

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

42 IAC 1-5-12 Use of state property

Due to the presence of a legislative mandate, use of IALBC monies to fund the transportation of a museum exhibit was found to be consistent with the Use of state property rule. SEC found no conflict of interest would arise for a special state appointee to participate in a decision or vote in which a business organization for whom she served as an officer had a financial interest since legislation specifically required her to sit on the board in her capacity as a member of the organization.

December 13, 2007

No. 07-I-13

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6(b)(1).

BACKGROUND

A special state appointee is the CEO and President of the Lincoln Museum ("Museum") which is located in Fort Wayne, Indiana. The Museum is part of Lincoln Financial Foundation, a non-profit organization. The special state appointee was appointed to serve on the Indiana Abraham Lincoln Bicentennial Commission ("IALBC") pursuant to the legislative requirement that the CEO of the Museum in Fort Wayne, Indiana serve on the IALBC. HEA 1540(d)(9).

The Indiana General Assembly established the IALBC to plan a statewide celebration of the 200th anniversary of Abraham Lincoln's birth. The IALBC falls within the purview of the State Department of Natural Resources ("DNR").

The Museum would like to enter into a contract with DNR to utilize a part of the IALBC state funded budget to circulate traveling exhibits that would be made available to in-state host venues, free of charge. Such venues include county historical societies, public libraries, and possibly public schools and museums. The Museum would like to utilize IALBC funds to pay for the costs of transportation, insurance and maintenance of the exhibits as they travel throughout the state. While the Museum will not net a profit from the IALBC funds, it would recuperate its expenses.

The special state appointee requests a formal advisory opinion from the Commission to determine whether any ethical problems would arise if the IALBC and the Museum entered into such a contract given her respective roles with the contracting entities.

ISSUE

1. May the IALBC and the Museum enter into a contract to pay for the costs of transporting Museum exhibits throughout the state?
2. Would a conflict of interest arise for the special state appointee if the Museum and the IALBC would enter into a contract given her dual roles as President and CEO of the Museum and Commissioner of the IALBC?

RELEVANT LAW

42 IAC 1-5-12 Use of state property

Sec. 12. A state officer, employee, or special state appointee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation.

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (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.

ANALYSIS

ISSUE 1

The IALBC's enabling legislation specifically charges the IALBC to perform various functions. HEA 1540(f). One of these functions is to honor Abraham Lincoln and educate Indiana residents and the nation about Indiana's important role in the life of Abraham Lincoln. HEA 1540(f)(1).

While approval of the intended contract between the IALBC and the Museum is outside of the Commission's jurisdiction, the expenditure of funds by a special state appointee serving on the IALBC is subject to 42 IAC 1-5-12, the use of state property rule. The Use of state property rule prohibits a special state appointee from utilizing state materials, including funds for any purpose other than for official state business.

ISSUE 2

Generally, IC 4-2-6-9 prohibits a state officer, employee, or special state appointee from participating in any decision or vote if the individual has knowledge that various persons, including the individual or a business organization in which the individual serves as an officer, has a "financial interest" in the outcome of the matter.

In this case, the employee, as an IALBC Commissioner, is a special state appointee. However, as the president and CEO of the Museum, the special state appointee also serves as an officer for a business organization. Accordingly, the special state appointee would be prohibited from participating in a decision or vote in which the Museum has a financial interest in the outcome of the matter. The term financial interest is defined to include an interest in a contract. IC 4-2-6-1(10)(1).

While the special state appointee indicates that the Museum would not net a profit from the IALBC funds, the Museum would nevertheless recoup expenses that it would not otherwise recover. Accordingly, the Museum would appear to have a financial interest in the execution of this contract. As such, the special state appointee would be prohibited from participating in any decision or vote pertaining to this contract.

However, in this particular case, the enabling legislation of the IALBC specifically designates that the “chief executive officer of the Lincoln Museum in Fort Wayne, Indiana” shall serve on the IALBC.

CONCLUSION

ISSUE 1

Based upon the legislative mandate set forth in HEA 1540 (f)(1), the Commission finds that an expenditure of IALBC funds for the purpose of funding the transportation of Museum exhibits that pertain to Abraham Lincoln would be consistent with the Use of state property rule.

ISSUE 2

A conflict of interest would arise for the special state appointee under IC 4-2-6-9, but for the enabling legislation of the IALBC which specifically requires that she, as “chief executive officer of the Lincoln Museum in Fort Wayne, Indiana,” serve on the IALBC. HEA 1540(d)(9). Accordingly, the Commission finds a conflict of interest would not arise in this case.