

**IC 4-2-6-17 Use of state property
42 IAC 1-5-13 Ghost employment**

The Department of Natural Resources, on behalf of the Indiana Natural Resources Foundation, requests a formal opinion on whether they can use state resources for an auction event to support its annual fund. The Commission finds that it is permissible for the Foundation to use state resources to provide experiences to donors as part of the Foundation's proposed auction event that is intended to raise funds to support DNR.

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2021-FAO-005

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 General Counsel and Ethics Officer (Ethics Officer) for the Indiana Department of Natural Resources (DNR) requested a formal advisory opinion on behalf of the Indiana Natural Resources Foundation (Foundation).

The Foundation is a quasi-governmental entity tasked with aiding and supporting DNR in its mission. The Foundation's mission is to celebrate and preserve Indiana's natural legacy by raising funds to support the DNR and its programs.

Under IC 14-12-1-4 the Indiana General Assembly created the Foundation as a public body corporate and politic (a not-for-profit section 115 corporation) to acquire real and personal property to be donated to DNR.

According to its [website](#), the Foundation "work[s] diligently with the [DNR] to identify the greatest conservation needs, adventurous outdoor education opportunities and new ways to introduce Hoosiers to nature by providing exciting outdoor recreation opportunities."

The Ethics Officer provides that the Foundation would like to conduct an auction to support its annual fund. The auction would be comprised of experiences on DNR properties and include DNR staff in functions they typically perform, as well as a few more unique experiences.

The Ethics Officer provides that, while the primary goal of this effort is to raise funds, it is also to promote DNR properties and activities throughout the State of Indiana. Ideally, the Foundation would like to hold the auction again in the future and look to change the experiences. The Foundation would like to encourage people to experience the DNR in ways that create memorable experiences that keep them coming back year after year.

The Ethics Officer provides the following examples of experiences that would be "routine":

1. Weekend for up to eight people at the Covered Bridge Retreat.

2. Weekend/Week in a State Park Inn or Cabin.
3. Two side-by-side campsites for the 2024 Eclipse when Indiana is in totality.
4. Private Party for twenty to thirty at Pokagon Toboggan (held on a day separate from regular hours of operation, likely on a Wednesday or Thursday).

The following are examples of experiences that are more “unique”:

1. Candlelight dinner for up to twelve people in the Mill at Spring Mill State Park.
2. Lake James wine cruise at Pokagon State Park.
3. Guided hikes at various locations for up to eight to ten people across different DNR properties.
4. Guided kayak trip for eight to ten people (Patoka Lake, Chain O’lakes, O’Bannon Woods).
5. Guided lake history tour for six to eight people at a reservoir property.

The Ethics Officer seeks a formal opinion as to whether staffing these activities would be an appropriate use of DNR staff and resources. The Ethics Officer feels this would be considered official state business because the Foundation is a quasi-governmental entity tasked with aiding and supporting DNR in its mission.

ISSUE

Is it permissible for the Foundation to use state resources, including DNR staff and property, to provide experiences to donors as part of the Foundation’s proposed auction event?

RELEVANT LAW

IC 4-2-6-17 (42 IAC 1-5-12)

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

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, employee or special state appointee may not use state materials, funds, property, personnel, facilities or equipment for purposes other than for 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 rule is subject to action under IC 4-2-6-12.

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 Use of State Property and Ghost Employment. The application of each provision to DNR employees is analyzed below.

IC 4-2-6-17 (42 IAC 1-5-12) prohibits a state officer, employee or special state appointee from using 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 the Commission has approved.

Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee 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.

Accordingly, if DNR is paying its employees to facilitate these activities, DNR would need to determine whether such work would be considered part of their official duties.

Based on the information provided, the Foundation was created to accept donations of personal and real property to DNR. The Foundation is attempting to solicit increased donations by hosting a proposed auction whereby donors would bid on various experiences that would occur in DNR-operated parks and recreational areas. In order to facilitate these activities, DNR employees would utilize state facilities/property to host these experiences.

The Commission finds that hosting these experiences for the Foundation would be official state business. The Foundation was expressly created by the General Assembly to support the DNR, and these experiences are being created to raise funds to support the DNR. Accordingly, the Commission finds it is permissible for the Foundation to use state resources including DNR staff, within the scope of their normal day-to-day activities, and DNR property to provide these experiences to donors.

CONCLUSION

The Commission finds that it is permissible under the Code for the Foundation to use state resources, including DNR staff and property, to provide experiences to donors as part of the Foundation's proposed auction event that is intended to raise funds to support DNR.