

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

The Special Counsel for DCS was subjected to a screening process where a conflict of interest resulted from his spouse's contracts with his agency for event management purposes.

April 12, 2007
No. 07-I-4

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

BACKGROUND

A state employee is Special Counsel to the Director of the Indiana Department of Child Services ("DCS"). The Special Counsel was employed by DCS on February 26, 2007, and his primary duties are to counsel the Director of DCS on strategic issues and provide leadership to various projects that are initiated by the agency to bring it in compliance with federal and state legislation and the regulations and service standards required by such legislation.

Prior to the Special Counsel's employment at DCS, the Special Counsel's spouse had contracted with the same agency to perform various duties including the facilitation, planning and event management of several strategic planning sessions for the agency's central office and field staff. The Special Counsel indicates that he does not participate in or have any responsibility for any of his spouse's activities with respect to her contract with the agency. DCS would like to continue its contractual relationship with the Special Counsel's spouse at the discretion of the agency.

The Special Counsel further indicates that DCS has implemented a procedure whereby the decision to renew or not renew the spouse's contract will be handled by a Deputy Director at DCS who reports directly to the agency Director. If renewed, that same Deputy Director will also be responsible for administering the spouse's contract. The Special Counsel indicates that he will have no influence over, or be involved in the selection or procurement of the services provided by his spouse.

ISSUE

The issue in this case is whether a conflict of interest would arise for the Special Counsel if DCS continues and renews its contractual relationship with the Special Counsel's spouse.

RELEVANT LAW

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

IC 4-15-7-1
Nepotism

ANALYSIS

A conflict of interest would arise if the Special Counsel was to participate in any decision or vote in which he knew that his spouse had a financial interest in the outcome of the matter. In this case, a conflict of interest could potentially arise for the Special Counsel given that he serves as Special Counsel to the Director of DCS and his spouse has a contractual relationship with the same agency. Accordingly, a screening mechanism must be put in place to preclude the Special Counsel from participating in any matter concerning his spouse.

With regard to nepotism, the Special Counsel would be in violation of the nepotism rule if he and his spouse were to be placed in a direct supervisory-subordinate relationship. In this case, the Special Counsel and his spouse would not be placed in a direct supervisory-subordinate relationship.

CONCLUSION

The Commission approves of the screening mechanism proposed by DCS, whereby the decision to renew the spouse's contract will be handled by a Deputy Director at DCS who reports directly to the agency Director. If renewed, that same Deputy Director will also administer the spouse's contract. The Special Counsel must also be screened from any other decision or vote in which his spouse would have a financial interest in the outcome of the matter. Subject to the screening mechanism being implemented, the Commission finds that a conflict of interest would not arise for the Special Counsel if DCS continued and renewed its contractual relationship with his spouse.

With regard to nepotism, the Commission finds that the Special Counsel would not be in violation of the nepotism rule if his spouse's contractual relationship with DCS continues.

The Special Counsel must ensure continued compliance with this advisory opinion and the State Code of Ethics.