

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 Consequently, the analysis reflected in the opinion may be outdated.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 4-2-6-5.5

IC 4-2-6-9

The Deputy Commissioner of the DOR was subject to a screening process where a conflict of interest existed due to the continued part-ownership of an Indiana corporation by both him and his wife.

July 14, 2005

No. 05-I-7

BACKGROUND

The Deputy Commissioner of the Department of Revenue is part owner of an Indiana corporation. He serves on the Board of Directors of the corporation and receives a stipend for attendance at the board meetings. He also has served as the corporation's treasurer and received a salary for that position. As treasurer, he prepared the trial balance and the appropriate state and federal tax returns. The Deputy Commissioner disclosed all of this information to the Department of Revenue (DOR) when he was hired. He has now resigned as an officer of the corporation and will not prepare future trial balances or tax returns. He will complete the 2004 tax returns.

QUESTION

Does the Deputy Commissioner's membership on the Board of Directors and receipt of a stipend for attending meetings constitute a conflict of interest under IC 4-2-6-5.5?

Are the Department's planned measures to screen the Deputy Commissioner from handling any complications with the corporation's 2004 tax return sufficient to satisfy the provisions of IC 4-2-6-9?

Does the Deputy Commissioner's employment by the corporation, after resigning as an officer, constitute a conflict of interest if he is in no way involved in the preparation of tax returns for the corporation?

Can the Deputy Commissioner's spouse serve as an officer of the corporation and receive a salary from the corporation for the service?

RELEVANT LAW

Moonlighting:

IC 4-2-6-5.5. (Amended, 2005)

Conflict of Interest:

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

CONCLUSIONS

The Deputy Commissioner's role as treasurer of a corporation creates a conflict of interest with his position as Deputy Commissioner of the Department of Revenue. Therefore, a screening procedure must be put into place so that the Deputy Commissioner has no participation in any matter concerning the corporation's state tax return. The screen must insure that the Deputy Commissioner cannot use his official position or attempt to use his position to secure unwarranted privileges or exemptions for the corporation.

When a tax return is filed with the DOR, if no complications are encountered, no individual is involved in any discretionary matter related to the return. The department's Returns Processing System mechanically processes the return. Should the return encounter a complication, it is normally resolved by a supervisor. If the supervisor cannot resolve a complication, it is normally

referred to an administrator at the Returns Processing Center. If the administrator cannot resolve the matter, it is referred to a deputy commissioner.

The screening procedure recommended by the DOR and approved by the Ethics Commission is as follows: If the Deputy Commissioner's corporate return is referred to the administrator of the Returns Processing System, the administrator will contact the DOR ethics officer, who shall monitor the continued consideration of the matter until it is resolved to ensure that the Deputy Commissioner is shielded from any participation in that resolution. At the point a return would normally be referred by the Returns Processing Center's administrator to the deputy, the ethics officer will work with other administrators and the Commissioner to resolve the matter without the Deputy Commissioner's involvement.

After resigning as treasurer of the corporation, the Deputy Commissioner and his spouse will still have financial interests in the corporation. The Deputy Commissioner has an ownership interest and may be employed by the corporation in the future (although he will not be involved in the preparation of the state tax returns); his spouse may serve the corporation as an officer. Again, this relationship with the corporation presents a conflict of interest with the Deputy Commissioner's position at the DOR. The DOR proposes the same screen as described above with the following addition: The screening will apply to all aspects of the Department's operations, including audit selection and appeals. This screening procedure is approved by the Ethics Commission.

The DOR has issued an opinion that the screening procedure set forth herein does not interfere with the Deputy Commissioner's performance of his duties or the operation of the DOR. In addition, the Deputy Commissioner's continuing relationship with the corporation will not require him to disclose confidential information that he gained in the course of his employment with the DOR. The Ethics Commission concurs with this opinion.