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The Chief Equity and ADA Officer for the Indiana Family Social Services Administration sought advice regarding her multiple outside employment/professional activities while employed by FSSA. The Commission finds that the employment/professional activities would not be contrary to the Code of Ethics.

February 11, 2021
2021-FAO-004

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 Family and Social Services Administration (FSSA) is requesting an advisory opinion on behalf of the new Chief Equity and ADA Officer (Chief Equity Officer) for FSSA. Specifically, the Ethics Officer is requesting an opinion from the Commission addressing whether it would be a conflict of interests for the Chief Equity Officer to continue her outside academic, community service and consulting activities while employed as the Chief Equity and ADA Officer for FSSA.

The Chief Equity Officer joined FSSA in January 2021 as the first Chief Health Equity and ADA Officer, a recently created position that reports directly to FSSA's Secretary. The Chief Equity Officer's responsibilities include leading the FSSA Office of Healthy Opportunities, providing leadership in the evaluation of policy decisions that affect race equity, building metrics for agency accountability, ensuring agency adherence to the Americans with Disabilities Act (ADA) and serving at the executive level, working to build a culture of equality across the agency. Her role also may include activities such as assisting with identifying contractors or developing language for requests for proposals during the procurement process; however, other staff in the FSSA executive office who do not report to the Chief Equity Officer would oversee procurements. The Chief Equity Officer's role in this situation would be to serve as a subject matter expert.

Before joining FSSA, the Chief Equity Officer served as the founding director of the Center for Research on Inclusion and Social Policy at Indiana University Purdue University - Indianapolis (IUPUI). She was also a clinical assistant professor in IUPUI's O'Neill School of Public and Environmental Affairs and adjunct faculty for the Africana Studies program. She continues to have an affiliation with IUPUI, serve on external boards and serve as a paid

consultant. Except for one existing contract with the Urban League, the Chief Equity Officer's activities generally do not include any compensation.

The Chief Equity Officer is a frequently sought-after speaker because of her expertise in the areas of social policy, vulnerable populations and racial equity. While many of her speaking requests may be directly related to her FSSA work, she likely will receive requests unrelated to her work with FSSA. The Chief Equity Officer would like to accept future offers to speak. The Chief Equity Officer has advised the Ethics Officer that the speaking engagements seldom include an honorarium. She is aware of the need to be cognizant of potential conflicts of interests when accepting speaking engagements.

The Chief Equity Officer is also interested in continuing her involvement with the Indianapolis Public Schools (IPS) and Central Indiana Community Education Foundation. Her involvement includes participating in regular meetings to discuss equity and policy making among students and families with IPS and discussing the criminal justice system and equity with the Central Indiana Community Foundation. Although she committed to these obligations before joining FSSA in the context of her prior role, the responsibilities intersect with her current role as they relate to equity and public policy. The Chief Equity Officer is not compensated for her involvement with IPS or the Central Indiana Community Education Foundation.

FSSA has an agreement with IPS in which IPS provides educational services to school-age students who are residents at the Neuro Diagnostic Institute. The Chief Equity Officer was not involved in the negotiation of this agreement nor is she involved in the oversight of the agreement. FSSA entered into the agreement with IPS before the Chief Equity Officer joined FSSA. FSSA's Division of Mental Health and Addiction administers the agreement. FSSA does not have any business relationship with the Central Indiana Communication Education Foundation.

The Chief Equity Officer's other obligations include serving on the board of the following organizations: Fair Housing Center of Central Indiana, Hawthorne Community Center (Hawthorne), Blueprint Council Continuum of Care Indianapolis and the Thomas Gregg Neighborhood School. Except for the Blueprint Council Continuum of Care for Indianapolis and Thomas Gregg Neighborhood School, the board meetings for these organizations occur outside of her regular work hours. For meetings that occur during her regular work hours, the Chief Equity Officer will either join the meeting later or make up the time by working later those days. The Chief Equity Officer does not receive any compensation for serving on any of these boards.

Of the organizations where the Chief Equity Officer serves on the board, only Hawthorne has a business relationship with FSSA. In July 2019, Hawthorne received a grant from FSSA to be used for its School Age Care Project. The grant award is administered by the FSSA Office of Early Childhood and Out of School Learning. FSSA made the award to Hawthorne before the Chief Equity Officer joined FSSA. Furthermore, the Chief Equity Officer is not involved with the administration of this grant.

The Chief Equity Officer also would like to continue in her role as an associate member of the faculty in the IUPUI School of Liberal Arts Africana Studies Program and Community Scholar for the Africana Studies Program and to serve on the advisory board of their new Center for Africana Studies and Culture.

The Chief Equity Officer's appointment as a Community Scholar is a renewable three-year honorary appointment that commenced on January 1, 2021. Community Scholars are expected to make contributions to meeting educational objectives for IUPUI students through community-based learning activities, research or professional service, such as being a guest speaker. It is an unpaid appointment where she will be entitled to participate in research and to access other university facilities. The appointment does not involve any instructional or financial commitments. It is not tenured, and it does not confer any voting rights or other benefits accruing to other faculty. Although the Community Scholar appointment does not require teaching, the Chief Equity Officer is interested in teaching. Any potential teaching obligations would require 1.5 hours a week during the work week for 13 weeks. She would ensure future courses were scheduled outside work hours.

The Chief Equity Officer also has a few manuscripts under review by peer-review journals and under her affiliation with IUPUI. Any minor work the Chief Equity Officer completes on those projects after submission will be completed after hours and on weekends. She also has a team of students and staff leading work on a project that she passed on to them before joining FSSA. She likely will need to meet with them monthly until August 2021. She will limit her interactions with this team to after hours.

Lastly, the Chief Equity Officer is a contracted consultant with the Urban League Indianapolis African American Quality of Life Initiative team. As with her other outside activities, she plans to complete the work required under this one-year agreement outside of her regular work hours. Her compensation for this work does not come from any state contract or grant.

The Chief Equity Officer understands that she is not to use her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. She also understands and agrees to abide by the Code governing conflicts of interests, ghost employment, use of state property and confidential information.

Based on the information presented, the Ethics Officer has determined that the Chief Equity Officer's outside activities do not appear to be incompatible with her duties. Rather, the Chief Equity Officer's outside activities will help maintain and build upon her professional skills such that she may better be able to meet the essential functions of her position such as developing and expanding community collaborations related to racial equity; learning about equity-related innovations relevant to FSSA; and developing increased knowledge about trends across the State of Indiana.

ISSUE

What ethics issues, if any, arise for the Chief Equity Officer given her position as Chief Equity and ADA Officer for FSSA and her simultaneous outside activities/positions?

RELEVANT LAW

IC 4-2-6-5.5 (42 IAC 1-5-5)

Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

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.

IC 4-2-6-10.5 (42 IAC 1-5-7)

Prohibition against financial interest in contract; exceptions; disclosure statement; penalty for failure to file statement

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency; and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

- (2) An affirmation that the contract: (A) was made after public notice and, if applicable, through competitive bidding; or (B) was not subject to notice and bidding requirements and the basis for that conclusion.
 - (3) A statement making full disclosure of all related financial interests in the contract.
 - (4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.
 - (5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee. A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.
- (d) A state officer, employee, or special state appointee who:
- (1) fails to file a statement required by rule or this section; or
 - (2) files a deficient statement; before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

42 IAC 1-3-12

"Honorarium" defined

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 12. "Honorarium" means a payment of money for:

- (1) an appearance;
- (2) a speech; or
- (3) an article;

but does not include payment or reimbursement of travel expenses for a state employee.

42 IAC 1-5-3

Honoraria

Sec. 3. An employee shall not personally accept an honorarium for any activity that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium on behalf of the state. The employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. An employee may personally accept an honorarium for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case may an employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

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.

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

IC 4-2-6-17

Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-13

Ghost employment

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

ANALYSIS

The Ethics Officer's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment, Honoraria and Benefitting from and Divulging Confidential Information. The application of each provision to the Chief Equity Officer is analyzed below.

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities because these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity. Based on the information and opinion provided by the Ethics Officer, the Chief Equity Officer's employment as a consultant with the Urban League of Indianapolis, African American Quality of Life Initiative team would not create a conflict under this provision. According to the Ethics Officer, the Chief Equity Officer's responsibilities under this contract would not conflict with her responsibilities in her position at FSSA and would not require her to recuse herself from matters that are critical to the performance of her FSSA duties.

Her other outside employment/professional activities would not provide the Chief Equity Officer with compensation of substantial value. There is the possibility that the Chief Equity Officer could receive an honorarium for a speaking engagement on occasion. If that is the case, she will need to be mindful of the honoraria rule (42 IAC 1-5-) discussed later in this opinion.

The Commission confirmed that the Chief Equity Officer would not be required to disclose confidential information that she may have access to by virtue of her state employment in any of her outside positions.

Further, the Ethics Officer provides that the Chief Equity Officer is aware that she must not use or attempt to use her state position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

The Commission finds that the Chief Equity Officer's outside employment/professional activities in serving as a consultant, as a board member for the various organizations for which she volunteers, in her academic position and affiliation with IUPUI, and in working on her manuscripts would not create a conflict of interests for her under IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits the Chief Equity Officer from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the

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

IC 4-2-6-9(b) requires that a state employee who identifies a potential conflict of interests notify her 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 OIG.

The Chief Equity Officer serves as the Chief Equity and ADA Officer for FSSA and wishes to continue her outside employment/professional activities with various organizations, including IPS and Hawthorne, both of which have a business relationship with FSSA through a contract and grant, respectively. The Chief Equity Officer had no involvement in the contract negotiations with IPS, and she will not be involved in the administration/oversight of this contract at FSSA. The contract is administered by FSSA's Division of Mental Health and Addiction. The Chief Equity Officer also was not involved in the FSSA grant award to Hawthorne, and she is not involved in its administration at FSSA.

Based on the Ethics Officer's description of the Chief Equity Officer's role as Chief Equity and ADA Officer for FSSA, it appears that the Chief Equity Officer's responsibilities will be focused on creating policy and a culture of equality at FSSA at the executive level and that she would not be involved in decisions/votes in which any of the organizations with which she has an outside employment/professional activity position would have a financial interest.

Accordingly, the Commission finds that the Chief Equity Officer does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, the Chief Equity Officer must meet the disclosure and notification requirements in IC 4-2-6-9(b).

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between the state and a third party.

This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Although the Chief Equity Officer would receive compensation for her outside consulting work with the Urban League of Indianapolis, the Ethics Officer provides that the Chief

Equity Officer would not be compensated from any funds derived from any state contract or grant.

Accordingly, the Commission finds that the Chief Equity Officer would not have a financial interest in a state contract.

D. Honoraria

The honoraria rule, 42 IAC 1-5-3, prohibits state employees from personally accepting an honorarium for any activity that may be considered part of the state employee's official duties. The definition of "honorarium" includes a payment of money for an appearance, a speech or an article but excludes payment or reimbursement for travel expenses.

The general prohibition on honoraria does not apply to employees for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources; however, regardless of whether the activity is done in connection with the state employee's official duties, the employee may not accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

To the extent that the Chief Equity Officer is ever offered an honorarium for any of her public speaking engagements or articles, she could not personally accept the honorarium if it was for an activity that is part of her official duties. She could, however, accept the honorarium on behalf of the State and remit the funds to the Treasurer of State.

If the honorarium was offered for an appearance, speech or article that falls outside of her official duties, the Chief Equity Officer could personally accept the honorarium so long as the person offering it does not have a business relationship with or is seeking to influence an official action from FSSA.

The Commission requested that the Chief Equity Officer and FSSA keep a written record of any honoraria received by the Chief Equity Officer that relate to any of her outside employment/professional activities for transparency purposes.

E. Confidential information

The Chief Equity Officer 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. Similarly, IC 4-2-6-6 prohibits the Chief Equity Officer from accepting any compensation from any employment, transaction or investment which is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and an organization. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent the Chief Equity Officer is exposed to or has access to such confidential information in her position as Chief Equity and ADA Officer for FSSA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including any of her outside employers, in any manner.

F. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits the Chief Equity Officer from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that the Commission has approved. Likewise, 42 IAC 1-5-13 prohibits the Chief Equity Officer from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

Due to the significant number of outside employment/professional activity positions that the Chief Equity Officer wishes to continue to hold, and the fact that the Ethics Officer provided that some of these positions will require her time/attention during her normal FSSA working hours, the Commission determined that the Chief Equity Officer should keep an accurate and detailed record (e.g. a log) of the time she spends volunteering or working in her outside positions to minimize any appearance that she may be completing this work on state time and to minimize or eliminate any confusion as to which role she is fulfilling at any given time.

To the extent that the Chief Equity Officer observes these provisions regarding her outside employment/professional activities, her outside positions would not violate these ethics laws.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the Chief Equity Officer's outside employment/professional activities would not be contrary to the Code of Ethics.

Respectfully Submitted,

Jennifer Cooper
Ethics Director