

**INFORMAL OPINION IO-2002-001  
ISSUED MAY 20, 2002**

You have requested an informal staff opinion on the following:

*Is there a conflict of interest if the general counsel, school coordinator, manager or supervisor of a private security division of a state agency, which licenses and regulates Oklahoma's private security industry, is a paid instructor with an agency approved private security training school?*

**FACTS**

You have advised the following:

- the state agency licenses and regulates Oklahoma's private security industry.
- the state agency's responsibilities include establishing and enforcing standards governing the training of persons required to be licensed.
- the agency is authorized to issue, deny or revoke certificates of approval to security training schools, and programs administered by the state, a county, a municipality, a private corporation or an individual.
- the agency is authorized to establish minimum requirements for security training schools and to periodically review these standards and provide for periodic inspection of all security training schools or programs.

**ANALYSIS**

Simply stated, your question is whether a conflict of interest exists if the general counsel, school coordinator, manager or supervisor of a private security division of a state agency, which licenses and regulates Oklahoma's private security industry, is a paid instructor with an agency approved private security training school.

Section 257:20-1-4 controls. This provision prohibits solicitation or acceptance of compensation or employment which would impair a state officer's or employee's independence of judgment in carrying out services/public duties.

**Misuse of office**

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(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 performance of his or her public duties.

Section 257:20-1-4

Whether the Director's, Manager's or Supervisor's independence of judgment is impaired in a given case is a fact question. It is not presumed because duties are not given.

The Commission found the Attorney General's view on the issue persuasive in EI-1999-001. In interpreting a statute similar to the rule, the Commission found that dual employment with two state entities is not, per se, prohibited.

...It has long been the opinion of the Attorney General that it is not a per se violation of state law for a state employee to accept employment with more than one state agency... Because dual employment is not per se prohibited, the determination of an ethics violation is a factual question which must be made on a case by case basis.

A.G. Opin. No. 88-23, at p. 60

The Commission further held:

The Attorney General has said that state employees may maintain dual employment so long as no conflict arises between the duties imposed, the hours of the two jobs are not contemporaneous, and the primary employer is notified and provided a schedule of the secondary employment.

The determination of whether or not the secondary employment would impair the independent judgment of an employee is also a fact question which must be considered on a case by case basis. In A.G. Opin. No. 74-149, the Attorney General noted that dual employment was permissible as long as a conflict of interest did not arise between the duties imposed by each job and the hours were not contemporaneous. In order to avoid possible conflict, the primary employer should be notified of the secondary employment and the part-time work schedule...

A full time employee of a state agency may accept compensated part-time employment with another state agency if such secondary employment does not impair the employees's independence of judgment and performance of public duties...

Id.

If the director's, manager's or supervisor's duties over licensing or regulating the state's private security industry, a conflict of interest exists. If such duties can be assumed by another qualified agency employee, there would be no conflict between the public duties of the primary agency employment and the secondary [private security training school] employment. Further under EI-1999-001, the Commission held:

Under this condition, Section 257:20-1-4(c) would be satisfied, so long as no conflict arises between duties imposed by the two [employers], the hours of the two jobs are not contemporaneous and the primary employer is notified and provided a schedule of the secondary employment.

Provided these criteria are met, the Commission finds that the Director, Manager or Supervisor could accept the proposed employment.

Therefore, if other qualified agency employees can take over the supervisory duties with respect to licensing and regulating private security training schools, the director, manager or supervisor may take approved leave for the hours he or she teaches at the private security training school outside his or her regular agency work hours – so that the hours of the two jobs are not contemporaneous – no other conflict arises between the duties imposed by the two jobs, and agency is notified of his or her teaching contract and provided a schedule, Section 257:20-1-4(c) does not prohibit the proposed employment.

## CONCLUSION

**It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held June 18, 1999, that Rules Section 257:20-1-4(c) does not prohibit the director, manager or supervisor from taking approved leave for the hours he or she teaches at the private security training school outside his or her regular state agency work hours – so that the hours of the two jobs are not contemporaneous – no other conflict arises between the duties imposed by the two jobs, and agency is notified of his or her teaching contract and provided a schedule, Section 257:20-1-4(c) does not prohibit the proposed employment if neither has supervisory duties with respect to licensing and regulating private security training schools or if other qualified agency employees can assume such duties.**

Like ethics interpretations, informal staff opinions are fact specific. They answer only the question or questions put forth in the underlying 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 person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.