

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

An ALJ with the IURC submitted his resume seeking employment with a utility regulated by his agency and sought advice on when “negotiations” began, thereby invoking the restrictions under IC 4-2-6-9 and requiring that he be screened from any cases involving the utility. SEC determined “negotiations” would commence upon the response of the utility to the ALJ’s resume submission at which point the provisions of IC 4-2-6-9 would be implicated, and the ALJ would need to be screened from matters involving the utility.

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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 an administrative law judge with the Indiana Utility Regulatory Commission (IURC). The administrative law judge submitted a resume seeking employment with a utility that is regulated by the IURC (Utility).

In his current position at the IURC, the administrative law judge has pending cases assigned to him involving the Utility. The administrative law judge disclosed to the agency’s Ethics Officer, out of an abundance of caution, that he had submitted his resume and screened himself from cases involving the Utility. The administrative law judge was advised by the agency’s Ethics Officer that the Commission issued a formal advisory opinion twenty years ago addressing a similar situation. He was further advised that the Indiana Office of Utility Consumer Counselor received a more recent informal opinion in 2007 indicating that the submission of a resume did not constitute “negotiations” and therefore did not create a conflict of interest.

The administrative law judge requests this advisory opinion to determine whether he is permitted to work on cases involving the Utility given that he has submitted a resume for employment with that Utility.

#### **ISSUE**

Does a conflict of interest arise for the administrative law judge if he participates in a decision or vote involving a Utility with whom he has submitted a resume to seek employment?

#### **RELEVANT LAW**

##### **IC 4-2-6-9 (42 IAC 1-5-6)**

##### **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**

IC 4-2-6-9 prohibits the administrative law judge from participating in any decision or vote if he has knowledge that various persons have a "financial interest" in the outcome of the matter, including a potential employer. Specifically, IC 4-2-6-9(a)(4) prevents the administrative law judge from participating in any decision or vote in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. In this case, a conflict of interest would arise if (1) the Utility has a financial interest in the outcome of a decision(s) or vote(s) that the administrative law judge participates in, and (2) the administrative law judge is negotiating or has an arrangement concerning prospective employment with the Utility. It is undisputed that the Utility would have a financial interest in the decision(s) or votes(s) the administrative law judge would participate in as an ALJ involving the Utility. Accordingly, the application of this rule depends upon whether the administrative law judge's mere submission of his resume to the Utility rises to the level of "negotiating or having an arrangement concerning prospective employment" with the Utility.

In this case, the Commission finds that the administrative law judge's submission of his resume does not constitute negotiating or having an arrangement concerning prospective employment with the Utility. Specifically, the administrative law judge disclosed that while he has submitted a resume for a job opening with the Utility, the Utility has not contacted him in response to his submission. Since the Utility has not contacted the administrative law judge, the Commission finds that he does not have an arrangement for prospective employment with the Utility. With

respect to negotiations, the Commission looks to the plain meaning of the term “negotiations” since the term is not defined by statute or administrative rule. The term “negotiations” is defined in the dictionary as “dealings conducted between two or more parties for the purpose of reaching an understanding.” Black’s Law Dictionary 8<sup>th</sup> Edition, 1065; <http://www.merriam-webster.com/dictionary/negotating> (defining “negotiate” as “to confer with another so as to arrive at the settlement of some matter” or “to arrange for or bring about through conference, discussion, and compromise <negotiate a treaty>”). Based upon these definitions, the Commission finds that negotiations did not commence for the administrative law judge at the time of his unilateral submission of his resume. Instead, negotiations for prospective employment would commence for the administrative law judge if, and when, the Utility contacts him in response to his resume.

### **CONCLUSION**

The Commission finds that a conflict of interest would not arise for the administrative law judge if he participates in a decision or vote involving the Utility so long as the Utility has not contacted him in response to his resume submission. However, a conflict of interest would arise for the administrative law judge if, and when, the Utility contacts him in response to his resume.