

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 Consequently, the analysis reflected in the opinion may be outdated.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(a)

40 IAC 2-1-9

An IURC Assistant Chief Economist wanted to know if it would be a conflict of interest for him to send his professional credentials to a company's corporate offices seeking employment as an attorney while at the same time participating in an ongoing formal investigation of a wholly owned subsidiary of that company. SEC found this presented a conflict of interest, but the economist could apply for employment provided he was screened out of any case that related to the potential employer.

**90-I-29: Conflict of Interest
Indiana State Ethics Commission
Official Advisory Opinion
(Decision November 1, 1990)**

FACT SITUATION

The Assistant Chief Economist in the Economics and Finance Division of the Indiana Utility Regulatory Commission (IURC) wanted to know if he would have a conflict of interest if he were to send his professional credentials to the corporate offices of Ameritech seeking employment as an attorney while at the same time participating in an ongoing formal Utility Regulatory Commission investigation of Indiana Bell, a wholly owned subsidiary of Ameritech. The Assistant Chief Economist also wanted to know whether he would have a conflict of interest in sending his professional credentials seeking employment as an attorney to Ameritech Mobile, a sister subsidiary of Ameritech. The Assistant Chief Economist's job responsibilities involved financial and economic analysis of various public utility regulatory issues that were part of case adjudication or rule-making before the Indiana Utility Regulatory Commission. Since January 1990, he had been involved in an informal investigation of Indiana Bell's earnings levels that were potentially in excess of IURC guidelines. The Assistant Chief Economist was the principle author of a staff report that provided the basis for a formal investigation of Indiana Bell begun on July 5, 1990. He was scheduled to testify as a staff witness on the appropriate profit level for Indiana Bell. He was first hired as an analyst by the IURC in 1982. In 1989, he obtained a Jurist Doctor from Indiana University School of Law and, in October, 1989, having passed the bar, was sworn in as an attorney.

Through informal contacts with an employee of Indiana Bell Telephone Company, Inc., the Assistant Chief Economist had been informed that employment opportunities might exist with American Information Technology Corporation (Ameritech) or with one of its subsidiaries, Ameritech Mobile Communications (Ameritech Mobile). Ameritech is a telecommunications services corporation with headquarters in Chicago, Illinois. Indiana Bell is a local exchange telephone utility that is subject to the full jurisdiction of the IURC and is a wholly-owned subsidiary of Ameritech. Ameritech Mobile is a largely unregulated concern that provides mobile communication services within the United States including Indiana and overseas. Ameritech Mobile, which is located in Shaumburg, Illinois, is involved in setting up operations in Europe, one of which may be in the Assistant Chief Economist's former homeland, Greece. Although the Assistant Chief Economist wanted to apply, he had not done so and had come to the State Ethics Commission to seek an advisory opinion.

QUESTION

Is the Assistant Chief Economist for the Indiana Utility Regulatory Commission permitted to send his professional credentials to Ameritech or Ameritech Mobile, a sister subsidiary of Ameritech, seeking employment as an attorney while at the same time participating in an ongoing formal IURC investigation of Indiana Bell, a wholly owned subsidiary of Ameritech?

OPINION

The State Ethics Commission found that it would be a conflict of interest for the employee to pursue employment opportunities with Ameritech or any of its subsidiaries while participating in any case involving Indiana Bell Telephone Company. The employee may apply for employment provided the employee is screened out of any case that relates to the potential employer.

A relevant statute is IC 4-2-6-9(a) which provides, "A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest.

The definition section, IC 4-2-6-1(9), defines "financial interest" to include "an interest arising from employment or prospective employment for which negotiations have begun."

The relevant rules are as follows:

40 IAC 2-1-9(A) provides, "If in the course of the discharge of his official duties as a state officer or state employee he shall find himself in a position where his, or his spouse's or his unemancipated children's economic interest shall be substantial and material and in conflict with the interest of the people of this State, then such state officer or state employee shall be expected to resolve such conflict as provided for in Section 10 (40 IAC 2-1-10)."

40 IAC 2-1-9(F) provides, "No state officer or employee shall participate in any decision or vote of any kind in which he, his spouse, or his unemancipated children have an economic interest."

The Indiana Utility Regulatory Commission operates under Executive Order 4-83 which is a Code of Ethics for the Public Service Commission of Indiana. It says that commission personnel should disqualify themselves in a proceeding in which impartiality might reasonably be questioned, including but not limited to instances where the individual knows that he has a financial or other property interest in the subject matter in controversy or in a party to the proceeding, other than that of other members of the ratepaying public similarly situated, which interest could be substantially affected by the outcome of the proceedings.