

**INFORMAL OPINION IO-99-008
ISSUED FEBRUARY 2, 2000**

You have asked for an informal opinion on the following

Do the Constitutional Ethics Rules [“the Rules”], Section 1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1999, Ch. 62, App., preclude a Director Designee, who is a full-time employee of a state governmental entity, from being retained as a part-time City Attorney?

FACTS

You have advised:

- In August, 1995, you were appointed to the full-time position of City Attorney for a nearby municipality.
- In August, 1999, the city council reduced the position to part-time status and divided the duties.
- Another person assumed the position of City Attorney, while you were retained on a part-time, hourly contractual basis as Prosecutor to Municipal Court, and to provide legal representation and counsel to the city’s Traffic Commission and Board of Adjustment.
- In September, 1999, you were appointed as a Division Director for a state agency in a full-time, classified position.

ANALYSIS

Rules Section 257:20-1-4 governs your inquiry. In applicable part, it provides:

Misuse of Office

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(b) No state officer or state employee, except in the performance of his or her duties, shall disclose or offer to *disclose confidential information* acquired by reason of his or her official position to any person, group or others not entitled to receive such confidential information, nor shall he or she use such information for his or her personal gain or benefit.

(c) No state officer or state employee shall:

(1) receive or solicit any compensation that would *impair his or her independence of judgment* for his or her services as an officer or employee of any state agency, from any source other than the state, unless otherwise provided by law; or

(2) accept or solicit other employment which would *impair his or her independence of judgment* in the performance of his or her public duties.

257:20-1-4

Whether the Rules preclude secondary employment hinges on four criteria:

- Are the hours of the secondary job contemporaneous with the primary state employment?
- Is there a possibility for the employee to disclose, in connection with the secondary position, confidential information gained in the primary employment?
- Will the secondary job impair independence of judgment in the performance of duties for the state agency?
- Has the primary employer been informed of the secondary position and the proposed working hours?

You have advised that your duties for the municipality would be in the evenings, outside your state agency's work hours. You do not envision any opportunity for revealing confidential agency information in connection with your secondary position. The two jobs have no connection of significance; thus, you cannot foresee that your judgment with respect to your agency employment would be impaired. Finally, your state agency superior has been informed of the secondary employment and the hours you will be working.

Since you have met all four criteria, staff believes that nothing in the Rules precludes your acceptance of the secondary employment.

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that the Rules do not preclude a Director Designee, who is a full-time employee of a state governmental entity, from being retained as a part-time City Attorney when the two positions do not have contemporaneous hours, have no obvious connection which would either encourage the disclosure of confidential information gained in the primary employment or impair independence of judgment with respect to performing state duties and the primary employer has been informed both of the secondary employment and the proposed hours of employment.

Like ethics interpretations, informal staff opinions are fact specific. They answer only the question or questions put forth in the request according to information described in the "Facts" section [supra]. While they may shed light on other situations, this opinion does not necessarily control them.

The Rules permit the Commission staff to issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these

informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements.

This opinion letter has been approved by the Commission Chairman. According to policy, this opinion will be submitted to the members, any of whom can request that the matter be converted to an ethics interpretation and considered by the full Commission.

Informal opinions are published with sufficient deletions to prevent identification of the persons or entities involved. The name of the requestor is considered confidential. This letter has been labeled accordingly.