

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 Consequently, the analysis reflected in the opinion may be outdated.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) Conflicts of interest

SEC found there was no conflict of interest for the spouse of the DOC's Deputy Commissioner for Juvenile Services to be a public defender for the Marion County Superior Court, Juvenile Division, provided the spouse did not represent juveniles in parole hearings that came before the DOC.

**92-I-15 Conflict of Interest
(Decided November 19, 1992)**

FACT SITUATION

The Deputy Commissioner for Juvenile Services, Department of Correction, was promoted to her position on September 1, 1992, after having been with the Department of Correction for eighteen years. The Deputy Commissioner's duties consisted of supervision over the juvenile institutions in the state including overall direction, policy setting, and general management, as well as determining the mission, vision, and goal of Juvenile Services. The superintendents, who were responsible for day-to-day operation of the facilities, reported directly to her. Prior to her appointment as Deputy Commissioner, she had been the Director of the Internal Audit Division where she supervised all the investigations, health and safety inspections and fiscal audits. Prior to that position, she was staff counsel for the Department of Correction.

The Deputy Commissioner's husband was a public defender for the Marion County Superior Court, Juvenile Division. He worked previously for Legal Services Organization in the Juvenile court. He had been a public defender at the Marion County Juvenile court for eighteen years under Judges Fields, Boring, and Payne. The Deputy Commissioner's husband had a private practice in addition to his work as a public defender, but his private practice did not involve representing juveniles.

The Deputy Commissioner's current position was not the first one in which she had responsibility for juvenile offenders. In the early 1980's, she served as the chair of the Juvenile Parole Committee and was responsible for paroling juveniles out of the system. At that time, she supervised some of the department's residential programs for juvenile offenders. When she first came to the department, she was a juvenile parole agent but had no releasing authority.

The Deputy Commissioner reported directly to Commissioner DeBruyn and had authority over eight juvenile facilities and six regional facilities. A deputy Commissioner for programs and field services had authority for the juvenile parole chair. The Deputy Commissioner did not supervise the juvenile parole chair but she did have discussions with him.

The Deputy Commissioner's husband usually had no responsibilities for a juvenile after the adjudication. The Public Defender's office would be responsible for the appeal. Since all public defender's offices were over worked and understaffed, they did not usually file appeals. The Deputy Commissioner's husband was paid a specific salary as a public defender which did not depend upon results or upon his case load. He was employed directly by the court. He was also responsible for assigning cases to other public defenders. He would not be involved in the parole process. The state public defender's office had a person who represented juveniles at parole committee hearings.

In the juvenile system, there were determinate sentences. A counselor at the facility where a juvenile was placed worked with the juvenile and made the recommendation concerning parole. The Indiana Administrative Code specified the process to be followed if a juvenile has not been recommended for parole within six months. Parole committees met with the juvenile to determine why the juvenile had not been recommended for parole. The paper work was sent to the juvenile parole chair who reviewed the history and made the decision about the parole. If the juvenile had

committed an offense other than a property offense, the parole committee had to make the decision. The parole committee was made up of the juvenile parole chair and two people from the institution. Each institution had two people appointed to sit on their parole committee along with the parole chair who made the third member of these committees. The institutional members of the parole committees reported to the Deputy Commissioner by way of the superintendent of the institution. The name of the public defender who represented the juvenile was on the fact sheet of the commitment order, but that information was not usually something the parole committee had access to or wanted to know.

QUESTION

Is it a conflict of interest for the Deputy Commissioner/Juvenile Services of the Department of Correction's husband to be a public defender for the Marion County Superior Court, Juvenile Division?

OPINION

The Commission found it was not a conflict of interest for the Deputy Commissioner/Juvenile Services, Department of Correction's spouse to be a public defender for the Marion County Superior Court, Juvenile Division, provided the spouse did not represent juveniles in parole hearings which came before the Department of Correction.

The relevant rule is as follows:

IC 4-2-6-9(a) on conflicts of interest 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."