

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

42 IAC 1-5-7 Conflicts of interest; contracts (IC 4-2-6-10.5)

A state employee was offered contract employment with the OAG but his wife was also working out of the OAG as an INDOT employee. SEC found neither conflict of interest provision applied since neither spouse would supervise nor be involved in decisions related to the other spouse.

No. 06-I-1

State Ethics Commission
Official Advisory Opinion
January 19, 2006

Background

A state employee is an attorney licensed to practice in the State of Indiana and has been offered contract employment with the Office of the Indiana Attorney General (hereinafter "OAG"). He also has four other projects that he will handle for Jay County, Marion County, Southwest Sullivan School Corporation, and the Town of French Lick in addition to the contract for services with the OAG. The OAG contract position will allow him to serve as in-house counsel on all work that requires private sector knowledge and experience and to provide specialized services to client state agencies. These duties shall include, but not be limited to, (1) reviewing and advising the OAG on complex transactional work; (2) assisting with oversight of non-profits; (3) assisting with review of bond matters; and (4) other duties as assigned by the OAG.

The state employee's wife is an employee of the Indiana Department of Transportation (hereinafter "INDOT") that is housed in the Office of the Attorney General. Her salary, benefits, and time reports are overseen by INDOT. Her day-to-day work is overseen by to the head of the Indiana Transportation Practice Group. The state employee's wife will not be responsible for, supervise, or be directly involved in the matters he will be working on for the OAG. Likewise, he will not be responsible for, supervise, or be directly involved in the matters his wife is working on for INDOT. Furthermore, his wife is not involved whatsoever with the negotiation, drafting, or approval of OAG contracts for service.

One of the standard state boilerplate clauses in the state employee's contract with the OAG is the "conflict of interest" clause. This clause provides in pertinent part that "Contractor represents and warrants that he has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. Contractor certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an Interested Party), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Contractor shall provide the OAG with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees."

Issue

Does the state employee's contract to provide legal services for the OAG violate an ethics law or rule, given the fact that his wife is an employee of the State of Indiana?

Relevant law

Conflict of Interest: IC 4-2-6-9 (AMENDED, 2005)

(a) A state officer, an employee, or a special state appointee may not participate in any 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 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 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:

(1) 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

(2) 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.

(c) A written determination under subsection (b)(2) 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)(2) shall be filed with the appointing authority.

IC 4-2-6-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS(2005) :

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:

(1) a state officer, an employee, or a special state appointee who does not participate

in or have official responsibility for any of the activities of the contracting agency, if:

(A) the contract is made after public notice or, where applicable, through competitive bidding;

(B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission 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; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission; and

(B) terminates or disposes of the financial interest.

Conclusion

Even though the state employee's spouse is employed by the State of Indiana and is physically placed in the Office of the Attorney General, neither of the relevant statutes is violated by the arrangement. The state employee's wife actually works for the Department of Transportation. She is currently working in the OAG pursuant to a Memorandum of Understanding between INDOT and the AG. However, neither spouse will supervise or be involved in employment decisions regarding the other. The state employee's Employment Agreement with the OAG and the employment by the State of Indiana of the state employee's spouse do not violate any statute or regulation relating to the ethical conduct of state employees.