

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-9 Conflict of interest; prohibitions

An IPAS Assistant Director sought advice regarding whether it was permissible for her to participate in a Nielsen/Net Ratings study by allowing the company to install software on her work computer that would track her activity and applications. SEC found that participating in the study raised confidential information and state property concerns that would result in a violation of the Code of Ethics.

No. 02-I-2 Conflict of Interest

Indiana State Ethics Commission

Official Advisory Opinion

June 13, 2002

Background

The State Ethics Commission received a request for an opinion from an Assistant Director in the Indiana Protection and Advocacy Services. She had been contacted by a representative of Nielsen/Net Ratings (Nielsen) for the purpose of tracking her use of the Internet at work. Nielsen software would be installed on the state employee's work computer to track her activity and applications. She would be designated a panel member of the study and would continue in that capacity indefinitely.

Question

Does state ethics law permit a state employee to participate in a study during work time that tracks the employee's use of the Internet for work purposes?

Facts

The state employee uses her computer for letters, correspondence, counseling notes for her staff. She uses the Internet for e-mail and research. Nielsen is a for-profit company that is tracking Internet use by various groups of workers. The Nielsen organization provided a privacy statement that stated the use of the Internet by those working in public administration is encrypted and reported out as aggregate data only. Nielsen offered to send the employee a \$100 U.S. Savings Bond following installation of the software, and a savings bond every six months of her participation.

Relevant Law

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

Sec. 9. (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:

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.

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.

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.

Conclusion

The Commission found that it would be a violation of the state ethics conflict of interest rule to allow Nielsen/Net Ratings to place software on a state employee's assigned computer. The Commission concluded that any work product produced by an employee on a state computer was proprietary information that belonged to the state. Moreover, because much of the state employee's work is confidential, Nielsen could potentially profit from the data collected by their software, thereby violating subsection (d) of the conflict of interest rule.

The Commission also found that subsection (f) would be violated in that state equipment would be put to use for a purpose other than state business. And, the Commission found that, because of the unpredictable nature of computer technology, the potential existed for an inadvertent release of confidential information, violating subsection (h) of the rule.

Timothy J. McClure, Director

Date Signed