to the state would be used by the state with its own data entered into the fields he developed.

In December 1999, the INDOT employee discussed the application he was writing at home with the signs and paint coordinator at the district. He was asked if he could import the district sign log into his application and was given the discs containing the data to do so. He demonstrated the sign application to the sign department at the district. The application was not used by INDOT after his demonstration.

INDOT supervisory personnel later approached him about modifying the sign application that he earlier developed at work. He explained that he was continuing his work on one at home and would like to be able to sell his application from his private business to the state. His INDOT supervisor did not direct him to do further work on the application and determined that if he was given approval to be considered as an INDOT vendor, he would not be assigned any further sign application work in his INDOT position.

#### **RELEVANT LAW**

40 IAC 2-1-8 (moonlighting)

40 IAC 2-1-9 (conflict of interest)

IC 4-2-6-11 (post employment restriction)

See below for text of these laws.

#### **CONCLUSION**

The Commission held that the state ethics code does not permit this individual, as a state employee, to contact with the state concerning a software application where the individual, in the course of his INDOT employment, developed an application for the same purpose.

The Commission further held that the state employee's software application writing, as described to the Commission, does not represent a "particular matter" as defined in IC 4-2-6-11. Upon leaving INDOT employment, he would not, therefore, be restricted in his representation or assistance to a person concerning such writing.