

42 IAC 1-5-1 Gifts
42 IAC 1-5-2 Donor restrictions
42 IAC 1-5-8 Additional Compensation

The Ethics Officer for the Indiana Department of Correction (IDOC) sought advice regarding an offer for staff to receive discounted post-secondary educational opportunities through a contractual agreement with an online educational provider. The Commission finds that the acceptance of the offer would not be contrary to the Code of Ethics.

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The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics 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 Department of Correction (IDOC) is requesting a formal advisory opinion regarding an opportunity that has been presented to IDOC to determine whether it is permissible under the ethics rules.

Specifically, IDOC has been presented with an offer for staff to receive discounted post-secondary educational opportunities through a contractual agreement with Purdue University Global (Purdue Global). Purdue Global serves as Purdue University's (Purdue) online educational provider.

Purdue Global provides educational opportunities to a large class of students, including niche programs for first responders and those in the military. Purdue Global approached IDOC to develop a specialized educational program for those in corrections that would work closely with IDOC's Staff Development & Training (SD&T) Division to offer specialized curricula towards degrees. The Ethics Officer included a PowerPoint presentation that Purdue provided that offers more information on this program. Through this program, IDOC employees would be able to leverage their IDOC training to earn college credits and financial savings towards degrees.

To date, IDOC has had no business relationship or contractual relationship with Purdue Global. IDOC wishes to enter into an agreement with Purdue Global so qualified IDOC staff can receive educational credits for specific training they earn through IDOC's SD&T Division and so staff can receive discounted credit, including a 20% discount on credits leading to an undergraduate degree and a 14% discount for credits leading toward a graduate degree (see page 9 of attached PowerPoint presentation). These discounts are also reflected in the exhibit included in the proposed agreement (copy attached).

The Ethics Officer provides that IDOC supports this agreement for several reasons. IDOC is currently experiencing unprecedented low staff retention and high staff turnover. Providing these benefits could encourage some staff to stay with the agency to pursue their education. A more

highly educated workforce would also benefit the agency generally and potentially prepare more staff for opportunities to promote to higher level positions within the agency.

This opportunity was generally discussed and cleared with the Indiana State Personnel Department (SPD) via IDOC's Human Resources Director. As IDOC proceeded through the formal state contracting process, the Indiana Department of Administration (IDOA) stopped the process and expressed concerns that the proposed agreement might, at least appear, to violate the Gift rule (42 IAC 1-5-1). IDOA also questioned whether Purdue Global would be recognized as a "public institution" for purposes of the exception under 42 IAC 1-5-1(b)(1) for gifts from a public institution.

IDOC sought an informal advisory opinion from the Office of Inspector General (OIG), which the OIG issued on September 20, 2021. IDOC included a copy of the informal advisory opinion in this formal advisory opinion request. The informal advisory opinion concluded that the Gift rule, 42 IAC 1-5-1, would not apply to the educational credits/discounts as these are part of the consideration of the proposed contract agreement between IDOC and Purdue Global and not free "gifts" to IDOC employees.

The informal advisory opinion also stated that the credits/discounts would likely not be considered additional compensation under the Additional compensation rule, 42 IAC 1-5-8; however, the OIG recommended IDOC request a formal determination from the Commission on this question.

IDOC is now seeking a formal advisory opinion from the Commission to determine whether the IDOC employees would be able to accept the education credits.

ISSUE

1. Does the Gift rule, 42 IAC 1-5-1, prohibit IDOC employees from accepting the education credits/discounts through the proposed contract agreement with Purdue Global?
2. Does the Additional compensation rule, 42 IAC 1-5-8, prohibit IDOC employees from accepting the education credits/discounts through the proposed contract agreement with Purdue Global?

RELEVANT LAW

42 IAC 1-5-1

Gifts; travel expenses; waivers

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;

- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's or special state appointee's agency.

(8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

(1) be in writing; and

(2) identify the following:

(A) The employee or special state appointee.

(B) The nature and value of the gift.

(C) The donor of the gift.

(D) Why acceptance of the gift is consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

42 IAC 1-5-2 Donor restrictions

Sec. 2. A person who has a business relationship with an employee's or a special state appointee's agency shall not provide any:

- (1) gifts;
- (2) favors;
- (3) services;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

to such employee or special state appointee if the employee or special state appointee would not be permitted to accept the gift, favor, service, entertainment, food, drink, travel expenses, or registration fees under this rule.

42 IAC 1-5-8 Additional Compensation

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

ANALYSIS

A. Gifts and Donor Restrictions

The Gift rule prohibits state employees from knowingly soliciting or accepting 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 her official capacity.

The donor restrictions rule mirrors the Gift rule and prohibits those with a business relationship with a state employee's agency from offering a gift in that same circumstance.

In order for the Gift rule to apply, the "person," defined in IC 4-2-6-1(a)(13), from whom the gift is being accepted or solicited must either have a "business relationship" with the employee's

agency or must be seeking to influence an action by the employee in her 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 the agency or (ii) a license or permit requiring the exercise of judgment or discretion by the agency.”

The contract that IDOC plans to enter into with Purdue Global to establish this educational partnership would create a business relationship between Purdue Global and IDOC. This relationship would ordinarily prohibit Purdue Global from providing the proposed educational credit and discounts to IDOC employees under the donor restrictions rule. Likewise, IDOC employees would be prohibited from accepting the credits/discounts provided by Purdue Global under the Gift rule; however, because the credits/discounts are part of the consideration of the contract between Purdue Global and IDOC, they would not be considered gifts to IDOC employees. In other words, Purdue Global is not offering anything additional (or free) to IDOC employees beyond what it is providing IDOC through the contract. Because the Commission finds that the credits/discounts are not gifts, the Commission did not consider whether any of the exceptions to the Gift rule, such as gifts from public agencies or institutions, would apply.

The Commission finds that the educational credits/discounts are part of the consideration of the prospective contract between IDOC and Purdue Global and would not be considered gifts. Accordingly, IDOC employees would be permitted to accept the educational credits/discounts from Purdue Global.

B. Additional compensation

The Additional compensation rule prohibits a state employee from soliciting or accepting compensation for the performance of official duties other than provided for by law.

The Ethics Officer provides that IDOC employees may be eligible to receive educational credits for certain trainings they complete through IDOC’s SD&T. If completion of these trainings is part of their official state duties, IDOC employees would be prohibited from accepting the educational credits, if they would be considered compensation for completion of these trainings.

"Compensation" is defined in IC 4-2-6-1(a)(7) as any money, thing of value or financial benefit conferred on or received by any person in return for services rendered or for services to be rendered whether by that person or another. The Commission has never interpreted “compensation” in the context of educational credits provided to an employee by their agency through a contract with an educational institution. The Commission has, however, interpreted the term “compensation” when analyzing the application of the Additional compensation rule to the payment of state agency attorneys’ professional licensing fees.

In [09-I-14](#), the Commission determined that the payment of state attorneys’ dues and continuing legal education fees were not considered “compensation;” thus, the Additional compensation rule did not prohibit state agencies from paying the annual attorney registration fees for attorneys practicing law within their agencies. The Commission rationalized that the payment of dues and fees, although a thing of value, would not necessarily be paid “in return for services rendered”.

The Commission opined that the term “in return for services” implies a specific quid pro quo, and the fees in these types of situations would be paid to maintain the professional standards of the attorneys involved and not necessarily specifically in return for services rendered by the attorneys.

Consistent with 09-I-14, the Commission finds that Purdue Global would not be providing the educational credits to IDOC employees in return for specific services rendered by IDOC employees. Rather, Purdue Global would provide the credits as part of the educational partnership that IDOC and Purdue Global are pursuing through their upcoming contract. Accordingly, this rule would not prohibit IDOC employees from accepting the educational credits/discounts from Purdue Global.

CONCLUSION

Pursuant to the foregoing analysis, the Commission finds that IDOC employees could accept the educational credits/discounts from Purdue Global under the Code of Ethics.

Respectfully Submitted,

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Ethics Director