

42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)
42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)
42 IAC 1-5-7 Conflicts of interest; contracts (IC 4-2-6-10.5)

A Charge Nurse with Madison State Hospital inquired as to whether a conflict of interest would arise if the Hospital referred patients to an adult care facility owned by his wife. SEC found that no conflict of interest would arise as long as the Charge Nurse observed the prohibitions found in each of the aforementioned rules, namely the restrictions on disclosing confidential information and the requirements for entering into a contract with the State.

September 2008
No. 08-I-13

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

BACKGROUND

A Registered Nurse was hired by Madison State Hospital (“Hospital”) as a Charge Nurse 3, two months ago. The Hospital is part of the state’s Family and Social Services Administration (“FSSA”).

The Charge Nurse’s wife owns a business which provides care for elderly individuals on the Medicaid Waiver program or for private payment. In addition, his wife has a contract under the Adult Foster Care program (“AFC”) of FSSA. Pursuant to this contract, the AFC inspects the Charge Nurse’s business yearly. Last month, the Charge Nurse and his wife were approached by the local Council on Aging regarding the placement of a patient from the Hospital in one of his wife’s care facilities.

The Charge Nurse’s wife has owned the business for nine years. While his wife is the owner, the Charge Nurse acquired a vested interest in the business when they married last year. The Charge Nurse handles the paperwork for the business on his off hours from his job at the Hospital. His wife handles any decisions related to accepting a patient into care from the Hospital. The income earned from this venture helps support their family.

As a Charge Nurse at the Hospital, he states that he does not have any input on the placement of Hospital patients in healthcare facilities.

ISSUE

Would a conflict of interest arise for the Charge Nurse if the Hospital refers patients to an adult care facility owned by his wife?

RELEVANT LAW

IC 4-2-6-5.5

Conflict of interest; advisory opinion by inspector general

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not

knowingly:

(1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

(3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

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.

IC 4-2-6-10.5

Prohibition against financial interest in contract; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to:

(1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:

(A) the contract is made after public notice or, where applicable, through competitive bidding;

(B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission; and

(B) terminates or disposes of the financial interest.

IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(10) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

ANALYSIS

Based on the facts of this case, a conflict of interest under IC 4-2-6-5.5 could possibly arise for the Charge Nurse if his involvement in his wife's business would require him to disclose confidential information that was gained in the course of his state employment. To the extent that his involvement in the business would not trigger any of the restrictions set forth in the rule, particularly subsection (b), a conflict of interest would not arise for the Charge Nurse.

A second conflict of interest could arise for the Charge Nurse under IC 4-2-6-9. This provision prohibits a state employee from participating in any decision or vote in which various individuals, including the employee or the employee's spouse, has a financial interest in the outcome of the matter. According to this rule, the Charge Nurse would be prohibited from participating in a decision or vote in which he or his wife has a financial interest in. In this case, the prohibition would apply to a decision regarding the referral of a Hospital patient to his wife's business. However, because the Charge Nurse indicates that he does not have decision making authority in his position with the Hospital regarding patient placement, it does not appear that a conflict of interest under IC 4-2-6-9 would arise.

A third conflict of interest rule that must be considered is IC 4-2-6-10.5. This rule generally prohibits a state employee from having a financial interest in a contract made by an agency. This restriction, however, does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided the statutory criteria are met.

In this case, the Charge Nurse does not appear to have contracting responsibilities at the Hospital. However, the restriction in IC 4-2-6-10.5 applies when a state employee has an interest in a contract made by an agency. The Charge Nurse indicates that he has a vested interest in his wife's business by virtue of their marital status. In addition, the Charge Nurse owns one of the homes that is utilized in the business. Accordingly, the Charge Nurse must ensure compliance with the statutory criteria set forth in IC 4-2-6-10.5 (b)(1)(A)-(D).

CONCLUSION

To the extent that the Charge Nurse ensures compliance with the foregoing analysis, a conflict of interest would not arise for the Charge Nurse if the Hospital refers patients to an adult care facility owned by his wife.