

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 Consequently, the analysis reflected in the opinion may be outdated.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 a compliance officer who performed safety and health inspections to enforce IOSHA standards for both private and public sector employers in the state was permitted to consult for companies located outside the state that did not have operations in Indiana or any affiliate under common ownership, direct or indirect, which operated in Indiana, subject to the remaining provisions in the Code of Ethics.

**93-I-8 Conflict of Interest, Moonlighting
(Decision June 17, 1993)**

FACT SITUATION

A compliance officer with the Indiana Occupational Safety and Health Administration, Department of Labor, wanted to do consulting outside the state for private sector businesses which did not operate in Indiana or have a related company located in Indiana. Compliance officers with the Indiana OSHA are responsible for the whole state, although this officer was primarily responsible for compliance inspections in the northern part of the state. He was one of twenty-two inspectors with the division. All operate out of Indianapolis.

The compliance officer had an opportunity to do consulting work on a limited basis with a small manufacturing company and some nursing homes in Ohio. Primarily, he would be teaching within the nursing community blood pathogen standards. He would also do some industrial hygiene testing and general consulting for small manufacturers in and around the area where he lived. The companies for which he would work would not have any interest in a related company in the state of Indiana. Companies included small envelope manufacturers and machine shops. The work would be done primarily on weekends and on vacation time. A typical seminar for a nursing home would take three to five hours for each shift. The seminar could be done over time and not all at once.

QUESTION

Is a compliance officer with Indiana OSHA, Department of Labor, permitted to consult outside the state for private sector businesses which do not operate in Indiana or have a related company located in Indiana?

OPINION

The Commission found an industrial hygiene compliance officer who performed safety and health inspections to enforce Indiana's Occupational Safety and Health Administration Standards for both private and public sector employers in the state of Indiana was permitted to consult for companies located outside the state of Indiana which did not have operations in Indiana or any affiliate under common ownership, direct or indirect, which operated in Indiana. All work done needed to be completed on the employee's own time without using any state materials, state equipment, or state time and without disclosing any confidential information.

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."