

IC 4-2-6-1 Definitions

The IG sought clarification on the application of the Code of Ethics ("Code") to proxies designated by members of state boards and commissions to appear on their behalf. SEC found such proxies are required to complete ethics training and would be bound by the Code as it would apply to both them and the member on whose behalf they are serving.

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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 who is the Inspector General requests an advisory opinion from the Commission to clarify the application of the Code of Ethics to proxies who are designated by members of state boards and commissions (Members). It is common practice for Members to send proxies to board or commission meetings and appear on their behalf. In most cases, proxies do more than just deliver a vote and very often participate actively as the Member's representative.

ISSUE

- (1) Is a proxy required to observe the requirements of the Code of Ethics as it applies to: (a) the proxy, or (b) the Member he or she is representing?
- (2) Is a proxy required to complete ethics training?

RELEVANT LAW

IC 4-2-6-1 Definitions

(8) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(16) "Special state appointee" means a person who is:

- (A) not a state officer or employee; and
- (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.

- (17) "State officer" means any of the following:
- (A) The governor.
 - (B) The lieutenant governor.
 - (C) The secretary of state.
 - (D) The auditor of state.
 - (E) The treasurer of state.
 - (F) The attorney general.
 - (G) The superintendent of public instruction.

42 IAC 1-4-1 Training requirements

Sec. 1. (a) All state officers, employees, and special state appointees shall be properly trained in the code of ethics as described in this article. All persons who have a business relationship with a state agency are obligated to abide by the code of ethics

ANALYSIS

The membership of the myriad boards and commissions throughout the executive branch of state government is primarily established by the enabling statute of each board and commission. Some enabling statutes include provisions that allow Members to designate proxies to serve as their representatives. Proxies designated by Members can be categorized into two distinct groups. First, Members can designate a proxy that is currently serving as a state officer, employee, or a special state appointee and accordingly, is subject to the application of the Code of Ethics. On the other hand, Members also designate proxies who are not state officers, employees, or special state appointees and accordingly, are not already subject to the application of the Code of Ethics.

It is the opinion of the Commission that a proxy is acting on behalf of a Member who is subject to the application of the Code of Ethics. Accordingly, when acting in that capacity, the Commission finds that a proxy must observe the application of the Code of Ethics as it applies to the designating Member. The Commission further finds that a proxy must also observe the application of the Code of Ethics as it applies to the proxy him or herself. For example, a proxy must ensure compliance with the Code of Ethics if, and when, a decision or vote would create a conflict of interest for the designating Member. At the same time, the proxy must also ensure compliance with the Code of Ethics if, and when, that same decision or vote would create a conflict of interest for the proxy.

With respect to training, the Commission finds that a proxy must complete ethics training. Specifically, it is the opinion of the Commission that proxies must complete ethics training to ensure that they are aware of the rules that they and the Member(s) they are representing are subject to.

CONCLUSION

Pursuant to the foregoing analysis, the Commission finds that a proxy is required to observe the requirements of the Code of Ethics as it applies to the proxy and the Member he or she is representing. Furthermore, the Commission finds that a proxy is required to complete ethics training.