

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 Consequently, the analysis reflected in the opinion may be outdated.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

The DNR's Assistant State Fire Coordinator sought to teach various fire courses for a fee to fire departments in the state and incident management courses for the State Emergency Management Agency to local fire departments, county government employees and civil defense-type people throughout the state. SEC found there was no conflict of interest in the coordinator teaching these classes so long as it was done on the coordinator's own time and without the use of state property, personnel or materials.

**92-I-1, Conflict of Interest, Moonlighting
(Decision February 20, 1992)**

FACT SITUATION

The Assistant State Fire Coordinator for the Division of Forestry, Department of Natural Resources, wanted to teach various medical and structural fire courses for a fee to local fire departments in the state and incident management courses to local fire departments, county government employees and civil defense-type people for the State Emergency Management Agency. Part of the employee's state job in the Division of Forestry was to teach basic wildland fire suppression and master's category wildland fire suppression courses to fire departments in the state. The basic wildland fire course is a one-day course and the master's category class is a four weekend course. The employee also inspects every two years each of the 300 fire departments that have federal property and oversees the placement of federal excess equipment in local fire departments. The decision where to place federal excess equipment was done on a point system. The employee had taught medical and structural courses to fire departments voluntarily without charging a fee in the past as a volunteer firefighter. The Natural Resources' employee could in some situations become incident commander during a suppression action meaning that everybody on the fire would work under the employee's direction. The employee planned to do the teaching on weekends and evenings without the use of any state materials or vehicles. If inspecting a fire department that had federal property and asked to teach a medical or structural course, the employee said the answer would be to talk about that on non-state time. The State Fire Marshal's office is responsible for fire suppression as well as making sure all fire departments are trained to fight structural fires. However, the Department of Natural Resources works in wildland fire suppression to protect their own ground. Therefore, the law says DNR may extend that expertise to local fire departments. Local fire departments may select the State Fire Marshal's office to offer training for which the charge is \$50 and \$100 per master's class, excluding the materials. Alternatively, the local fire department could for a fee hire the DNR employee to teach the structural fire course. The employee also planned to teach a medical course called first responder, a forty-hour course for those a step below being an EMT. The fee would be \$30 to \$40 per person. Indiana Vocational Technical College teaches an EMT course which is 120 hours for which the charge is between \$200 and \$300. The incident management courses involve handling big incidents like earthquakes and floods. The employee was certified nationally to teach this course, along with two other state employees, none of which were State Emergency Management Agency employees.

QUESTION

Is the Assistant State Fire Coordinator for the Division of Forestry, Department of Natural Resources, permitted to 1) teach various medical and structural fire courses for a fee to fire departments in the state, and 2) teach incident management courses for the State Emergency Management Agency to local fire departments, county government employees, and civil defense-type people throughout the state?

OPINION

The Commission found that it was not a conflict of interest or violation of moonlighting for an Assistant State Fire Coordinator in the Division of Forestry who teaches basic wildland fire suppression and master's category wildfire suppression courses to fire departments in the state as part of his state employment to teach:

- 1) various medical and structural fire courses for a fee to fire departments in the state,
- and
- 2) incident management courses for the State Emergency Management Agency to fire departments, county employees, and civil defense-type people

provided that the employee taught on the employee's own time and without the use of state property, personnel, or materials.

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."