

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

The Chair of the Meridian Street Preservation Commission sought advice to determine whether it was permissible for Commission members to bid and be contracted to work on a project that the Commission previously approved. SEC found that no conflict of interest would arise for a Commission member to work on a project that had been previously approved by the Commission so long as the Commission member had not gained a financial interest in the contract prior to voting on it.

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No. 07-I-9

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 state employee serves as the Chair of the Meridian Street Preservation Commission ("MSPC"). The MSPC is a historic preservation commission that reviews applications by property owners and authorizes appropriate development and changes to private property.

The Chair requests an official advisory opinion from the Commission to determine whether she or members of the Commission may bid on or be hired for a project when a property owner is requesting a bid for a project previously approved by the MSPC

ISSUES

The issue in this case is whether a member of the MSPC may bid on and be contracted to do work on a project that was previously approved by the MSPC.

RELEVANT LAW

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

In this case, a conflict of economic interest would not arise if a member of the MSPC bids on and/or is contracted to do work on a project that was ***previously*** approved by the MSPC. Specifically, a conflict of economic interest would arise if a member of the MSPC participates in a decision or vote in which the member or any person with whom the member is negotiating or has an arrangement regarding prospective employment has a financial interest in the decision or vote taken by the MSPC. To the extent that a member of the MSPC does not gain a financial interest in the project ***prior*** to the MSPC's ruling, IC 4-2-6-9 would not apply.

However, given that a project that has already been approved by the MSPC may come before the MSPC in the future and to avoid the appearance of impropriety, the MSPC members should avoid bidding on or accepting to work on projects that have come before the MSPC for approval.

CONCLUSION

Subject to the foregoing analysis, a conflict of economic interest would not arise if a member of the MSPC bids on and/or is contracted to do work on a project that was ***previously*** approved by the MSPC. However, to avoid future conflicts and the appearance of impropriety, a member of the MSPC should avoid bidding on and/or accepting to do work on projects that have come before the MSPC for approval.