

no license shall be required for Indians to hunt and fish, provided such hunting or fishing is for the sole purpose of obtaining food for the Indians themselves.

Your third question is answered in the negative, since both statutes require that hunting or fishing be for the sole purpose of obtaining food.

Section 285.10, F. S., goes on to require that Indians using this privilege have upon their person an identification card issued by the Florida Game and Fresh Water Fish Commission. It is clear from the language of this statute, therefore, that a Seminole Indian can hunt and fish on lands of the state, including wildlife management areas, without any permit whatsoever, although an identification card must be on his person. This law, effective June 15, 1955, is in effect until June 15, 1980.

It should be noted, however, that nothing in Ch. 285, F. S., exempts the Seminole Indians from the regulatory control of the game commission on lands other than the reservation. Therefore, although an Indian can hunt and fish without a permit on lands other than the reservation, he can do so only during the seasons and under the restrictions for bag limits and sizes prescribed by the Game and Fresh Water Fish Commission.

073-435—November 27, 1973

STANDARDS OF CONDUCT LAW

UNIVERSITY PROFESSOR SERVING AS CONSULTANT TO STATE REGULATORY BOARD

To: Louis H. Ritter, Secretary, Department of Professional and Occupational Regulation, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a state regulatory body employ a state university professor as an "educational consultant" in the following circumstances?

SUMMARY:

Neither the Standards of Conduct Law, §§112.311-112.318, F. S., nor the common-law rule of incompatibility, prohibits a regulatory state agency from employing as an educational consultant a university professor to supervise and administer its program for educating applicants for certificates of registration, as required by law, when such consultant has nothing whatsoever to do with the final examination given by the commission to an applicant for the purpose of determining whether he is qualified to receive a certificate of registration.

It appears that the commission in question is a regulatory body which examines and issues certificates of registration to persons to engage in the business which it regulates. It is required by law to provide for educational courses which must be taken by an applicant as a condition precedent to registration. The commission's "Educational Consultant" is employed for the purpose of updating the material for the educational courses offered by the commission to reflect changes in the applicable laws, revising and updating the instructor's manual used in connection with the courses, visiting the instructors to provide personal assistance, arranging for instructors' seminars as necessary, approving the educational courses offered in accredited colleges and universities as the equivalent of the commission's courses, reviewing examinations in which a student failed to pass by a narrow margin, planning and preparing new courses, writing

articles, reviewing new texts for consideration, and performing such other functions as may be requested or directed by the commission. In an effort to achieve uniformity and standardization in the educational courses so that all applicants will receive equal treatment, all instructors use standard manuals prepared by the commission's consultant, and all students use a text selected by the commission. The examinations to determine whether they passed the courses are administered centrally for the commission by the Division of Continuing Education of the university by which the proposed educational consultant is employed. However, the commission's *licensing* examination is prepared, administered, and graded by the commission through its education coordinator and his staff.

In these circumstances, I find no conflict of interest. Certainly, in the carrying out of its statutory responsibility to provide educational courses for applicants for registration in the field regulated by the commission, the commission may obtain the services of persons knowledgeable and expert in this field; and I can find no impropriety in the utilization of a university professor and the staff of the university's department of continuing education in administering its statutory duties in this respect.

The Standards of Conduct Law, §§112.311-112.318, F. S., was adopted by the legislature of this state to carry out its policy that no public officer or employee should have any "interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest." Section 112.311. At the same time, it is declared that the law shall not be construed to prevent a public officer or employee "from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge" of his public duties. Section 112.316. The grading of the educational-course examination papers by the university's department of continuing education and the review by the educational consultant of the examination paper of a student who fails to pass by a narrow margin are in accordance with routine examining procedures; and, as the university department and the educational consultant have nothing whatsoever to do with the final licensing examination upon the basis of which the applicant's certificate of registration is issued—which, as noted above, is prepared, administered, and graded by the commission itself through its education coordinator and his staff—no conflict between the educational consultant's duties as a member of the university's staff and as a consultant to the commission is apparent. Nor would there appear to be any violation of the common-law rule of incompatibility—which, as noted in AGO 070-46, is still in force in this state—prohibiting an individual from holding two positions in the public service whose duties are incompatible, as where the duties clash or one is subordinate to the other. In this respect, it may appropriately be mentioned that the head of the department of the university in which the proposed educational consultant is presently serving has stated (apparently in response to the requirement of §216.262, F. S.) that "such employment will be in the interest of . . . education, of the industry, and of the people of the State of Florida."

073-436—November 27, 1973

SHERIFFS

APPOINTMENT OF SPECIAL DEPUTIES TO SERVE PROCESS

To: *E. Wilson Purdy, Director, Dade County Public Safety Department, Miami*

Prepared by: *Richard W. Prospect, Assistant Attorney General*