

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

The MWBE Division of IDOA only certified potential contractors and did not actually approve the expenditure of the related public funds. Consequently it was not considered to exercise purchasing or procurement authority on behalf of the state under the Political activity rule.

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#### **BACKGROUND:**

The Indiana Department of Administration has a Minority and Women's Business Enterprises Division. This IDOA division certifies businesses that qualify for the Minority Business Enterprise and Women's Business Enterprise Program. They certify that certain firms qualify for a program that offers advantages in the state procurement process and assist those firms in obtaining state contracts.

Tasks completed by the staff of the Minority and Women's Business Enterprises Division include:

- process, review, and determine the eligibility of applications for certification as a Minority and/or Woman owned business
- assist client firms with the navigation of the State procurement process (inform firms of opportunities, facilitate networking events with agency representatives, provide educational information, etc.)
- serve on the division's Certification Committee which evaluates the recommendation of the individual reviewer and determines whether the applicant firm should receive State certification - the outcome of which is not directly related to State purchasing, but can affect a firm's ability to do business with the State.
- monitor contracts with sub-contracting participation of Minority and/or Woman owned businesses for adherence by the prime contractor to requirements and sub-contractor payment.

#### **ISSUE:**

Does 42 IAC 1-5-4 (effective date January 7, 2006) apply to solicitation of political contributions by employees with purchasing or procurement authority on behalf of the State? Specifically, is the staff of the Minority and Women's Business Enterprises Division considered as having "purchasing or procurement authority" as a result of their duty to certify firms as qualifying for a program that offers advantages in the procurement process and assisting those firms with obtaining state contracts?

#### **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

Sec. 1. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from another employee or any other person when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

(1) persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or

(2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The heads of all state agencies as defined in IC 4-2-6-1 and all employees or special state appointees with purchasing or procurement authority on behalf of the State, shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

### **CONCLUSION**

The Minority and Women's Business Enterprises Division of IDOA certifies potential contractors with state government. They do not actually approve the expenditure of the public funds. Given this circumstance, the procurement aspect of the political activity rule (section (d)), does not apply to the employees of the division.