

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

A member of the DFI board could not accept gifts from attorneys, accountants or other agents of financial institutions with which his agency had a business relationship.

#### **42 IAC 1-5-4 Political activity**

The policy reasons behind prohibiting a special state appointee from soliciting political contributions from his own financial institution were not applicable to DFI members. Members would only be found to violate sections (1) and (2) where they solicited political contributions from directors and officers of a competing financial institution. Members could participate as members of the Indiana Bankers Association BankPAC, so long as they would not engage in any activity prohibited by 42 IAC 1-5-4 which would include approving the use of their names on a political fundraising invitation.

#### **42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)**

There was no actionable conflict of interest where a member served on the DFI Board in compliance with the statutory requirements for board members.

#### **42 IAC 1-5-10, 42 IAC 1-5-11 Confidential information**

There was no actionable conflict of interest in a DFI member's receipt of confidential information merely because an inherent capacity for using and divulging confidential information about his competitor financial institution existed.

#### **42 IAC 1-5-14 Postemployment restrictions (IC 4-2-6-11)**

Because of their fact-sensitive nature, post-employment issues must be analyzed only on a case-by-case basis.

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### **BACKGROUND**

The Executive Director of the Department of Financial Institutions (DFI) requests an advisory opinion on behalf of the members of the Board of DFI. The members of the board are special state appointees, the majority of whom are CEOs of financial institutions (banks and credit unions) located within Indiana. The statutory composition of the board requires the majority of the members to come from within the executive management of state-chartered institutions. This statutory requirement inherently raises certain conflicts of interest. Further, as bankers and community leaders, the board members are often asked to participate in the political process.

DFI members do not have procurement authority; however, they are a policy-making board.

### **ISSUES**

1. Can a member of the DFI board solicit political contributions from the directors, officers and employees of their own financial institution?
2. Can a member of the DFI board solicit political contributions from the directors, officers, and employees of other financial institutions over which the DFI has jurisdiction?
3. Can a member of the DFI board serve as a member of the Indiana Bankers Association BankPAC?
4. Can a member of the DFI board accept gifts from attorneys, accountants, and other agents of financial institutions with which the DFI has a business relationship?
5. Under what circumstances is a member of the DFI board in violation of the outside employment statute if the member is appointed to the board pursuant to the statutory mandate of the composition of the board?

6. Under what circumstances is a member of the DFI board in violation of the post-employment statute when the term of service to DFI ends?

7. Under what circumstances is a member of the DFI board in violation of the confidential information requirements of the Code of Ethics, given the inherent conflict of interest created by the statutory structure of the board?

### **RELEVANT LAW**

42 IAC 1-5-1 Political activity

Authority: IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6-1

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

42 IAC 1-5-2 Donor Restrictions

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

Affected: IC 4-2-7-3

42 IAC 1-5-10 Benefiting from confidential information

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

Affected: IC 4-2-7

42 IAC 1-5-11 Divulging confidential information

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

Affected: IC 4-2-7

Outside Employment:

IC 4-2-6-5.5. (Amended, 2005)

IC 4-2-6-11 Post Employment

### **CONCLUSIONS**

A member of the DFI Board is special state appointee. As such, a board member is subject to the jurisdiction of the State Ethics Commission and the statutes and rules contained in the Code of Ethics. By virtue of being a special state appointee, the member has a business relationship with every financial institution over which the agency has jurisdiction. This business relationship extends to individuals who represent the interests of the subject financial institutions before the agency.

Issue # 1: The policy reason for prohibiting a member of the board from soliciting political contributions from that member's own financial institution is not applicable. The compulsion to acquiesce to the solicitation is minimal. In addition, the member's interests in obtaining favorable results for the financial institution are consistent with the interests of his colleagues.

Issue # 2: 42 IAC 1-5-4(c) prohibits a member of the DFI board from soliciting political contributions from:

(1) persons whom the member knows to have a business relationship with the DFI; or  
(2) state employees or special state appointees directly supervised by the member of the board. In recognition of the fact that a member may not know all the employees of a competing financial institution, the Ethics Commission will only consider an actionable violation of this restriction if the

member solicits political contributions from directors and officers of a competing financial institution.

Issue #3: A member of the DFI board can participate as a member of the Indiana Bankers Association BankPAC, so long as the member does not engage in any activity prohibited by 42 IAC 1-5-4. Approval of one's name on a political fundraising invitation is considered to be a solicitation for purposes of the application of 42 IAC 1-5-4.

Issue #4: Pursuant to 42 IAC 1-5-1, a member of the DFI board cannot accept gifts from attorneys, accountants, or other agents of financial institutions with which the DFI has a business relationship.

Issue #5: By virtue of statutory requirements, some members of the DFI board have inherent conflicts of interest which are prohibited by the outside employment statute. There is no actionable conflict of interest if a member serves on the DFI Board in compliance with the statutory requirements for board members.

Issue #6: Post employment issues are particularly fact sensitive. The Ethics Commission must analyze the role of the employee while at the state agency in relation to a specific post-employment position. As a result, the Ethics Commission only renders post employment opinions on a case-by-case basis.

Issue #7: By virtue of statutory requirements for board membership, an inherent capacity for using and divulging confidential information about a member's competitor financial institution exists. There is no actionable conflict of interest in a member's receipt of such confidential information. However, a DFI board member must not abuse the receipt of confidential information by:

- (1) personally benefiting from such confidential information; or
- (2) allowing the member's financial institution to benefit from confidential information; or
- (3) divulging confidential information to any person.