

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

The Superintendent and Ethics Officer for the Indiana School for the Deaf (ISD) sought advice on behalf of the ISD regarding a proposal for ISD employees and resources to carry out functions of the Indiana Deaf Children Foundation. The Commission finds that the ISD employee activities performed on behalf of the Foundation would not be contrary to the Code of Ethics.

April 13, 2023  
2023-FAO-003

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**

The Superintendent and Chief Executive Officer (Superintendent) for the Indiana School for the Deaf (ISD) and Board Member for the Indiana Deaf Children Foundation (IDCF), a 501(c)(3) charitable organization, requested the Commission's Formal Advisory Opinion. Based on the information provided, ISD established IDCF exclusively for the benefit of ISD, as IDCF will provide funding to enhance academic, social and cultural opportunities for deaf children.

ISD instituted a new policy, effective March 30, 2023, titled "Standards for the Indiana School for the Deaf Employees Who Perform Work on Behalf of the Foundation" (ISD Policy). The ISD Policy allows for the use of ISD employees' time and state-owned resources to participate in fundraising efforts on behalf of IDCF. The ISD Policy permits certain ISD employees to serve on the IDCF Board of Directors, provide administrative support to IDCF and engage in fundraising activities on behalf of IDCF. The ISD Policy specifies that these activities are part of the authorized employees' official state duties.

The Superintendent explains that ISD's relationship with IDCF is similar to that of the Indiana Destination Development Corporation (IDDC) and the Indiana Destination Development Foundation (Foundation). The Commission issued [2022-FAO-010](#) related to the IDDC's relationship with the Foundation. In that opinion, the Commission noted that the legislators who sponsored the creation of the IDDC intended to introduce legislation to allow the IDDC to create the Foundation. The Commission noted that the General Assembly passed such legislation during the 2023 legislative session.

During the Superintendent's presentation to the Commission, he stated that public schools have foundations to help raise funds for the schools. He also stated that ISD would seek legislative approval for the creation of IDCF and the use of state resources and personnel for IDCF business.

On behalf of ISD, the Superintendent requested the Commission's formal advisory opinion on the applicability of the Code to ISD's use of state property and employees to carry out IDCF's fundraising and administrative activities.

## ISSUES

1. Is it permissible under the Code for ISD to use state resources, including ISD employees and equipment, to provide support in carrying out IDCF functions? Are there any limitations on such activities by ISD employees under the Code?
2. Does the ISD Policy adequately address ethical considerations for ISD employees performing work on behalf of IDCF?

## RELEVANT LAW

### **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, 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.

### **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.

### ANALYSIS

The Superintendent's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Use of State Property, Ghost Employment and Gifts. The application of each provision to ISD employees is analyzed below.

#### *A. Use of State Property and Ghost Employment*

IC 4-2-6-17, the use of state property rule, 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.

If performing certain work for IDCF is part of an ISD employee's official duties, then the work would not implicate either the use of state property or ghost employment rules. If performing certain work for IDCF is not part of an ISD employee's official duties, then it would implicate these rules.

Based on the information provided, IDCF was created exclusively for the benefit of ISD as it will provide funding to enhance academic, social and cultural opportunities for deaf children. The ISD Policy permits certain ISD employees to serve on the IDCF Board of Directors, provide administrative support to IDCF and engage in fundraising activities on behalf of IDCF. The ISD Policy specifies that these activities are part of the authorized employees' official state duties.

Based on the information provided in ISD's formal advisory opinion request and during testimony provided in the public meeting, the Commission determined that ISD currently does not have specific statutory authority for creation of IDCF. The Commission highly encourages ISD to seek legislative approval for creation of IDCF in the future.

The Commission finds that ISD may utilize ISD resources and personnel for the fundraising and administrative support activities supporting IDCF, as outlined in the ISD Policy, with the understanding that ISD would pursue and secure legislation to formally recognize ISD's creation and use of IDCF to support ISD functions.

So long as ISD employees who use state time and state property to perform work for IDCF do so in accordance with the ISD Policy, such activities would not violate the use of state property and ghost employment rules.

### *B. Gifts Rule*

The Gifts 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.

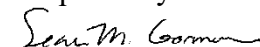
Based on the information provided, ISD created IDCF exclusively for the benefit of ISD to provide funding of enhanced academic, social and cultural opportunities for deaf children. Pursuant to prior formal advisory opinions issued by the Commission, the Gifts rule does not prohibit an agency from accepting gifts. As a result, so long as gifts are made for the benefit of IDCF or ISD as an agency and not for any individual employees or appointees, IDCF or ISD could accept donations without violating the Gifts rule. Also, ISD employees cannot solicit donations from persons with a business relationship with ISD or from any person seeking to influence an action by the ISD employee in his/her official capacity.

The ISD Policy identifies several positions as Authorized Employees who can engage in fundraising activities on behalf of IDCF. The ISD Policy specifically prohibits the solicitation of any person or entity that has a business relationship with ISD. The Commission finds that the ISD Policy is sufficient to protect employees from violating the Gifts rule.

### **CONCLUSION**

The Commission finds that ISD's purpose and needs are unique and serve critical functions and that generally, a state agency is in the best position to define what constitutes official state business in the assignment of state employees' job duties. The Commission understands that ISD will, at the earliest opportunity, pursue legislation codifying the creation of IDCF as an entity operating for the benefit of ISD. As such, the Commission finds that proposed ISD employee activities supporting ISDF, performed in accordance with the ISD Policy, do not violate the use of state property or ghost employment provisions in the Code. Finally, the Commission finds that the guidelines contained in the ISD Policy adequately address considerations under the Code and are sufficiently structured to prevent violations of the Code by ISD employees carrying out fundraising and administrative activities on behalf of IDCF as part of their official ISD duties.

Respectfully Submitted,

  
Sean Gorman  
Ethics Director