

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)

The Chief Airport Inspector at INDOT conferred with his supervisor and agency EO before accepting part-time employment as a line service technician with a municipal airport but sought guidance as to whether his outside employment raised conflict of interest concerns under the Code of Ethics. SEC found that a conflict of interest would only arise for the Inspector if he were to participate in the annual safety inspection of the municipal airport that employed him but that he could avoid violating the Code of Ethics by following the screen detailed in the advisory opinion.

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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

A state employee is currently employed as the Chief Airport Inspector with the Indiana Department of Transportation’s (“INDOT”) Office of Aviation and is responsible for the annual safety inspection of ninety-five Indiana public-use airports. The Office of Aviation includes three other staff members who have served as inspectors in the past.

After consulting with his supervisor and agency Ethics Officer, the Chief Airport Inspector started a part-time position with a municipal airport (“Airport”) as a Line Service Technician on December 9, 2008. The Chief Airport Inspector’s duties at the Airport include fueling and storing aircrafts. He also helps to provide basic maintenance of the Airport hangers.

ISSUE

Does the Chief Airport Inspector’s outside employment with the Airport give rise to a conflict of interest under the Code of Ethics?

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.

ANALYSIS

As a state employee, the Chief Airport Inspector is subject to the Code of Ethics including the conflicts of interest provisions set forth in IC 4-2-6-5.5 and IC 4-2-6-9. The application of both conflicts of interest provisions to the Chief Airport Inspector's outside employment with the Airport are analyzed below.

A. *IC 4-2-6-5.5, Conflict of Interest, Outside Employment*

In this case, the Chief Airport Inspector's outside employment with the Airport would not appear to create a conflict of interest under IC 4-2-6-5.5. In relevant part, IC 4-2-6-5.5 provides that a current state employee may not 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. In this case, it is unclear whether the Chief Airport Inspector's employment would involve compensation of substantial value. However, to the extent that it does, the Chief Airport Inspector's outside employment would not require him to recuse himself from matters so central or critical to the performance of his official duties. More specifically, while the Chief Airport Inspector's supervisor recognizes that he would not be able to perform the annual safety inspection for the Airport, the state employee would indeed be able to perform the rest of his duties as Chief Airport Inspector for INDOT.

In addition, IC 4-2-6-5.5 would also prohibit the Chief Airport Inspector from accepting employment that would require him to disclose confidential information that was gained in the course of state employment. According to INDOT's Ethics Officer, the Chief Airport Inspector would not be required to disclose confidential information in his employment with the Airport. Moreover, INDOT's Ethics Officer has indicated that such moonlighting activity by the Chief Airport Inspector would not be contrary to any INDOT rule or policy.

B. *IC 4-2-6-9, Conflicts of Interest, Decisions and Voting*

In relevant part, IC 4-2-6-9(a)(3) provides that a state employee may not participate in any decision or vote if the state employee has knowledge that a business organization in which the employee is employed by has a financial interest in the outcome of the matter. The state employee is the Chief Airport Inspector for INDOT and is responsible for conducting the annual safety inspection of the Airport. In this case, the Airport would appear to have a financial interest in the outcome of their annual safety inspection. Accordingly, a conflict of interest would arise if the Chief Airport Inspector participated in or performed the annual safety inspection of the Airport. Given that a conflict of interest could arise for the Chief Airport Inspector due to his outside employment, he must ensure full compliance with IC 4-2-6-9(b). Specifically, the Chief Airport Inspector must notify his appointing authority of the potential conflict of interest and request an advisory opinion from the Commission.

Upon disclosure of a potential conflict of interest, the Commission may take one of the following two courses of action under IC 4-2-6-9(b).

First, with the approval of a person's appointing authority, the Commission may recommend assigning the matter giving rise to the conflict of interest to another person and further recommend the implementation of all necessary procedures to screen the Chief Airport Inspector from any involvement in the matter. In this case, INDOT's Ethics Officer and the Chief Airport Inspector's supervisor have proposed a screening procedure for the Commission's approval. Specifically, the Chief Airport Inspector's supervisor will disqualify him from performing the annual safety inspection at the Airport and will assign another member of INDOT's Office of Aviation to conduct that inspection.

In the alternative, the Commission may make a written determination that the interest is not so substantial that it is likely to affect the integrity of the services that the state expects from the Chief Airport Inspector.

CONCLUSION

The Commission finds that the Chief Airport Inspector's outside employment with the Airport would not appear to create a conflict of interest under IC 4-2-6-5.5.

The Commission further finds that a conflict of interest would arise for the Chief Airport Inspector under IC 4-2-6-9 if he would participate in the annual safety inspection of the Airport. Accordingly, it is the recommendation of the Commission that INDOT implement the screening procedure discussed herein.