

### **IC 4-2-6-1 Definitions**

The DWD Chief Compliance and Ethics Officer requested advice on whether the members of a series of entities associated with DWD fell under the definition of “special state appointee” under IC 4-2-6-1(a)(16).

SEC found the members of the State Workforce Innovation Council satisfied the definition of “special state appointee” but the members of the Indianapolis Private Industry Council and Regional Workforce Boards did not since they do not function in a policy or an advisory role to the executive branch of government, as required under IC 4-2-6-1(a)(16)(B)(ii).

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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 the Chief Compliance and Ethics Officer for the Indiana Department of Workforce Development (“DWD”). DWD is a state agency that manages and implements employment and training for Hoosier workers, unemployment insurance systems, labor market information surveys, career and technical education programs and facilitates regional economic growth initiatives for Indiana.

Indiana’s workforce investment system consists of various councils and boards including the State Workforce Innovation Council (“SWIC”), the Indianapolis Private Industry Council (“IPIC”), and eleven Regional Workforce Boards (“RWBs”).

Pursuant to Section 111 of the Workforce Investment Act (“WIA”), 29 USC 2801, the governor of each state shall establish a “State workforce investment board” to 1) assist in the development of a state plan establishing statewide workforce development activities and 2) to assist the Governor in a multitude of functions, including the development of local areas and allocation formulas for federal funds.<sup>1</sup> In Indiana, a State workforce investment board (“SWIC”) was

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<sup>1</sup> (d) Functions.--The State Board shall assist the Governor in--

- (1) development of the State plan;
- (2) development and continuous improvement of a statewide system of activities that are funded under this subtitle or carried out through a one-stop delivery system described in section 134(c) that receives funds under this subtitle (referred to in this title as a “statewide workforce investment system”), including--
  - (A) development of linkages in order to assure coordination and nonduplication among the programs and activities described in section 121(b); and
  - (B) review of local plans;
- (3) commenting at least once annually on the measures taken pursuant to section 113(b)(14) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C 2323(b)(14));
- (4) designation of local areas as required in section 116;
- (5) development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 128(b)(3)(B)

established pursuant to IC 22-4-18.1-3. In compliance with WIA and IC 22-4-18.1-5, the membership of the SWIC consists of the Governor, two members of each chamber of the State legislature, appointed by the appropriate presiding officers of each such chamber, and representatives of business, labor, cities, and counties, etc. appointed by the Governor. Currently, the SWIC consists of 42 members, three of which are non-voting members.

In addition to the establishment of a state workforce investment board, Sect. 116 and 117 of WIA requires the establishment of local workforce investment boards (“Local Board”) within local workforce investment areas. In Indiana, Governor Daniels, after public comment and in consultation with the SWIC and others as prescribed by statute, established two workforce investment areas. These local workforce investment areas are referred to as Marion County and the Balance of State i.e. the rest of the State of Indiana.

In addition to serving as the State board, the SWIC serves as the Local Board for the Balance of State. The U.S. Department of Labor granted a waiver to Indiana permitting Indiana’s SWIC to act as the Local Board for the Balance of State as well as the State workforce investment board. The governor is deemed to be the “chief elected official” and appoints all members of the SWIC. The members of the SWIC jointly fulfill the composition requirement under WIA i.e. members do not delineate themselves as filing the local or state membership requirement.

The Indianapolis Private Industry Council (“IPIC”) serves as the Local Board for Marion County.

The Local Boards (SWIC, in its role as the Local Board for the Balance of State, and IPIC) are responsible for eight overarching functions set forth in Section 117 of WIA. Those functions include, but are not limited to the following: 1) develop a local plan; 2) select private entities to operate, in part, Indiana’s Work One offices (formerly referred to as unemployment offices); 3) develop a budget; 4) manage program oversight; 5) establish local performance measures; 6) develop employment statistics system; 7) coordinate workforce investment activities; and 8) promote employer participation.<sup>2</sup>

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and 133(b)(3)(B);

(6) development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State as required under section 136(b);

(7) preparation of the annual report to the Secretary described in section 136(d);

(8) development of the statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(9) development of an application for an incentive grant under section 503.

<sup>2</sup> (d) Functions of Local Board.--The functions of the local board shall include the following:

(1) Local plan.--Consistent with section 118, each local board, in partnership with the chief elected official for the local area involved, shall develop and submit a local plan to the Governor.

(2) Selection of operators and providers.--

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(A) Selection of one-stop operators.--Consistent with section 121(d), the local board, with the agreement of the chief elected official--

(i) shall designate or certify one-stop operators as described in section 121(d)(2)(A); and

(ii) may terminate for cause the eligibility of such operators.

(B) Selection of youth providers.--Consistent with section 123, the local board shall identify eligible providers of youth activities in the local area by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council.

(C) Identification of eligible providers of training services.--Consistent with section 122, the local board shall identify eligible providers of training services described in section 134(d)(4) in the local area.

(D) Identification of eligible providers of intensive services.--If the one-stop operator does not provide intensive services in a local area, the local board shall identify eligible providers of intensive services described in section 134(d)(3) in the local area by awarding contracts.

(3) Budget and administration.--

(A) Budget.--The local board shall develop a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official.

(B) Administration.--

(i) Grant recipient.--

(I) In general.--The chief elected official in a local area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local area under sections 128 and 133, unless the chief elected official reaches an agreement with the Governor for the Governor to act as the local grant recipient and bear such liability.

(II) Designation.--In order to assist in the administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local grant subrecipient for such funds or as a local fiscal agent. Such designation shall not relieve the chief elected official or the Governor of the liability for any misuse of grant funds as described in subclause (I).

(III) Disbursal.--The local grant recipient or an entity designated under subclause (II) shall disburse such funds for workforce investment activities at the direction of the local board, pursuant to the requirements of this title, if the direction does not violate a provision of this Act. The local grant recipient or entity designated under subclause (II) shall disburse the funds immediately on receiving such direction from the local board.

(ii) Staff.--The local board may employ staff.

(iii) Grants and donations.--The local board may

IPIC serves as the Local Board in Marion County. Section 117 of WIA requires that members of IPIC consist of representatives of business, labor organizations, community-based organizations, etc. Like the State workforce investment board, the representatives of IPIC (as the Local Board) are appointed by the chief elected official. However, the mayor of Indianapolis is the chief elected official in Marion County. IPIC functions in the same capacity as that described for the SWIC, in its capacity as the Local Board described *supra*.

With respect to the Balance of State workforce investment area, IC 22-4.5-7-1 established eleven RWBs throughout the State of Indiana. Each of the eleven RWBs is comprised of at least nine but no more than sixteen members. Pursuant to IC 22-4.5-7-2, the members must consist of at least one business representative and four non-business representatives from each of the following categories: an economic development agency; a local education entity; a community based or faith based service organization and a labor organization. The RWB members are appointed by the mayors of the cities within each particular Workforce Region, according to the

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solicit and accept grants and donations from sources other than Federal funds made available under this Act.

(4) Program oversight.--The local board, in partnership with the chief elected official, shall conduct oversight with respect to local programs of youth activities authorized under section 129, local employment and training activities authorized under section 134, and the one-stop delivery system in the local area.

(5) Negotiation of local performance measures.--The local board, the chief elected official, and the Governor shall negotiate and reach agreement on local performance measures as described in section 136(c).

(6) Employment statistics system.--The local board shall assist the Governor in developing the statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act.

(7) Employer linkages.--The local board shall coordinate the workforce investment activities authorized under this subtitle and carried out in the local area with economic development strategies and develop other employer linkages with such activities.

(8) Connecting, brokering, and coaching.--The local board shall promote the participation of private sector employers in the statewide workforce investment system and ensure the effective provision, through the system, of connecting, brokering, and coaching activities, through intermediaries such as the one-stop operator in the local area or through other organizations, to assist such employers in meeting hiring needs.

(e) Sunshine Provision.--The local board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the local board, including information regarding the local plan prior to submission of the plan, and regarding membership, the designation and certification of one-stop operators, and the award of grants or contracts to eligible providers of youth activities, and on request, minutes of formal meetings of the local board.

procedures set forth in IC 22-4.5-7-2. The RWBs provide guidance and support to the workforce investment system.<sup>3</sup>

The Chief Compliance and Ethics Officer requested this opinion from the Commission to determine whether the members of the SWIC, IPIC, and the RWBs are special state appointees and therefore subject to the application of the Code of Ethics.

### **ISSUES**

- (1) Are SWIC members special state appointees?
- (2) Are IPIC members special state appointees?
- (3) Are RWB members special state appointees?

### **RELEVANT LAW**

#### **IC 4-2-6-1**

##### **Definitions**

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

- (16) "Special state appointee" means a person who is:
  - (A) not a state officer or employee; and

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#### <sup>3</sup> **IC 22-4.5-7-3**

##### **Regional workforce boards; duties**

Sec. 3. The duties of a regional workforce board include the following:

- (1) Providing guidance and direction to the workforce investment system.
- (2) Providing support and guidance described in section 4 of this chapter to a workforce investment board.
- (3) Performing additional duties in the regional workforce area as assigned by a workforce investment board.

*As added by P.L.161-2006, SEC.31.*

#### **IC 22-4.5-7-4**

##### **Regional workforce board; duties with respect to a workforce investment board**

Sec. 4. In addition to the duties described in section 3 of this chapter, each regional workforce board shall advise the workforce investment board in the regional workforce area on regional workforce area issues and provide support to the workforce investment board as follows:

- (1) Select and enter into an agreement with a regional operator on behalf of its workforce investment board at least every three (3) years using a competitive procurement process.
- (2) Select Workforce Investment Act services, other employment and training services as determined by the department, and service providers on behalf of its workforce investment board at least every three (3) years using a competitive procurement process.
- (3) Oversee on behalf of its workforce investment board the activities of the regional operator in the regional workforce area.
- (4) Develop an outcome based regional plan that encourages the integration of service delivery.
- (5) Perform additional duties as requested by the workforce investment board.

*As added by P.L.161-2006, SEC.31.*

(B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

## ANALYSIS

The Code of Ethics applies to special state appointees of the executive branch of state government. 42 IAC 1-2-1(b)(1). In determining the application of the Code of Ethics to members of the SWIC, IPIC and the RWBs, the Commission looks to the definition of the term “special state appointee” as defined in IC 4-2-6-1(a)(16). A special state appointee is someone who is neither a state officer nor a state employee and is appointed to a board or council that is authorized by statute or executive order and functions in a policy or an advisory role in the executive department of state government. The Commission analyzes the status of the members of each group below.

### A. SWIC Members

SWIC members would appear to be special state appointees. Specifically, SWIC members do not fit the definitions of the terms “state officer” or “state employee.” Instead, members are appointed to the SWIC by the Governor pursuant to the section 111 of the WIA and IC 22-4-18.1-5. Furthermore, the SWIC is a council that is authorized by a federal statute and is created by state statute in IC 22-4-18.1-3. With respect to the SWIC’s work, it would appear that the SWIC does function in a policy or an advisory role in the executive department of state government. Specifically, IC 22-4-18.1-3(1), (2), (5), (6) and (8) provide that the SWIC is to advise the governor, a member of the executive department of state government, regarding various workforce matters involving the State of the Indiana. Accordingly, the Commission finds that the SWIC members are special state appointees.

### B. IPIC Members

IPIC members do not appear to be special state appointees. Specifically, IPIC members do not fit the definitions of the terms “state officer” or “state employee.” However, IPIC members are appointed to the IPIC pursuant to section 117 of the WIA. While the appointments of the IPIC members are made by the mayor of Indianapolis and not the governor, IC 4-2-6-1 (a)(16)(B) only requires that the member be appointed. IC 4-2-6-1 (a)(16)(B) does not specifically require that such appointment be made by a specific individual.

Furthermore, IPIC is a council that is authorized by statute. More specifically, IPIC is a Local Board. Local Boards are authorized by a federal statute in the WIA section 117(a) (29 USC 2832). While IPIC specifically is not created by state statute, IC 4-2-6-1(a)(B)(i) only requires that the council be *authorized* by statute. It should be noted that

IC 4-2-6-1(a)(B)(i) does not require that the statute authorizing the board be a state or federal statute.

However, with respect to IPIC's function in a policy or an advisory role in the executive department of state government, it would appear that IPIC's work is primarily focused on a local level. Accordingly, the Commission finds that IPIC does not function in a policy or an advisory role to the executive branch of government and IPIC members are therefore not special state appointee.

### C. RWB Members

RWB members do not appear to be special state appointees. RWB members do not fit the definitions of the terms "state officer" or "state employee." Instead, members are appointed to the RWB according to the procedures set forth in IC 22-4.5-7-2. While the appointments of the RWB members are made by the mayors of the cities within each particular Workforce Region and not the governor, IC 4-2-6-1(a)(16)(B) only requires that the member be appointed. IC 4-2-6-1 (a)(16)(B) does not specifically require that such appointment be made by a specific individual. Furthermore, the RWB are boards that are authorized by and are created pursuant to state statute in IC 22-4.5-7-1.

With respect to the RWB's function in a policy or advisory role in the executive branch of state government, it would appear that the work of the RWBs is primarily focused at the regional level. Accordingly, the Commission finds that RWBs do not function in a policy or an advisory role to the executive branch of government and RWB members are therefore not special state appointees.

## CONCLUSION

Pursuant to the foregoing analysis, the Commission finds that members of the SWIC are special state appointees as the term is defined in IC 4-2-6-1(a)(16) and are therefore subject to the Code of Ethics. The Commission further finds that members of the IPIC and RWBs are not special state appointees and are therefore not subject to the Code of Ethics as it applies to special state appointees.