

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 Consequently, the analysis reflected in the opinion may be outdated.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 a DOC Director to work as an independent contractor for the former DOC Commissioner while another independent contractor on the project was someone over whom the Director had supervisory authority on several contracts with the DOC. However, the Director was advised to seek further guidance from the SEC in the event he was interested in working on another project with the independent contractor.

**92-I-17 Conflict of Interest, Moonlighting
(Decided November 19, 1992)**

FACT SITUATION

The Director of the Classification Division, Department of Correction, wanted to work as an independent contractor for the former Commissioner of the Department of Correction while another independent contractor on the project was someone over whom the Director of the Classification Division had supervisory authority on several contracts with the Indiana DOC.

The Director of Classification for the Department of Correction was responsible for the design of a classification system, i.e., determining what institution an offender should go to based on security levels of prisons.

The former Commissioner of the Indiana Department of Correction and current Director of U.S. Virgin Island Bureau of Correction had asked the Director to enter into a contract as an outside consultant to make an assessment of the Virgin Island's classification system and develop a new classification system for their Bureau of Correction. The Director had previously developed a classification system for Indiana Department of Correction while the former Commissioner was the Commissioner. The former Commissioner had also asked another independent contractor to develop an automated system to be used with the new classification design. The independent contractor previously and at that time had a contract with the Indiana Department of Correction working on the system designs for the classification systems. The Director was responsible for overseeing the independent contractor's work for the state of Indiana in all except the juvenile classification system.

The Director and the independent contractor were two independent contractors working separately. Upon completion of the Director's work, the independent contractor was to then be responsible for the system design based upon the design for the classification. There would be no money flowing between the Director and the independent contractor. However, both were being funded by the National Institute of Corrections (NIC).

The independent contractor did not ask the former Commissioner to have the Director do the classification system. The former Commissioner was familiar with both the Director's and the independent contractor's work. When NIC awarded a grant to someone, they provided a list of persons qualified to do the required work. The person awarded the grant could choose any of the people on the list.

The Director and the independent contractor had not done this type of work together before. Although the potential existed for them to work together on other projects in the future, the Director would have to decide whether he wanted to do any more projects because the work was done outside his full-time employment with the state. Most states have automated to a certain degree. Indiana was one of the few states that was completely automated and, consequently, other states looked to Indiana for direction.

The Director did not anticipate the state of Indiana entering into another contract with the independent contractor. Indiana had almost completed its classification. As soon as the classification of females was completed, the Director's work with the independent contractor would be finished. The independent contractor was also working on a juvenile classification system for Indiana, but the Director was not in charge of that project.

QUESTION

Is the Director of the Classification Division, Department of Correction, permitted to work as an independent contractor for the former Commissioner of the Department of Correction when another independent contractor on the project is someone over whom the Director of the Classification Division has supervisory authority on several contracts with the Indiana DOC?

OPINION

The Commission found it was not a conflict of interest for the Director of the Classification Division to work as an independent contractor for the former Commissioner of the Department of Correction while another independent contractor on the project was someone over whom the Director of the Classification Division had supervisory authority on several contracts with the Indiana Department of Correction.

If the Director was interested in working on another project with the independent contractor, he was to come back to the State Ethics Commission for a subsequent opinion.

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."