

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 Consequently, the analysis reflected in the opinion may be outdated.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

40 IAC 2-1-8 Moonlighting

SEC found there was no conflict of interest for non-supervisory, full-time DOC nursing personnel, who are not in the position of selecting competitive nurse registries or scheduling nurses, to work through a nursing registry for another DOC institution.

91-I-24: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision December 12, 1991)

FACT SITUATION

Eight institutions of the Department of Corrections have contracts with outside companies to furnish nurses. The contracts were made by the institution and were reviewed by the Department of Corrections' administrative offices. In contracting, the institution used state contract procedures for signatures and approvals. At each institution having a contract, the shift charge nurse contacts the contract agency to fill shift vacancies. The contract nurses are used to fill in for nurse positions that the institution is not able to fill on the manning table. Some facilities contracted with more than one agency. The contracts all had dollar caps on them. Nursing registries were generally priced competitively and comparably. Facilities had enough overtime hours for nurses so that the nurses do not usually have an opportunity to take another job. Registries offer greater pay than the Department of Corrections offers. The Department of Corrections had authority to approve the nurses provided by agreement with the agency.

QUESTION

Is it a conflict of interest for a nurse employed full-time at a Department of Corrections' facility who has outside employment to work through a nursing registry as a nurse for another Department of Corrections' institution?

OPINION

The Commission found it was not a conflict of interest for non-supervisory full-time Department of Corrections' nursing personnel who are not in a position of selecting competitive nurse registries or scheduling nurses to work through a nursing registry for another Department of Corrections' institution.

The relevant rules are as follows:

40 IAC 2-1-8, on Moonlighting provides, "A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties."

IC 4-2-6-9(a), on Conflict 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."

The Department of Corrections own rules on conflict of interest on file with the State Ethics Commission say, "Staff shall perform their duties in such a manner that appearances of impropriety or conflicts of interest do not exist. Compromising activity may include any activity

that gives rise to a suggestion of impropriety or conflict of interest. Staff shall not accept gifts nor gratuities from anyone with whom the Department conducts business. (Note: This prohibition is more restrictive than those provided in the Indiana Code of Ethics for the Conduct of State Business.) Any questions regarding potential conflicts of interest shall be discussed with the staff member's immediate supervisor for advice and direction. No staff person shall supplement any state salary through activities engaged in the physical confines of the institution or office, such as collecting commissions, owning or operating concessions, rendering service to other staff, offenders, or the public."