

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

SEC found that any conflict of interest in the Executive Director of a state agency serving as a member of a board to whom his state agency looked to supply a specific service was so insubstantial as to be unlikely to affect the integrity of services expected of him.

September 14, 2006  
No. 06-I-21

### **BACKGROUND**

On August 17, 2006, the Commission received a request for an advisory opinion from the Ethics Officer for a state commission. The request for an advisory opinion was submitted on behalf of a state commission's Executive Director. The Ethics Officer explains that the state commission has decided to require the implementation of a particular service and that there is only one entity currently offering such a service. The Executive Director serves on this particular entity's Board of Directors and is scheduled to become the entity's Chairman Elect in 2007. The Executive Director is reportedly not compensated for his service on the Board of Directors and is not scheduled to receive any compensation when he assumes the Chairmanship in 2008.

The primary issue submitted for the Commission's consideration is whether the Executive Director would have a conflict of interest pursuant to IC 4-2-6-9. In particular, the Ethics Officer seeks advice regarding how the state commission should deal with any conflict of interest that would be presented by any decision by the state commission to approve the implementation of the entity's service. While the state commission has not yet approved the entity's service, the Ethics Officer explains that this issue is likely to come before the state commission given its prior decision to support the requirement that such a service be implemented.

### **ISSUE**

Whether the Executive Director's professional affiliation with the entity in question poses a conflict of interest under IC 4-2-6-9 with regard to his duties as Executive Director of the state commission.

### **RELEVANT LAW**

IC 4-2-6-9  
Conflict of economic interests

### **ANALYSIS**

The Commission finds that it has jurisdiction over the Executive Director. The Commission renders this advisory opinion by virtue of its authority under IC 4-2-6-4(b)(1)(A). This opinion is limited to the facts and testimony that the Executive Director and Ethics Officer have presented.

The Commission finds that the Executive Director has complied with IC 4-2-6-9 to the extent he has identified a potential conflict of interest and sought an advisory opinion from the Commission. To ensure full compliance with IC 4-2-6-9(b), the Commission directs the Executive Director to notify his appointing authority, the state commission, of the facts he has submitted to the Commission for review, including complete disclosure of his involvement with the entity in question. The Commission notes that the Executive Director's service on the entity's Board of Directors and his upcoming service as the entity's Chairman implicates consideration of IC 4-2-6-9(a)(3), which generally provides that a state officer, an employee, or a special state appointee may not participate in any decision or vote if such person has knowledge that a business organization in which the state officer, employee or appointee is an officer, director, a trustee, a partner, or an employee has a financial interest in the outcome of the matter. Given that the entity

in question would appear to have a financial interest in any approval by the state commission to require the implementation of the service it offers, IC 4-2-6-9 could operate to prohibit the Executive Director from participating in any decision or vote on behalf of the state commission in which this particular entity would have a financial interest.

Upon disclosure of a potential conflict of interest, the Commission is authorized to take two courses of action under IC 4-2-6-9(b). First, with the approval of a person's appointing authority, the Commission may recommend assigning the matter giving rise to the conflict of interest to another person and further recommend the implementation of all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter. Second, the Commission may 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. In this case, the Commission finds 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 Executive Director.

### **CONCLUSION**

Subject to the foregoing analysis, the Executive Director must ensure compliance with this advisory opinion and all provisions of the state ethics code. The Commission further directs the Executive Director to disclose this advisory opinion and all related facts to his appointing authority.