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The Ethics Officer for the Indiana Department of Revenue (DOR) sought advice on behalf of a DOR Business Systems Analyst regarding a proposed outside business venture while employed by DOR. The Commission finds that the state employee's proposed employment/professional activities would not be contrary to the Code of Ethics.

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2024-FAO-002

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, an agency Ethics Officer, and the state employee whose proposed outside professional activities serve as the basis for this request.

BACKGROUND

The Director/Special Counsel of Compliance and Ethics, and agency Ethics Officer (Ethics Officer), for the Indiana Department of Revenue (DOR) requested the Commission's advisory opinion on behalf of a Business Systems Analyst with DOR (Analyst). Specifically, the Ethics Officer's request seeks the Commission's determination as to whether the Code permits the Analyst's proposed outside business venture while he works at DOR.

The Analyst's job duties at DOR include providing assistance in the development of technical standards and policies, recommending and facilitating quality improvement efforts, training and advising lower-level DOR business analysts, working with assigned DOR customers, analyzing business and user needs, participating in the development of strategic planning and facilitating the delivery of technical business solutions and products. The Analyst does not make hiring decisions in his DOR role.

The Analyst's proposed business would provide training and job placement services to clients seeking careers in the private sector information technology industry. The Analyst does not intend to solicit funds or grants from State of Indiana agencies nor does he plan to enter into contractual agreements with any state agencies. The Analyst will not use his DOR credentials in the marketing of his business' services.

The Analyst's proposed business would contract with and receive compensation from his clients' job placements. The Analyst's business would then directly pay its clients as its own employees.

DOR utilizes Knowledge Services and Computer Aid Inc. for DOR's temporary employee needs. The Analyst would ensure that his business would avoid placing job seekers in any employment positions with Indiana state government agencies or with staffing agencies that would place his proposed business' employees in state agencies. Further, the Analyst will include language in the contracts that his proposed business will enter into with clients requiring clients to notify him should the client enter into a working relationship with a state agency.

The Analyst has confirmed that he will dedicate his full efforts to his state responsibilities during his scheduled DOR work hours and that his proposed business venture will not compromise the quality of his DOR work.

The Analyst understands that he may not engage in any outside business or professional activity that would require him to disclose confidential information he has gained through his DOR role. The Analyst provides that in his proposed business venture, he will not disclose or utilize any confidential information he may have gained from his role in state government.

ISSUE

What ethics issues, if any, arise for the Analyst given his role at DOR and his proposed outside business venture?

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 1-5-10

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 the Commission's consideration of the Code's provisions pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to the Analyst's proposed outside business venture is analyzed below.

A. Outside employment

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

The Ethics Officer has discussed internal DOR policies and relevant Code provisions with the Analyst regarding his proposed business venture.

As mentioned previously, the Analyst confirmed that he will dedicate his full efforts to his state responsibilities during his scheduled DOR work hours and that his proposed business venture will not compromise the quality of his DOR work.

The Analyst will not use his DOR position or credentials in marketing for his proposed business venture. Nothing in the information presented suggests that the Analyst would use or attempt to use his DOR position to secure any unwarranted privileges or exemptions for himself, his proposed business, its clients or others.

The Commission finds that based on the information before it, the Analyst's proposed business venture would not be inherently incompatible with his DOR duties and would not require his recusal from DOR work such that his ability to perform his DOR duties would be materially impaired.

The Commission further finds that based on the information before it, the Analyst understands that he may not engage in any outside business or professional activity that would require his disclosure of confidential information he gained from his state role.

Based on the information before it, the Commission finds that the Analyst's proposed outside business venture will not violate IC 4-2-6-5.5 (a)(1) or (a)(2).

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits the Analyst 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 Analyst from participating in any decision or vote, or

matter relating to that decision or vote, if a business organization, such as his proposed business, has a financial interest in the outcome of the matter.

Accordingly, the Analyst would have a potential conflict of interests if he were in a position to participate in decisions or votes, or matters related to such decisions or votes, in which he or his proposed business would have a financial interest in the outcome.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority and either seek an advisory opinion from the Commission or file a written disclosure statement.

The Ethics Officer has counseled the Analyst on the processes for both filing a conflict of interests disclosure and implementing a screen upon the identification of a potential conflict of interests.

The Commission finds that based on the information before it, the Analyst is not in a position at DOR to participate in matters in which he himself or his proposed outside business has a financial interest. Furthermore, the Commission finds that the Analyst's outside business would not require his recusal from his DOR duties or a disclosure of a potential conflict of interests. The Commission advises the Analyst to continuously evaluate for the potential conflict of interests when assigned new DOR matters and as his proposed business venture develops.

C. Conflict of interests - contracts

Pursuant to IC 4-2-6-10.5, the Analyst may not knowingly have a financial interest in a contract made by an agency. This prohibition does not apply so long as he does not participate in or have contracting responsibility for the contracting agency, and he files the prescribed written statement with the Inspector General prior to the execution of such a contract.

The Analyst does not have the authority to enter or participate in the negotiation of contracts in his role at DOR. In his proposed outside business venture, he will not seek to do business with the State of Indiana, and he does not intend to solicit funds or grants from State of Indiana agencies. The Analyst does not plan to enter into any contractual agreements with any state agency, and he will not place his clients with staffing agencies that may source his clients to a state agency.

So long as the Analyst does not receive any compensation derived from state contract or grant funds through his proposed business venture, the Commission finds that he would not have a financial interest in a state contract that would create a conflict of interests under the Code or Criminal Code.

D. Confidential information

The Analyst 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 Analyst from accepting any compensation from any employment, transaction or investment that 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 a corporation, such as the Analyst's

proposed business. 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 Analyst is exposed to or has access to such confidential information in his DOR role, the Commission reminds the Analyst that he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his proposed business or its clients, in any manner.

E. Use of state property and Ghost employment

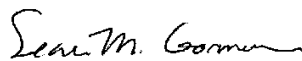
42 IAC 1-5-12 prohibits the Analyst from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits the Analyst 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.

To the extent that the Analyst observes these provisions regarding his outside business venture, the Commission finds that the operation of his proposed business while employed at DOR would not violate these ethics laws.

CONCLUSION

Based on the information presented to the Commission and subject to the foregoing analysis, the Commission finds that the Analyst’s engagement in his proposed outside business venture while he maintains his position at DOR will not violate the Code.

Respectfully Submitted,



Sean Gorman
State Ethics Director