

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 Consequently, the analysis reflected in the opinion may be outdated.

**Conflict of interest, Moonlighting**

A DOE computer field consultant was interested in accepting outside employment with a vendor selling computer software packages to schools that he served in his capacity with the State. SEC found that while the consultant could work with the vendor to sell a software package to out-of-state schools that was different from the software programs provided by the State for school lunch programs, the potential conflict of interest in selling software packages to in-state schools could impair his judgment in making recommendations to the DOE.

96-I-3 Conflict of Interest, Moonlighting  
(Decision March 21, 1996)

Fact Situation

The computer field consultant for the School and Community Nutrition Program of the Department of Education who developed, maintained, and installed computer programs to count school lunches, record cash received and disbursed, and track summer child care and feeding programs wanted to accept employment with a vendor to sell computer software packages to schools he served in his state job. In his position, he trained other field consultants who reviewed schools' compliance with the standards of federally funded school lunch programs. He wrote, installed, and maintained, computer programs that the other field consultants used to collect data. He wrote computer programs for the "SF Program," a program which collected information for the State Board of Accounts regarding the number of meals served on a daily basis by schools.

The computer field consultant's job placed him in contact with one-hundred-fifty school corporations and two-hundred schools throughout Indiana. In his state job, he worked with the person on the local level who managed the school lunch program, e.g., the principal, business manager, or food service director.

The other field consultants were assigned to geographic territories and wrote reports that could provide the basis for funds to be withheld from a school which failed to comply with federally mandated performance standards. The computer field consultant had produced letters on the other consultants' computers for them to send at appropriate times. The computer field consultant had no territory, did not file a report and could not withhold funds. However, his supervisor on occasion asked him to recommend whether to withhold funds. The supervisor made the final decision. He had substituted for and accompanied field consultants on reviews. His duties also required him to do similar work for the Child Care Section of the Department of Education, and he had written programs for meal counts for the summer feeding program.

The computer field consultant had been contacted by a vendor for a sales position. The position was in a division which sold a software program. This program tracked nutrition quality, school purchases, inventory, payroll and equipment. It was different from the program the computer field consultant has developed for schools in the state, and there

was no duplication between the programs. There was also no interface or movement of data between the programs.

The computer field consultant would as a sales representative contact the same people he worked with in his state position, people he knew by virtue of his position with the Department of Education. Four companies, including the one he would work for, had received federal approval to market these products. He would have an advantage in selling the company's product. This company also sold a product that did the same as the program supplied by the Department of Education. Under terms of a contract the state had with the software vendor, the way that a school obtained the program that was supplied by the Department was as follows. After the computer field consultant installed the program, he left a form for the school to fill out and return to the vendor with a \$75 license fee. There was also an annual maintenance fee.

None of the information the computer field consultant worked with in the Department of Education was confidential. Nonetheless, clearly retrieval of such information would be more convenient for the computer field consultant than for any of the other three companies who might desire access to the information.

The computer field consultant planned to do the sales representative work on his state vacation days. A school employee would know that the computer field consultant was visiting in his capacity for the private software company, because the company required sales representatives to make appointments. He said if he were asked by a school representative when in his capacity with the Department of Education to give an opinion on programs like the one his company sold, he would refer the question to an employee in a different division.

The computer field consultant felt he could not refrain when asked from making recommendations to his supervisor as to whether withholding funds for failure to comply with federally mandated performance was appropriate in a specific case. To not give advice when asked would disrupt the working relationship of his office.

#### Question

Is a computer field consultant for the School and Community Nutrition Program, Department of Education, permitted to accept employment with a vendor to sell computer software packages to schools he serves in his state job?

#### Opinion

The Commission found that the computer field consultant was permitted to sell in other states a computer software product which performed functions that were not the same as those programs the state provided to school lunch programs but would have a potential conflict of financial interest that could impair his judgment in recommendations

to the Department of Education if he were to work as a sales representative for this company in selling its products to school lunch programs in Indiana.