

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 Consequently, the analysis reflected in the opinion may be outdated.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

A DNR Grants Section Coordinator, who reviewed master plans as part of grant applications, wanted to take a part-time position with a consulting company that consulted with local governments who were preparing park and recreation master plans to be submitted to and reviewed by the Coordinator's section. SEC found this proposed outside employment presented a conflict of interest that was incompatible with the full and proper discharge of the Coordinator's public duties and responsibilities.

**92-I-12 Conflict of Interest, Moonlighting  
(Decided August 20, 1992)**

**FACT SITUATION**

The Grants Section Coordinator of the Outdoor Recreation Division in the Department of Natural Resources, with job responsibilities that included reviewing master plans as part of grant applications, wanted to take a part-time position with a consulting company which consulted with local governments who were preparing park and recreation master plans which would be submitted to and reviewed by the Coordinator's section.

The Grants Section Coordinator in Outdoor Recreation coordinated the process of awarding National Park Service and Fish and Wildlife grants. In reviewing grant applications, the Coordinator's section reviewed five-year master plans for parks and recreation. The Coordinator had three grant coordinators and a secretary under her supervision.

A community applying for a grant had to complete a five-year park and recreation plan before it could request a grant application. The master plan had to comply with a minimum list of standards. The quality of the master plan did not affect the grant application process.

The Grant Section Coordinator wanted to accept part-time employment with a consulting company which consults with local governments applying for grants through the Department of Natural Resources, Division of Outdoor Recreation. In her part-time position, the Coordinator would be preparing master plans for local governments to submit as part of their grant application. Her supervisor had stated that she could be screened from having to review any master plan, grant application, or Section 504 self-evaluation and transition plans prepared by the consulting company for whom she was working.

After the screening of the master plans for compliance with the minimum standards, the applications were rated by the employee's agency and ranked. An independent rating system approved by the National Park Service was used to judge the applications. Four or five people sat in on the ratings. A list was compiled and used to determine who would receive the money to be disbursed for the year. After the Natural Resources' Commission approved the list of proposed grant recipients, an application was prepared and submitted to the National Park Service which made the final determination. The grant program allocated \$400,000 the prior year and expected to allocate \$500,000 that year in funding five or six projects.

The Coordinator would not be performing any functions for the consulting company on a grant application. However, she could not be removed from all of her grant responsibilities. The Coordinator was a landscape architect and had been involved with parks and recreation planning for seven years.

**QUESTION**

Is it a conflict of interest or a violation of the moonlighting rule for the Grants Section Coordinator of the Outdoor Recreation Division in the Department of Natural Resources, with job responsibilities that include reviewing master plans as part of grant applications, to take a part-time position with a consulting company which consults with local governments who are preparing park and recreation master plans which will be submitted to and reviewed by her section?

#### OPINION

The Commission found it was a conflict of interest and a violation of the moonlighting rule as incompatible with the full and proper discharge of public duties and responsibilities for an employee who was the Grants Section Coordinator for the Outdoor Recreation Division of the Department of Natural Resources to have a part-time position with a consulting company preparing parks and recreation facilities master plans which were required as part of the grant application to the employee's section.

The Commission felt the Coordinator's services to the consulting company would give the company's clients an unfair advantage. The employees supervised by the Coordinator could feel some pressure to look favorably on applications submitted with the help of the consulting company knowing their boss was working for that company. In spite of master plans being separated from grant applications, the Coordinator would have a financial interest in the success of the consulting company. The potential would exist for the company to market their services in such a way as to promote the fact the company had the Coordinator of grant applications working for them. Therefore, the Commission had concern about the Coordinator doing any work for a company who was coming before her section in a competitive process.

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 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."