

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 Consequently, the analysis reflected in the opinion may be outdated.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

An ISP Sergeant, who supervised troopers doing audits of trucking companies for compliance with federal laws and who answered questions regarding regulations, sought outside employment providing consultation and technical information on motor carrier regulations and providing training seminars on how to comply with these regulations to regulated trucking companies. SEC found this outside employment posed a conflict of interest and would be incompatible with the Sergeant's state duties.

**92-I-6 Conflict of interest, Moonlighting
(Decision April 16, 1992)**

FACT SITUATION

A Sergeant for the Motor Carrier Division, Indiana State Police, who supervised troopers who audit trucking companies for compliance with federal laws and answered questions regarding regulations wanted to have outside employment providing consultation and technical information on motor carrier regulations and providing training seminars on how to comply with these regulations, including Commercial Driver's License regulations, to regulated trucking companies.

The Sergeant was the Enforcement Officer and Supervisor of the Motor Carrier Division, Indiana State Police. His duties included supervising people who conducted safety reviews of trucking companies. The reviews were sent to the federal government which rated a carrier as satisfactory, unsatisfactory or conditional. While the Sergeant was trained to perform safety reviews, it was not his primary responsibility to actually perform them. The Sergeant's duties included answering questions and explaining regulations to carriers, mostly via telephone. If an officer performing a safety review discovered a violation, the information in regard to the violation was sent to the federal government. The safety review of a carrier was done by the officers upon instruction by the federal government. The officers did not initiate their own inspections.

Safety reviews and the compliance process were as follows. For a safety review, the department received a list of carriers from the federal government. The Sergeant distributed these lists to his subordinates who called on the companies for a safety review. The purpose of the safety review was to help the company understand and comply with the regulations. From this review, each company received a rating. If the rating was unsatisfactory, then the carrier was given a time period to make corrections. The federal government might then perform a compliance review. For failure to comply, the federal government might assess a fine. The Motor Carrier Division did not assess fines or issue citations, except that troopers issued citations to carriers on the road for violations of the logbook rule.

In recent years, there have been many new laws enacted that regulate the trucking industry. Due to the highly technical nature of these regulations, many companies in the trucking business were having a hard time determining how to comply with the regulations. Therefore, the Sergeant wanted to consult for a fee with various trucking companies for the purpose of helping them comply with these regulations. He also wanted to provide training seminars to teach companies how to come into compliance with the regulations. The Sergeant planned to advertise that he was going to talk about a specific subject on a specific day and charge a fee to the people who come to listen.

In addition to the possibility of citing a driver of a truck who drove for a company the Sergeant had worked for with a violation of the logbook rule on the highway, it was possible the federal government would ask for a safety review of a company for which the Sergeant had worked. While it was possible for the Sergeant to send subordinates to do the inspection, it would still be

someone who reported to him. Because the Sergeant as part of his state job gave advice and information, some carriers would be getting assistance from him on state time while others would be paying him as a private consultant for the same assistance. If a company called while the Sergeant was at work, he would be able to help them over the telephone or he could set up a time when he would for a fee go out and help them on the weekend, his vacation or personal time.

The Sergeant had received at state expense the training which would enable him to provide consultation and seminars on motor carrier regulations to trucking companies.

QUESTION

Is a Sergeant for the Motor Carrier Division, Indiana State Police, who supervises troopers who audit trucking companies for compliance with federal laws and answers questions regarding regulations permitted to have outside employment providing consultation and technical information on motor carrier regulations and providing training seminars on how to comply with these regulations, including Commercial Driver's License regulations, to regulated trucking companies?

OPINION

The Commission found there was a conflict of interest and it was incompatible with state duties for a Sergeant for the Motor Carrier Division, Indiana State Police, who supervises the troopers who audit trucking companies for compliance with federal laws and answers questions regarding regulations to provide consulting services to motor carriers who are regulated trucking companies and to provide training seminars on how to comply with these regulations, including Commercial Driver's License regulations, to regulated trucking companies.

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."