

42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)

An INDOT employee also served as the President of a consulting company that sought to provide GIS support to local units of government and assist them in submitting mileage reports to INDOT for reimbursement. SEC found no conflict of interest would arise with the proposed expansion of the employee's outside employment to local units of government in the state since the mileage reports were submitted to a different section in the employee's agency.

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

BACKGROUND

In addition to his state employment as a Geographical Information Systems ("GIS") Analyst for the Department of Transportation's ("INDOT") Business Information and Technology ("BITS") Division, the Analyst also serves as President of a geospatial consulting company operating out of Cincinnati, Ohio. The consulting company currently provides GIS support to local units of government.

The Analyst plans to expand the company's operation to aid local units of government in their submission of roadway mileage to INDOT. More specifically, INDOT's Roadway Inventory Section, a section within INDOT's Division of Planning, maintains an inventory of roads and periodically submits a summary report of mileage under the jurisdiction of each local unit of government to the State Auditor ("Auditor"). The Auditor uses the figures contained in the report to help determine the distribution of fuel tax revenues to local units of government. The local units of government are not required to submit mileage to INDOT for the preparation of these reports, but local units may benefit from doing so.

ISSUES

Would a conflict of interest arise for the Analyst if he expands his outside business to assist local governmental units to prepare and submit mileage reports to INDOT, the state agency he currently works for?

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).

ANALYSIS

Based on the facts presented, the Commission finds that the Analyst's proposed business expansion would not be contrary to the Code of Ethics. While the Analyst's outside business organization would be assisting local governments in preparing documentation that will be submitted to INDOT, such work would not trigger the restriction set forth in subsection (1). More specifically, such assistance would not be inherently incompatible with his duties at INDOT or require his recusal from matters associated with his work at INDOT because the local government submissions are handled by a separate section within the agency. Similarly, sections (2) and (3) would not be triggered. According to the Analyst's representation, the expansion of his outside business would not require him to disclose information of a confidential nature or allow him to secure unwarranted privileges or exemptions.

CONCLUSION

Based on the foregoing analysis, the Commission finds that the Analyst's proposed outside employment activity would not create a conflict of interest according to state ethics law.