

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-6

40 IAC 2-1-7

40 IAC 2-1-9

An employee with the BMV's Commercial Driver's License Division, who was on contract to develop a tutorial program using volunteers that would help low reading level individuals pass the commercial driver's licensing test, was requested by a publishing company and an association to serve as a technical consultant in developing curriculum resources. SEC found the employee was prohibited from accepting an honorarium from a company with which the State might do business as well as accepting travel expenses for anything related to state business; however, it was permissible for the employee to be acknowledged as a state employee or private contractor on the project.

**90-I-9: Honoraria, Conflict of Interest, Travel
Indiana State Ethics Commission
Official Advisory Opinion
(Decision April 6, 1990)**

FACT SITUATION

An individual employed almost full-time on contract with the Bureau of Motor Vehicles, Commercial Driver's License Division to develop a tutorial program using volunteers that will help low reading level individuals pass the commercial driver's licensing test was requested by a publishing company and an association to serve as a technical consultant in developing curriculum resources. The individual previously had been employed on contract by the Governor's Voluntary Action Program. A publishing company, Delmar Publishing Company of Albany, New York, and the association, the American Association of Motor Vehicle Administrators of McLean, Virginia, wanted the individual to evaluate their respective study materials for the Commercial Driver's License test. The individual's responsibilities for the state of Indiana included developing and coordinating a program that would eventually use this kind of materials. The individual said her group within the Commercial Driver's License Division would be in a position to make recommendation of curriculum materials for the state to buy. The individual's training was in the adult education field working with literacy programs.

QUESTIONS

Is an individual employed almost full-time on contract by the Bureau of Motor Vehicles, Commercial Driver's License Division, permitted to serve as a technical consultant in developing curriculum resources and, for the service, permitted to accept 1) an honorarium, 2) published acknowledgement a) as a state employee, or b) as a private consultant, and 3) related travel expenses when such travel occurs on the individual's own time?

OPINION

The Commission rendered the opinion that an individual on contract with the Bureau of Motor Vehicles, Commercial Driver's License Division:

1) May not accept an honorarium from a company the state might do business with because that would be a conflict of interest since the individual is in a position to buy materials for the state. If the individual accepts the honorarium, then the state may not buy from the companies who have tendered the individual an honorarium. However, if the individual does not want to later buy materials from them, she can accept a honorarium so long as the work she is doing as a technical consultant is not work she is expected to do for the state.

2) May be acknowledged as a state employee or as a private consultant so long as the individual receives no financial remuneration, but being acknowledged as a state employee is preferred.

3) May not accept travel expenses if the travel is "concerning state business." However, the expense may be directly assumed by the publishing or other entity if the travel is not "concerning state business," but such travel must be of a nature and in a setting that reasonably may be construed by the public as proper.

The relevant rules are as follows:

40 IAC 2-1-6(C) says, "If an honorarium is offered to an employee as payment for a speech or article whose content is derived from that employee's state job, the honorarium is considered as payment for the performance of state duties and is not to be accepted. If an honorarium is offered to the state employee as payment for a speech or article whose content is based solely upon the employee's personal knowledge or expertise, the employee may accept it."

40 IAC 2-1-9(A) says, "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 2-1-7(C) says, "State employees should utilize the normal state policy and procedures concerning travel expense and allowance provisions when attending events concerning state business. However, there may be instances where state employees may be considered in compliance with the letter and spirit of the Code (40 IAC) even if expenses are directly assumed by a sponsor. The Ethics Commission may review such event for any improprieties. Each case shall be evaluated on its individual merits."