

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

The spouse of a Deputy Treasurer served as a public funds officer for a local bank with whom the Office of the State Treasurer had an ongoing business relationship. SEC found that a conflict of interest would arise for the Deputy should he participate in a decision or vote prohibited by IC 4-2-6-9 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 Deputy Treasurer and Portfolio Manager for the Office of the State Treasurer (“OST”) and commenced his employment with the OST on January 15, 2009. In this position, he is primarily responsible for making investment decisions regarding the State’s investment portfolio.

The Deputy Treasurer’s spouse is a public funds officer for a local bank (“Bank”). The OST has an ongoing relationship with the Bank. Specifically, the Bank conducts banking services for the State and serves as a depository for State money invested by the OST. Pursuant to her duties for the Bank, the Deputy Treasurer’s spouse has historically been the point of contact at the OST for the services provided to the State.

ISSUE

Would a conflict of interest arise for the Deputy Treasurer if he participates in a decision or vote pursuant to his duties with the OST involving the Bank if his spouse has a financial interest in the outcome of that decision?

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

As a state employee, the Deputy Treasurer is subject to the Code of Ethics including the conflicts of interest provision set forth in IC 4-2-6-9. In relevant part, IC 4-2-6-9(a)(2) provides that a state employee may not participate in any decision or vote if the state employee has knowledge that a member of their immediate family has a financial interest in the outcome of the matter. A spouse is an immediate member of a family. *See* 42 IAC 1-3-13. The Deputy Treasurer is the portfolio manager for the OST and is responsible for making investment decisions regarding the State's investment portfolio. Such decisions would involve the Bank. If the Deputy Treasurer's spouse's compensation from the Bank were to be affected in any way by the investment decisions made by her husband, she would have a financial interest in the outcome of investment decisions that her husband would make regarding State funds. Accordingly, a conflict of interest would arise if the Deputy Treasurer participated in any decision or vote involving the Bank. Given that a conflict of interest would arise for the Deputy Treasurer, he must ensure full compliance with IC 4-2-6-9(b). Specifically, the Deputy Treasurer must notify his appointing authority of the potential conflict of interest and request an advisory opinion from the Commission. In this case, he has complied with both requirements.

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 Deputy Treasurer from any involvement in the matter. In this case, the OST's Ethics Officer has proposed a screening procedure for the Commission's approval.

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 Deputy Treasurer.

CONCLUSION

The Commission finds that a conflict of interest would arise for the Deputy Treasurer if he would participate in any decision or vote involving the Bank if he knows that his wife would have a financial interest in the outcome of the matter. Given the Deputy Treasurer's position and investment duties with the OST, the Commission recommends that the screening procedure discussed herein be implemented by the OST.