

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 Consequently, the analysis reflected in the opinion may be outdated.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 it was a conflict of interest for a grants coordinator in DNR's Outdoor Recreation Division to submit bids for landscape design services and master planning to local parks departments, but it was not a conflict of interest for her to offer her design services to business or residential clients.

**93-I-17 Conflict of Interest, Moonlighting
(Decision November 18, 1993)**

FACT SITUATION

A new grants coordinator in the Outdoor Recreation Division of the Department of Natural Resources wanted to submit bids for landscape design services to business and residential clients and to local park departments. This individual was one of four in the Grants Section who administered land and water grants. The employee's responsibilities included rating applications and awarding funds, as well as following up the grants with five-year inspections and reviewing master plans required of grant recipients.

The employee had training in landscape design and a landscape design business for residential clients and small businesses. She also did consulting for park departments including master planning, site planning, and preparation of grant applications. She realized that grant application work was no longer possible while she was a state employee of the Grants Section. Her design work could include both new and existing parks. Although it had not occurred in the past, it was possible work she did might be included in an application to DNR for a grant. Parks department business constituted eighty percent of her profits while the residential and commercial design business constituted ninety percent of her workload. She had been in business for seven years.

Part of the job of grants coordinators in the Grants Section was to review park master plans, which are technical documents describing the goals a park has for a five-year period. She evaluated how the plans achieved those goals. In addition to reviewing master plans, grants coordinators offered technical assistance to parks on their plans. They awarded grants for land and water conservation funds and Indiana water funds. The applications were rated on a specific rating formula. In the previous year, nineteen parks departments submitted applications and eight were funded. Two that were funded included parks departments for which this employee had done work. Although the grants coordinator could be screened from grant applications of park departments where she had worked, she could not be screened from all grant application work. The Grants Section knew the parks departments for which she had worked and planned to screen her from projects involving those departments.

An example of a situation that might involve the employee was that a parks department might open a process of bidding to design a park, the employee could submit a bid in a competitive process with other consulting firms, be selected and design a master plan for a park. Subsequently, the same parks department might file an application for a grant with the Division of Outdoor Recreation to develop more facilities in the park the employee had designed. In such a situation, the employee would be screened from ranking the application from that park department because she had done a master plan for it. The employee said if she knew in advance the work was to be part of a grant application, she would decline to do the work.

QUESTION

Is it a conflict of interest or incompatible for a grants coordinator in the Outdoor Recreation Division of the Department of Natural Resources to submit bids for landscape design services to businesses and residential clients and to local parks departments?

OPINION

The Commission found that it was a conflict of interest and incompatible with state duties for a grants coordinator in the Outdoor Recreation Division of the Department of Natural Resources to submit bids for landscape design services or master planning to local parks departments, but it was not for her to offer design services to business or residential clients.

The relevant statute and rules are as follows:

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."

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."

The DNR policy on outside employment says, "DNR employees are permitted to provide a product or service for financial or other remuneration for a purpose or entity other than the DNR unless such activities: 1) reflect unfavorably on the Department; 2) adversely affect job performance; 3) utilize Department time, materials, or equipment, or 4) involve a public service provided free of charge by that employee's division."