

42 IAC 1-5-6 Conflict of interests; decisions and voting (IC 4-2-6-9)

42 IAC 1-5-1 Gifts; travel expenses; waivers

42 IAC 1-5-10 Benefiting from confidential information

42 IAC 1-5-11 Divulging confidential information

An Ethics Officer sought advice to determine whether an employee could serve on the advisory board of a company that has state contracts. SEC found that the employee would have a potential conflict of interests under IC 4-2-6-9 if he were to participate in decisions or votes, or matters related to such decisions and votes in matters in which the company would have a direct financial interest in the outcome of the matter. The Commission further finds that ISP will implement a screening mechanism to ensure the employee does not participate in any decisions or votes, or matters relating to such decisions and votes, in which the company has a financial interest.

December 13, 2018

2018-FAO-018

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

The Ethics Officer for the Indiana State Police (ISP) is requesting an advisory opinion on behalf of an employee, who serves in ISP's Logistics Section.

In his position with ISP, the employee administers the day-to-day management of ISP's vehicle fleet. He gathers information and makes recommendations to his commanding officer and primary staff on new vehicle needs. He also makes recommendations on the number of vehicles ISP should purchase based on their current and anticipated needs.

The Ethics Officer provides that ISP does business with and makes purchases from Fiat Chrysler Automobiles (FCA) relating to ISP commission vehicles. The Indiana Department of Administration (IDOA) also purchases vehicles from FCA for ISP's vehicle fleet. ISP is currently using Dodge Chargers as their primary patrol vehicle. The employee has had three meetings in three years with FCA representatives regarding engine and power steering problems with ISP vehicles.

The Ethics Officer provides that FCA has invited the employee to serve as a member on their Police Advisory Board (the Board). It is the employee's understanding that he would serve as a representative for ISP on the Board. The Ethics Officer provides that the driving force behind the Board is a desire to continue to make improvements in safety and technology to law enforcement products. The goal of the Board is to facilitate discussions between police fleet professionals and FCA fleet representatives regarding sales, engineering, support and service.

The Board is a board of advisors only, and the employee's position on the Board would be only advisory in nature. Board members provide open and honest input and feedback regarding matters before the Board. They also bring forth issues and concerns that they or their agency may be experiencing and discuss future products. The employee would not have the ability to cast a vote on any matters before the Board.

The Ethics Officer explains that the employee's membership on the Board would be considered part of his official state duties. He would not receive any additional compensation from FCA for serving on the Board. The Ethics Officer provides that the Board meets once per year, and FCA offers to cover travel expenses to the meeting for Board members; however, the Ethics Officer states that should the employee's membership on the Board be approved, ISP will pay for his travel expenses to the yearly Board meeting.

The Ethics Officer is seeking a formal advisory opinion from the Commission to determine whether, under the Code of Ethics (Code), it would be acceptable for the employee to serve on the Board.

ISSUE

What ethics issues, if any, arise for the state employee, if he were to serve as a member of the Board?

RELEVANT LAW

IC 4-2-6-9 (42 IAC 1-5-6)

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

- (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
 - (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

42 IAC 1-5-10

Benefiting from confidential information

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11

Divulging confidential information

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

ANALYSIS

The Ethics Officer's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to conflicts of interests, gifts, and confidential information. The application of each provision to the employee is analyzed below.

A. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits the employee from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits the employee from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization in which he serves as a member has a financial interest in the outcome. In

addition, the rule requires a state employee who recognizes a potential conflict of interests to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure form with the Office of Inspector General.

The Ethics Officer provides that ISP does business with and makes purchases from FCA relating to ISP commission vehicles. IDOA also purchases vehicles from FCA for ISP's vehicle fleet. In the employee's position with ISP, he administers the day-to-day management of ISP's vehicle fleet and makes recommendations regarding the number of vehicles ISP should purchase. As such, it appears that the employee is in a position to participate in decisions or votes, or matters related to those decisions or votes, in which FCA would have a financial interest in the outcome. As a member of the Police Advisory Board of FCA, the employee is a "member" of FCA.

The Commission finds that the employee has identified potential conflict of interests under IC 4-2-6-9(a)(3) as he would be in a position at ISP to participate in decisions or votes, or matters related to those decisions or votes, in which FCA would have a financial interest in the outcome. Accordingly, the employee must notify ISP's appointing authority of the potential conflict of interests, and ISP will need to screen him from participating in all decisions or votes in which FCA would have a financial interest. The Commission confirmed with the Ethics Officer that ISP is prepared to implement such a screen. ISP shall provide the proposed screen to the State Ethics Director for approval via filing the Conflict of Interests-Decisions and Voting disclosure form with the Office of Inspector General.

B. Gifts

The employee also will want to be aware of 42 IAC 1-5-1, which is the gift rule. The gift rule states, in part, that a state employee shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, drink, travel expenses, or registration fees from: (1) a person who has a business relationship with the employee's agency; or (2) a person who is seeking to influence an action by the employee in his official capacity.

"Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing (i) a pecuniary interest in a contract or purchase with an agency; (ii) a license or permit requiring the exercise of an agency's judgment or discretion; or (iii) a lobbyist.

The general prohibition on gifts is subject to the eight exceptions outlined in subsection (b) of 42 IAC 1-5-1, or its application in certain circumstances may be waived by the agency's appointing authority as provided for in subsections (c) and (d).

The Ethics Officer provided that ISP does business with and makes purchases from FCA relating to ISP commission vehicles. IDOA also purchases vehicles from FCA for ISP's vehicle fleet. As such, FCA has a business relationship with ISP and the employee is

prohibited from accepting any gifts from FCA unless an exception applies or he obtains a gift waiver. The Ethics Officer indicated that ISP is aware of the implications of the employee accepting any gift, including travel expenses from FCA; therefore, ISP will pay the employee's travel expenses to the yearly Board meeting he is expected to attend as a member of the Board.

C. Confidential information

The employee is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. To the extent that the employee will possess information of a confidential nature by virtue of his position with ISP that could be used to benefit the Board or FCA, or any other person, he must ensure that he complies with these rules.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the employee would have a potential conflict of interests under IC 4-2-6-9 if he were to participate in decisions or votes, or matters related to such decisions and votes in matters in which FCA would have a direct financial interest in the outcome of the matter. The Commission further finds that ISP will implement a screening mechanism to ensure the employee does not participate in any decisions or votes, or matters relating to such decisions and votes, in which FCA has a financial interest.

Respectfully Submitted,

Jennifer Cooper
Ethics Director