

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-9

SEC established a screen for a state employee who formerly worked for a law firm that practiced before the Motor Carrier Authority and supervised the Motor Carrier Authority Legal Section and its two administrative law judges in her state position and whose husband was a principal shareholder in two trucking companies which owned certificates of intrastate authority granted by the Motor Carrier Authority.

**90-I-22: Conflict of Interest
Indiana State Ethics Commission
Official Advisory Opinion
(Decision August 10 and September 6, 1990)**

FACT SITUATION

A supervisor of the Motor Carrier Authority Legal Section, Department of Revenue, had responsibility for supervising the section and reviewing orders drafted by its two Administrative Law Judges. Her husband was a principal shareholder in two trucking companies that owned certificates of intrastate authority granted by the Motor Carrier Authority. The supervisor had previous to her state employment been employed by a law firm that practices before the Motor Carrier Authority. The agency makes decisions involving the husband's authority to haul specific commodities between points, both the authority to transport and points of transport, and sets tariffs for operating between points in Indiana. The agency also makes the same kind of decisions in regard to the supervisor's former legal clients. The supervisor's duties also involve a special project to draft rules and regulations for the Motor Carrier Division. The final decisionmaker of the decisions of the Motor Carrier Authority is a committee consisting of the Commissioner of the Department of Revenue, the Administrator of the Tax Policy and Appeals Division, and the Deputy Administrator of the Tax Policy and Appeals Division.

QUESTION

Does a state employee who supervises the Motor Carrier Authority Legal Section and its two administrative law judges, whose husband is a principal shareholder in two trucking companies which owns certificates of intrastate authority granted by the Motor Carrier Authority, and previous to her state employment was employed by a law firm that practices before the Motor Carrier Authority have a conflict of interest?

OPINION

The State Ethics Commission, based upon the information received (including that all the supervisor's comments are in writing, signed or initialed, and part of the public record), rendered the following opinion:

- 1) The supervisor is to be screened from all matters in which her husband's financial interest is directly affected (examples, authority and tariffs). Instructions to that effect are to be given to all the staff in the Motor Carrier Authority Legal Section in writing immediately. Such matters are to be supervised by someone else.
- 2) The supervisor is to be screened from matters in which her husband's financial interest is indirectly affected including when a potential competitor of her husband's trucking firms files for authority or to set tariffs. When a matter comes before the Motor Carrier Authority Legal Section that involves competitors of her husband's trucking firms, the matter is to be brought to the attention of the Deputy Administrator of the Motor Carrier Legal Section. The Deputy Administrator is to decide if the supervisor is to be screened because of a probability of conflict of interest, putting in writing that the matter was brought

to his attention and why he decided to screen or not to screen the supervisor, which shall become part of the public record. Matters he decides to screen her from are to be supervised by someone else.

3) The supervisor is not to participate in matters involving a former legal client in which she participated personally and substantially while in private practice or non-governmental employment.

The Commission requested a report as to whether the screening process was effective from the Deputy Administrator of the Motor Carrier Authority Legal Section on February 6, 1991.

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 definition of a conflict of interest at 40 IAC 2-1-4(D) says, "Conflict of Interest' means a situation in which a state officer's or employee's private interest, usually of a financial or economic nature, may influence his judgment in the performance of his public duty."