

**42 IAC 1-5-1 Gifts**  
**42 IAC 1-5-2 Donor restrictions**  
**42 IAC 1-5-3 Honoraria**  
**42 IAC 1-5-8 Additional Compensation**  
**IC 4-2-6-17 Use of state property**  
**42 IAC 1-5-13 Ghost employment**

An employee for the Indiana Office of Administrative Law Proceedings (OALP) sought advice on the employee's attendance at a professional conference as a Board member of the conference organization on state time. The employee requests the Commission's opinion on whether the employee may accept a waiver of conference registration fees and reimbursement for travel expenses by the conference organization. The Commission finds that the employee's acceptance of the conference registration fee waiver and reimbursement for travel expenses are not permitted under the Gifts rule, but that the employee's activities in her role as a Board member would not violate the Ethics Code's provisions regarding the use of state property or ghost employment, so long as the employee does not use state time or state property for any work other than the employee's official state duties at OALP.

July 14, 2022  
2022-FAO-015

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

**BACKGROUND**

An employee (Employee) of the Indiana Office of Administrative Law Proceedings (OALP) currently serves as an Administrative Law Judge (ALJ) in the General Government Division of OALP, and on July 11, 2022, Employee will transition to a new position as a Chief Administrative Law Judge for the Social Services Division of the OALP.

Outside of work, the Employee serves as a board member of the National Association of Hearing Officials (NAHO) as the Central Representative. She began serving as the Central Representative in January of 2022, and her term will end in December of 2024. NAHO is a nonprofit organization committed to providing education on best practices for Administrative Law Judges. OALP currently purchases memberships from NAHO for select employees so that they can take advantage of NAHO's training opportunities.

Each year, NAHO holds a conference on best practices for ALJs. NAHO covers the cost of the conference for board members, along with some of the travel expenses incurred by board members, because the day before the conference, NAHO holds a day-long board meeting. NAHO also covers some travel costs and the cost of the conference for speakers who present at the conference. As a board member, the Employee is eligible to have her conference fee covered by NAHO, along with some of her travel expenses. Additionally, the Employee plans to speak at the conference, which would result in a similar coverage of her conference expenses by NAHO. This year, the conference will be held during the second week of August.

The Employee will not use state resources to complete her NAHO related responsibilities, including the preparation and presentation of her NAHO class. If she needs to attend to a NAHO issue during work hours, she will either make the time up or use leave time. Her participation in NAHO as a board member is not part of her state job, although she has agreed to maintain her NAHO certification status while an ALJ with OALP.

The August 2022 NAHO Conference will address topics that are relevant to the Employee's current and future job with OALP. Specifically, in both roles, she serves as an ALJ, and in her new role, she will be training and supervising ALJs. A conference on best practices for ALJs will allow her to stay current on issues in administrative law as well as in the practice of serving as an adjudicator. She will be able to use the skills that she learns for the adjudication of her own cases and will be able to pass the skills she learns on to other ALJs within OALP. Attending this kind of conference falls within the Employee's job duties. The Employee has conferred with the OALP Ethics Officer, who has represented to her that OALP will consider waiving the gift rule provided it addresses the relevant ethical issues.

### **ISSUE**

Is it permissible under the Code for the Employee to attend the NAHO conference on state time and to accept a waiver of conference registration fees and reimbursement for travel expenses from NAHO?

### **RELEVANT LAW**

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

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

Affected: IC 3-9-2; IC 4-2-6

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**

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

Affected: IC 4-2-7-3

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 1-5-3 Honoraria**

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

Affected: IC 4-2-7

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 1-5-8 Additional compensation**

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

Affected: IC 4-2-7

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.

#### **42 IAC 1-5-13 Ghost employment**

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

Affected: IC 4-2-7

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.

## **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.

### **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 his or 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.

"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 a pecuniary interest in a contract or purchase with the agency.

The Employee states that OALP purchases NAHO memberships for select OALP employees to take advantage of training opportunities. Accordingly, NAHO obtains a pecuniary interest in a purchase with OALP, and a business relationship exists between OALP and NAHO for the purposes of the Gift rule.

Further, the waiver of the conference registration fee and reimbursement of travel expenses constitute prohibited gifts under the Gift rule, unless an exception to the Gift rule applies. Based on the information provided, none of the exceptions to the Gift rule apply to the conference registration fee and reimbursement of travel expenses; therefore, the Employee's acceptance of these gifts is prohibited under the Gift rule unless OALP's appointing authority or the appointing authority's designee files with the Commission a waiver that meets the requirements outlined in 42 IAC 1-5-19(c).

#### *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. "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 Employee's activities as a NAHO board member and a conference speaker are not part of her state duties. Based on the information provided, NAHO offered to waive the Employee's conference registration fee and reimburse her travel expenses because she is a NAHO board member and because she is speaking at the conference, not in return for the Employee's attendance at the rest of the conference, which is part of her state duties.

Because NAHO is providing the waiver of the conference registration fee and travel reimbursement to the Employee for activities that the Employee engages in as part of her board duties outside of state employment, such items do not constitute prohibited additional compensation under this rule.

#### *C. Honorarium*

The honoraria rule 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.

NAHO is waiving the conference registration fee to the Employee because she is a NAHO board member and speaker at the conference, and not as payment for her attendance or participation in the conference as a state employee. To the extent that NAHO's fee waiver is an honorarium, it is not a prohibited honorarium because it is not for activity that is part of her official duties; therefore, the Employee's acceptance of the conference fee waiver from NAHO is not prohibited under this rule.

#### *D. Ghost employment and Use of state property for other than official business*

The ghost employment rule provides that a state employee shall not 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. The use of state property rule provides that an employee 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 State Ethics Commission.

The Employee is attending the NAHO conference both in her capacity as a NAHO board member and as part of her state duties at OALP. She states that she will not use state equipment or time in preparation for her NAHO board activities. She further provides that she will not use state time or equipment during the portion of her attendance at the NAHO conference when she is engaging in board related activities or for the session at which she is presenting.

The Employee states that her NAHO board activities will be conducted using non-state resources and on her own time, such as after regular working hours, on the weekends or during authorized leave. So long as the Employee does not use state time or state property for work other than her OALP duties, she will not be in violation of these rules.

### **CONCLUSION**

The Commission finds that NAHO maintains a business relationship with OALP for the purposes of the Code's applicability. The Commission finds that the Employee's acceptance of a conference registration fee waiver and reimbursement for travel expenses from NAHO is prohibited under the Gift rule unless OALP's appointing authority or the appointing authority's designee files with the Commission a waiver that meets the requirements outlined in 42 IAC 1-5-19(c). The Commission further finds that the Employee's acceptance of a conference registration fee waiver and reimbursement for travel expenses from NAHO do not constitute prohibited additional compensation or honoraria under the Code. Finally, the Commission finds that the Employee's activities on behalf of NAHO in her role as a NAHO Board member would not violate the Code's provisions regarding the use of state property or ghost employment, so long as the Employee does not use state time or state property for any work other than her official state duties at OALP.

Respectfully Submitted,

Sean Gorman  
Ethics Director