

**42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)**

**42 IAC 1-5-15 Nepotism (IC 4-15-7-1)**

No violation of the Code of Ethics was found where a direct supervisory-subordinate relationship did not exist, nor would a husband employed with IDEM be making any decision concerning his wife's contract with his agency through the OAG.

May 11, 2006

No. 06-I-11

**BACKGROUND**

An attorney was formerly employed by the State of Indiana as a Staff Attorney for both the Indiana Department of Environmental Management ("IDEM") and the Office of the Public Access Counselor. She is currently interested in contracting with the Attorney General's Office to perform temporary legal services for IDEM. Although she would be performing legal services for IDEM, the contract will be with the Attorney General's Office

The attorney's husband is a current employee of IDEM. He is an Environmental Engineer working in the Solid and Hazardous Waste Permitting Section. He does not have any supervisory or managerial duties at IDEM. Further, he does not have the authority to make any contracting decisions for the State. More specifically, he does not have any influence in the contracting decisions of either IDEM or the Attorney General's Office.

As a contractor with the Attorney General's Office, performing services for IDEM, the attorney would not have any supervisory duties over the work of her husband. Her work would be primarily in the area of Air Quality, which is a separate branch from the Land Quality Branch in which her husband is employed. While employed as a Staff Attorney for IDEM, the attorney worked with the Air Quality Branch for approximately two years; during that time she and her husband never worked on the same project.

In the position the attorney seeks, neither she nor her husband would have any supervisory or managerial duties over the work of the other. Further, it is unlikely that they would be working on the same projects, as their areas of expertise are in different fields. Were they to be assigned to work on the same project, neither of them would be in a managerial or supervisory position over the other.

**ISSUE**

Can the attorney contract with the Office of the Attorney General to perform temporary legal services for the Department of Environmental Management without violating IC 4-2-6-9 or IC 4-15-7-1?

**RELEVANT LAW**

IC 4-2-6-9 (AMENDED, 2005)

IC 4-15-7-1

**CONCLUSION**

IC 4-2-6-9 prohibits a state employee from participating in any decision or vote that has the result of providing a pecuniary interest for the other. The attorney's husband is not in a position to make any decision or vote about the contract employment of his spouse. Once the contract employment has begun, neither spouse will be in a position to make decisions affecting the

pecuniary interest of the other. In the rare event that such a situation should arise, one of the spouses could ask IDEM to effectuate a screen to prevent the potential conflict.

The nepotism statute does not apply to the facts of this case. The attorney's husband will not be making any decision concerning the contract employment of his spouse. Further, neither spouse will be in a direct supervisory-subordinate relationship with the other at IDEM.

The Commission recommends that the attorney not serve as an attorney for IDEM in any judicial case in which her spouse serves as a participant or witness for IDEM.