

42 IAC 1-5-4 Political activity

SEC advised the IG that while questions regarding political activity are fact sensitive, the mere attendance by a agency appointing authorities at a political fundraiser on their personal time would not necessarily constitute a violation of the Political activity rule. However, activity that extends beyond mere attendance may in certain instances constitute solicitation and/or prohibited political activity.

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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

The Inspector General requested a formal advisory opinion to obtain clarification regarding the application of 42 IAC 1-5-4, the political activity rule of the state Code of Ethics, to agency appointing authorities. Specifically, the Inspector General requested this opinion to determine whether the attendance of an agency appointing authority to political fundraising events would be in violation of the political activity rule.

ISSUE

May an agency appointing authority attend at a political fundraising event without violating 42 IAC 1-5-4, the political activity rule?

RELEVANT LAW

42 IAC 1-5-4 Political activity

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) 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 appointing authority of an agency 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.

ANALYSIS

The political activity rule sets forth various restrictions upon state employees and special state appointees. The attendance of an agency appointing authority at a political fundraising event invokes consideration of the restrictions set forth in subsection (a) and subsection (d) of the rule. 42 IAC 1-5-4(a) prohibits a state employee from engaging in political activity, including the

solicitation of funds, when on duty or acting in an official capacity. 42 IAC 1-5-4(d) prohibits an agency appointing authority from soliciting political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

The Commission was of the opinion that mere attendance to a political fundraising event by an agency appointing authority on their personal time would not necessarily be contrary to the restrictions set forth in subsections (a) and/or (b) of the political activity rule. However, the Commission recognized that each situation is unique and under certain circumstances, the attendance of an agency appointing authority to a political fundraising event could potentially result in a violation of any portion of the political activity rule.

CONCLUSION

The Commission found that while questions regarding political activity are fact sensitive, the mere attendance by an agency appointing authority to a political fundraiser on their personal time would not necessarily constitute a violation of the political activity rule. However, the Commission notes that activity that goes beyond mere attendance may in certain instances constitute solicitation and/or prohibited political activity.