

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 Consequently, the analysis reflected in the opinion may be outdated.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

The wife of a SPD Deputy Director worked as a commercial property casualty insurance salesperson for an insurance brokerage company whose client bid for a state contract to administer two state programs. SEC found that although the Deputy Director had a significant role in the process, there was no conflict of interest since the bidding process used adequate checks and balances and the Deputy Director's wife had no responsibility in the contracting process nor would her compensation be affected by the State's decision on the matter.

**94-I-7, Conflict of Interest
(Decision May 19, 1994)**

FACT SITUATION

A deputy director of the Personnel Department with responsibilities over the area of worker's compensation wanted to know if he had a conflict of interest if his wife was employed by an insurance brokerage company as a commercial property casualty insurance salesperson and one of the companies the insurance brokerage represented bid for a state contract to administer the worker's compensation and disability insurance program for the state. The State Personnel Department had recently taken on the responsibility for the administration of worker's compensation and disability benefits. The Department planned to contract with a third party administrator for services. The deputy director was responsible within the State Personnel Department for areas of training, benefits, worker's compensation, employment administration and affirmative action. The person who worked directly with the worker's compensation and disability program reported to the director of Benefits who reported to this deputy director. The deputy director would not be directly involved in drafting the request for proposals (RFP) or in the evaluation committee which selected the vendor, but would review the decision made and make a recommendation to the State Personnel Department Director and other appropriate staff.

The deputy director's spouse was employed by a privately owned insurance brokerage which employed a little over 200 people, making it the largest privately owned brokerage in the state of Indiana. One of the companies they represented submitted a proposal to be the state's third party administrator for worker's compensation and disability insurance. The deputy director's spouse was employed as a salesperson selling commercial property casualty insurance. She had no involvement with the RFP process or any role in the services provided to the state if the company was selected. The deputy director and spouse did not have any ownership in the insurance company or the brokerage, and the compensation of the deputy director's wife was not linked to the profits of either company but based solely on commissions from her own sales. Her compensation changed in no way as a result of the contract with the state.

The deputy director said he would not participate in the evaluation of the bids or attend committee meetings, but would receive a breakdown of the different criteria used and points allocated and an explanation of why the points were allocated as they were. The director of Benefits would prepare a memo of recommendation which the deputy director would review and about which he asked questions or made comments. At times the committee, in addition to making its primary recommendation of which company should receive a contract, indicated a company that was a close second or another company that was in the running. The deputy director submitted the recommendation for formal approval to the State Personnel Department Director. The decision of the director was forwarded to the Commissioner of the Department of Administration who entered into the contract for the state, with the approval of the Budget Director.

QUESTION

Does a deputy director of the Personnel Department with responsibilities over worker's

compensation have a conflict of interest if his wife is employed by an insurance brokerage company as a commercial property casualty insurance salesperson and one of the companies the insurance brokerage represents bids for a state contract to administer the worker's compensation and disability insurance program for the state?

OPINION

The Commission found the deputy director of the State Personnel Department with responsibilities over the area of worker's compensation did not have a conflict of interest if his wife was employed by an insurance brokerage company as a commercial property casualty insurance salesperson and one of the insurance companies the insurance brokerage represented bid on a third party administrator contract with the state for the following reasons:

- 1) Despite the deputy director's significant role in the process, his wife had no involvement on behalf of the insurance company in the development of the response or, in the event the company was the successful bidder, in the administration of the contract;
- 2) The compensation of the deputy director's wife was not in any way affected by any decisions the state made in this matter; and
- 3) The bidding procedure used included adequate checks and balances.

Note: The deputy director was cautioned to adhere to strict limits on use of information concerning the entire contracting process and directed not to provide his wife with information about it, including its development and any information submitted by various competitors.

In addition, if the responsibilities of the deputy director or his wife changed, the State Ethics Commission was to be informed in order to revisit the question.

The relevant statute 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."