

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 Consequently, the analysis reflected in the opinion may be outdated.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 2-1-8

40 IAC 2-1-9

Three INDOT employees wanted to form a corporation to establish and instruct at a real estate school in central Indiana. SEC found this presented no conflict of interest provided no INDOT employees were accepted into the school, none of the work connected with the school was done on state time and no state equipment or property was used.

90-I-4: Conflict of Interest, Moonlighting

Indiana State Ethics Commission

Official Advisory Opinion

(Decision March 1, 1990)

FACT SITUATION

Three state employees of the Department of Transportation desired to form a corporation to create and administer a real estate school in the central Indiana area wherein they would be instructors. One was a Chief of the Division of Land Acquisition charged with overall responsibility for acquiring the property needed for highway rights-of-ways which includes abstracting, engineering, appraising, buying property, and managing relocation. Another was a Manager of the Buying Section, one of six sections within the division, with responsibility for overseeing sixteen buyers in doing the buying operations for the division. The last was an appraiser for the Division.

The business venture the three were proposing was a school to train people for real estate salesperson's and broker's examinations. None of the three did that type of work in their state job. All were of the opinion that operating the school would not impair their judgment in regards to their state work or offer an opportunity for preferential treatment to people who had been through the school. None of the three were in any way responsible for the examinations for broker's and salesperson's licenses nor members of the Real Estate Commission. The school would not be connected in any way with the state of Indiana outside of receiving approval of the school by the Real Estate Commission and having the name of the school published on the list of such schools available from the Real Estate Commission.

QUESTION

Is it permissible for three employees from the Department of Transportation, the Chief of the Division of Land Acquisition, the Manager of the Buying Section, and an appraiser for the division, to form a corporation to create and administer a real estate school in the central Indiana area wherein the three would be instructors?

OPINION

The Commission rendered the opinion that there was no conflict of interest in this business venture so long as no members of the Department of Transportation are accepted into the school, none of the work connected with the school is done on state time, and no state equipment or property is used.

A relevant rule, 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(B) provides, "No state officer or employee shall solicit or accept compensation other than that provided for by law for such office or employment for the performance of his official duties."

Another rule, 40 IAC 2-1-8, provides, "A state employee must not engage in outside employment or other outside activity not compatible with the full and proper discharge of his public duties and responsibilities. This outside employment or other outside activity must not impair his independence of judgment as to his official responsibilities, pose a likelihood of conflict of interest or require him or persuade him to disclose confidential information acquired by him as a result of his official duties."